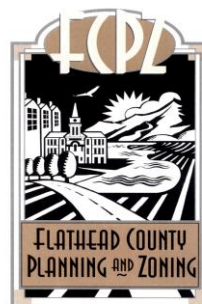


FLATHEAD COUNTY

FLOODPLAIN AND FLOODWAY MANAGEMENT REGULATIONS

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FLATHEAD COUNTY

FLOODPLAIN AND FLOODWAY MANAGEMENT REGULATIONS

BOARD OF COUNTY COMMISSIONERS

FLATHEAD COUNTY, MONTANA

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Chapter 1.
TITLE, PURPOSE, AUTHORITY AND GENERAL PROVISIONS

1.01 FLOODPLAIN HAZARD MANAGEMENT REGULATIONS

These regulations are known and may be cited as the “Floodplain and Floodway Management Regulations;” hereinafter referred to as “these regulations.”

1.02 STATUTORY AUTHORITY

- A. Floodplain and Floodway Management is incorporated in Montana Code Annotated (MCA) Title 76, Chapter 5 and describes the authority, procedures and minimum standards for local regulations and is further described in Montana Administrative Rule (ARM) 36, Chapter 15.
- B. The authority to regulate development in specifically identified flood hazard areas has been accepted pursuant to 76-5-301, MCA.

1.03 FINDINGS OF FACT

- A. Flood hazard areas specifically adopted herein as Regulated Flood Hazard Areas have been delineated and designated by order or determination of the Department of Natural Resources and Conservation (DNRC) pursuant to MCA 76-5-201 et.seq.
- B. These regulations have been reviewed by Montana Department of Natural Resources and Conservation and the Federal Emergency Management Agency. The Montana Department of Natural Resources and Conservation has found the regulations acceptable in meeting the Department minimum standards. The Federal Emergency Management Agency finds that these regulations are adequate and consistent with the comprehensive criteria for land management and use pursuant to the standards established in 44 CFR 60.3.

1.04 PURPOSE

The purpose of these regulations is to promote public health, safety and general welfare of the residents and minimize public and private losses due to flood conditions in Regulated Flood Hazard Areas. These Regulations are intended to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business and public service interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;
- F. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood disruptions; and to
- G. Ensure compliance with the minimum standards for the continued participation in the National Flood Insurance Program for the benefit of the citizens of Flathead County.

1.05 METHODS TO REDUCE LOSSES

In accordance with 76-5-102, MCA, these regulations are intended to reduce flood losses through the following methods:

- A. Restrict or prohibit uses that are dangerous to health, safety or property in times of flooding or that may cause excessive increases in flood heights or velocities;
- B. Require that uses of land vulnerable to floods, including public facilities, be developed or constructed to at least minimum standards or to otherwise minimize flood damage;
- C. Regulate the alteration of natural floodplains, stream channels, and natural protective barriers which are needed to accommodate floodwaters;
- D. Regulate filling, grading, dredging and other development which may increase flood damage;
- E. Prevent or regulate the construction of flood barriers which will impact other land, flood water depth or velocity of floodwaters;
- F. Distinguish between the land use regulations applied to the floodway within the Regulated Flood Hazard Area and those applied to that portion of the Regulated Flood Hazard Area not contained in the floodway;
- G. Apply more restrictive land use regulations within the floodway of the Regulated Flood Hazard Area; and
- H. Ensure that regulations and minimum standards balance the greatest public good with the least private injury.

1.06 REGULATED AREA

These regulations apply only to the flood hazard areas specifically adopted herein as Regulated Flood Hazard Areas which are more fully and specifically described in Chapter 4. Requirements and approvals for alterations to the Regulated Flood Hazard Area are specified in Chapter 4. The Regulated Flood Hazard Area includes areas specifically identified, labeled and illustrated on maps such as Floodplain, Floodway, or Flood Fringe that have differing uses allowed and minimum building standards that apply. The Regulated Flood Hazard Area is the geographic area inundated by a flood of 100-year frequency illustrated and depicted in the referenced studies and maps.

The Regulated Flood Hazard Area supporting study and maps illustrating the regulatory area are based on studies and maps that have been specifically adopted pursuant to 76-5-201et.seq. The maps and accompanying study become the Regulated Flood Hazard Area only when formally adopted by DNRC and subsequently by the Flathead County Board of Commissioners. The original source of studies and data may be from a Flood Insurance Study by FEMA, or other studies by Corps of Engineers, Soil Conservation, United States Geological Service or other federal or state agency.

1.07 FLOODPLAIN ADMINISTRATOR

The Flathead County Floodplain Administrator shall be the Planning Director or his or her designee. The Floodplain Administrator's duty is to administer and implement the provisions of these regulations. The Floodplain Administrator must serve to meet and maintain the commitments pursuant to 44 CFR 59.22(a) to FEMA to remain eligible for National Flood Insurance for individuals and business within Flathead County. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- A. Administration, interpretation, and enforcement of these regulations;
- B. Assure the flood carrying capacity within the altered or relocated portion of a watercourse is maintained;

- C. Assure all necessary permits have been received from governmental agencies from which approval is required by federal, state law and local codes, including 310 permits from the Flathead County Conservation District, 404 permits from the U.S. Army Corps of Engineers, 318 permits from the Montana Department of Environmental Quality, and septic permits from Flathead County Department of Environmental Health prior to issuing a floodplain development permit;
- D. Review floodplain permit applications to ensure the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding;
- E. Grant or deny floodplain permits based on whether the proposed establishment, alteration, or substantial improvement of an artificial obstruction meets the requirements of these regulations;
- F. Adopt administrative procedures to efficiently administer the provisions of these regulations;
- G. Ensure the proposed use complies with existing zoning designations;
- H. Maintain files and records necessary to document nonconforming uses, Base Flood Elevations (BFE), elevation and flood proofing certificates, fee receipts, the issuance of permits and variances, agendas, minutes, records of public meetings, and any other matters related to floodplain management in Flathead County.

1.08 COMPLIANCE

Development, new construction, alteration or substantial improvement may not commence without full compliance with the provisions of these regulations.

- A. Any use, arrangement or construction not in compliance as authorized by permit, shall be deemed a violation of these Regulations.
- B. An applicant is required to submit certification by a registered professional engineer, architect, land surveyor, or other qualified person designated by the Floodplain Administrator that finished fill and lowest building floor elevations, flood-proofing, hydraulic design, or other flood protection measures were accomplished in compliance with the provisions of the Regulations.

1.09 ABROGATION AND GREATER RESPONSIBILITY

It is not intended by these regulations to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, zoning or other regulations in effect. However, where these regulations impose greater restrictions, the provision of these regulations must prevail.

1.10 REGULATION INTERPRETATION

In the interpretation and application of these regulations, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

1.11 WARNING AND DISCLAIMER OF LIABILITY

These regulations do not imply that land outside the Regulated Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of Flathead County or any official or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made hereunder.

1.12 SEVERABILITY

If any chapter, section, clause, sentence, or phrase of these regulations is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding will in no way affect the validity of the remaining portions of these regulations.

1.13 DISCLOSURE PROVISION

All property owners or their agents in the Regulated Flood Hazard Areas shall notify potential buyers or their agents that such property, including any permitted uses transferred, is located within the Regulated Flood Hazard Area and is subject to regulation and any permitted uses that are transferred. Information regarding Regulated Flood Hazard Area and the repository for Floodplain maps is available in the Flathead County Planning and Zoning Office.

1.14 AMENDMENT OF REGULATIONS

These regulations may be amended after notice and public hearing in regard to the amendments to these regulations. The amendments must be found adequate and acceptable by DNRC and FEMA to be effective and must be submitted for review at least 30 days prior to official adoption.

1.15 PUBLIC RECORDS

Records, including permits and applications, elevation and flood proofing certificates, certificates of compliance, fee receipts, and other matters relating to these regulations must be maintained by the Floodplain Administrator and are public records and must be made available for inspection and for copies upon reasonable request. A reasonable copying cost for copying documents for members of the public may be charged and may require payments of the costs before providing the copies.

1.16 SUBDIVISION REVIEW

Within the Regulated Flood Hazard Area, subdivisions including new or expansion of existing manufactured home parks, must be designed to meet the following criteria:

- A. The Base Flood Elevations and boundary of the Regulated Flood Hazard area for all AE zones must be determined and shown on the final plat and considered during lot layout and building location design. To the greatest extent possible, no part of any new lot shall be located within a Special Flood Hazard Area.
- B. Where Base Flood Elevation data is not available in the Flood Insurance Study or on the Flood Insurance Rate Map (approximate A zone), all new subdivision proposals and other proposed developments, including proposals for manufactured home parks and subdivisions, greater than 50 lots or five (5) acres, whichever is the lesser, included within such proposals base flood elevation data. The Base Flood Elevations shall be shown on the plat. To the greatest extent possible, no part of any new lot shall be located within a Special Flood Hazard Area.
- C. Locations for future structures and development must be reasonably safe from flooding.
- D. Adequate surface water drainage must be provided to reduce exposure to flood hazards.
- E. Public utilities and facilities such as sewer, gas, electrical and water systems must be located and constructed to minimize or eliminate flood damage.
- F. Floodplain permits must be obtained according to these regulations before development occurs that is within the Regulated Flood Hazard Area.

1.17 DISASTER RECOVERY

In the event of a natural or man-made disaster, the Floodplain Administrator should participate in the coordination of assistance and provide information to structure owners concerning Hazard Mitigation

and Recovery measures with the Federal Emergency Management Agency, Montana Disaster Emergency Services, Montana Department of Natural Resources and Conservation, and other state, local and private emergency service organizations.

Upon completion of cursory street view structure condition survey within the Regulated Flood Hazard Area, the Floodplain Administrator shall notify owners that a permit may be necessary for an alteration or substantial improvement before repair or reconstruction commences on damaged structures because of damages caused by natural or man-made disasters such as floods, fires or winds.

Owners should be advised that structures that have suffered substantial damage and will undergo substantial improvements require a floodplain application and permit and must be upgraded to meet the minimum building standards herein during repair or reconstruction.

Chapter 2. **DEFINITIONS**

Unless specifically defined below, words or phrases used in these regulations shall be interpreted as to give them the meaning they have in common usage and to give these regulations their most reasonable application.

100-year flood: A flood having a one-percent (1%) chance of being equaled or exceeded in any given year. A 100-year flood has nearly a 23-percent chance of occurring in a 25-year period. A 100-year flood is the same as a base flood.

A ZONE: Portions of the Special Flood Hazard Area (SFHA) in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1—A30, Zone AO, Zone AH, Zone AR and Zone A99 on a FIRM. The specific definitions are presented below:

ZONE A: Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown.

ZONE AE AND A1—A30: Areas subject to inundation by the one-percent annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. (Zone AE is on new and revised maps in place of Zones A1—A30.)

Zone AO: Areas subject to inundation by one-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

Zone AH: Areas subject to inundation by one-percent annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

Zone AR: Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection.

Zone A99: Areas subject to inundation by the one-percent annual chance flood event, but which will ultimately be protected upon completion of an under-construction Federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown.

ACT: Montana Floodplain and Floodway Management Act, 76-5-101 through 406, MCA.

ACCESSORY STRUCTURE (appurtenant structure): A structure in which the use is incidental or accessory to the use of a principal structure.

ALTERATION: Any change or addition to an artificial obstruction that either increases its external dimensions or increases its potential flood hazard. Maintenance of an artificial obstruction is not an alteration.

ANCHORED: Adequately secured to prevent flotation, collapse, or lateral movement.

APPEAL: A request for a review of the Floodplain Administrator's interpretation of any provisions of these regulations or a request for a variance.

ARTIFICIAL OBSTRUCTION: Any obstruction which is not natural and includes any dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill or other analogous structure or matter in, along, across or projecting into any 100-year floodplain which may impede, retard or alter the pattern of flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of water would carry the same downstream to the damage or detriment of either life or property.

BASE FLOOD: A flood event having a one-percent (1%) chance of being equaled or exceeded in any given year. A base flood is the same as a 100-year flood.

BASE FLOOD ELEVATION (BFE): The elevation above sea level of the Base Flood in relation to the North American Vertical Datum of 1988 (NAVD88) or unless otherwise specified.

BASEMENT: Any area of a building, except a crawlspace, having its floor sub grade, below ground level, on all sides.

BUILDING: A walled and roofed structure, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

CHANNEL: The geographical area within either the natural or artificial banks of a watercourse or drain way.

CHANNELIZATION PROJECT: The excavation or construction of an artificial channel for the purpose of diverting the entire flow of a watercourse or drain way from its established course.

COMMUNITY: A political entity that has the authority to adopt and enforce floodplain regulations for the area under its jurisdiction.

CRAWL SPACE: An enclosure that has its interior floor area no more than five (5) feet below the top of the structure's next highest floor and no more than two (2) feet below the lowest adjacent grade on all sides. A foundation exceeding either dimension is a basement.

CRITICAL FACILITY: A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

DEVELOPMENT: Any man-made change to improved or unimproved real estate, including but not limited to:

1. Construction, reconstruction, or placement of a structure or any addition to a structure;
2. Installing a manufactured home on a site, preparing a site for a manufactured home or installing a recreational vehicle on a site for more than 180 days;
3. Installing utilities, erection of walls and fences, construction of roads, or similar projects;
4. Construction of flood control structures such as levees, dikes, dams, channel improvements;
5. Mining, dredging, filling, grading, excavation, or drilling operations;
6. Construction and/or reconstruction of bridges or culverts;
7. Storage of materials; or

8. Any other activity that might change the direction, height, or velocity of flood or surface water.

“Development” does not include activities such as the maintenance of existing structures and facilities such as painting, re-roofing, resurfacing roads, or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of structures.

DNRC: Montana Department of Natural Resources and Conservation.

DWELLING: A permanent structure for human habitation; a place for living purposes.

ELEVATED STRUCTURE: A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. A structure on a crawlspace is considered an elevated structure.

ELEVATION CERTIFICATE: A certified statement from a qualified professional that verifies important elevation information for structures within the Special Flood Hazard Area.

ENCLOSURE: That portion of an elevated structure below the lowest elevated floor that is either partially or fully shut in by rigid walls.

ENCROACHMENT: Activities or construction within the floodplain, including fill, new construction, substantial improvements, or other development.

ENCROACHMENT ANALYSIS: A hydrologic and hydraulic analysis performed by an engineer to assess the effects of the proposed artificial obstruction or nonconforming use on Base Flood Elevation, flood flows and flood velocities.

EROSION: The process of the gradual wearing away of land masses.

ESTABLISH: To construct, place, insert, or excavate.

EXISTING CONSTRUCTION OR STRUCTURE: Structures for which the “start of construction” commence on or before the effective date of the Flathead County Floodplain and Floodway Management Regulations and/or the Flathead County Flood Insurance Study. “Existing construction” may also be referred to as existing structures.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION: A manufactured home park or subdivision where the construction of facilities for servicing the manufactured home lots is completed before the effective date of the floodplain management regulations. This includes, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION: The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA: The Federal Emergency Management Agency, the agency that manages compliance with the National Flood Insurance Program (NFIP) and provides flood hazards studies and maps.

FLOOD OR FLOODING: A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.

FLOOD FRINGE: That portion of a designated floodplain outside the limits of a designated floodway.

FLOOD INSURANCE RATE MAP (FIRM) DIGITAL FLOOD INSURANCE RATE MAP (DFIRM): The official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zone.

FLOOD INSURANCE STUDY: The official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM and the water surface elevation of the base flood.

FLOODPROOFING: Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODPROOFING CERTIFICATE: A form used to certify compliance for non-residential structures as an alternative to elevated structures within Special Flood Hazard Areas. This certification must be performed by a licensed engineer or architect.

FLOODPLAIN: The areas subject to these regulations, generally adjoining a stream or other water body, that would be covered by floodwater of a base flood, including areas designated as A, AE, AH, AO, Floodway and Shaded Zone X on the FIRM.

FLOODPLAIN ADMINISTRATOR: The community official or representative appointed to administer and implement the provisions of this ordinance.

FLOOD OPENINGS: Required openings in enclosed areas to automatically equalize hydrostatic pressure on exterior walls by allowing for the automatic entry and exit of flood waters.

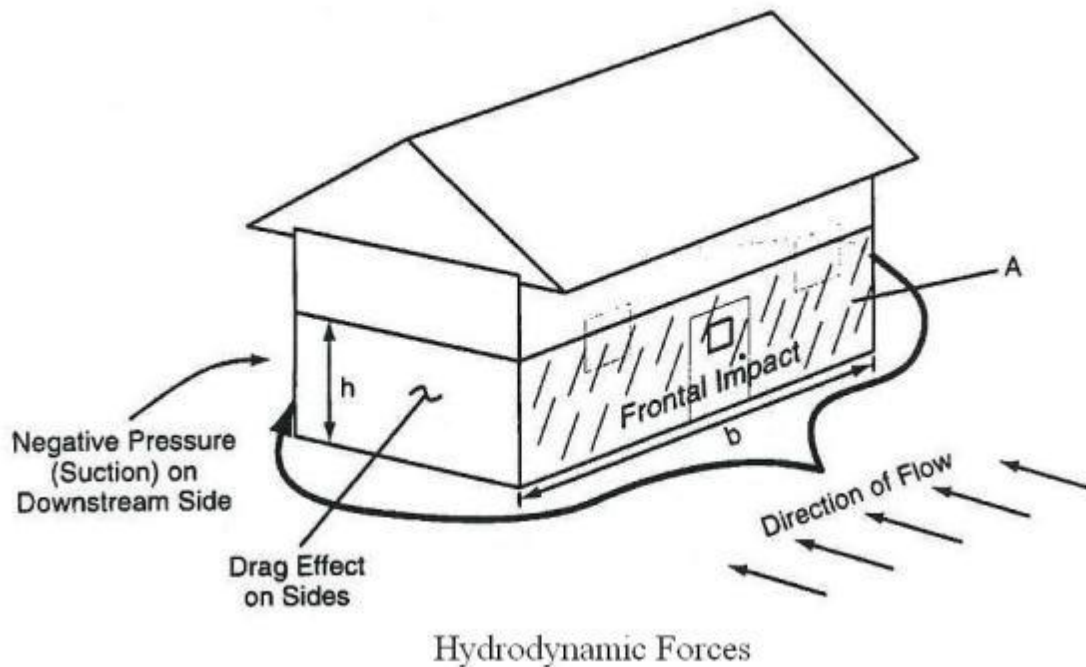
FLOODWAY: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

FREEBOARD: A factor of safety usually expressed in feet above the BFE for the purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams and the hydrologic effects of development in a watershed.

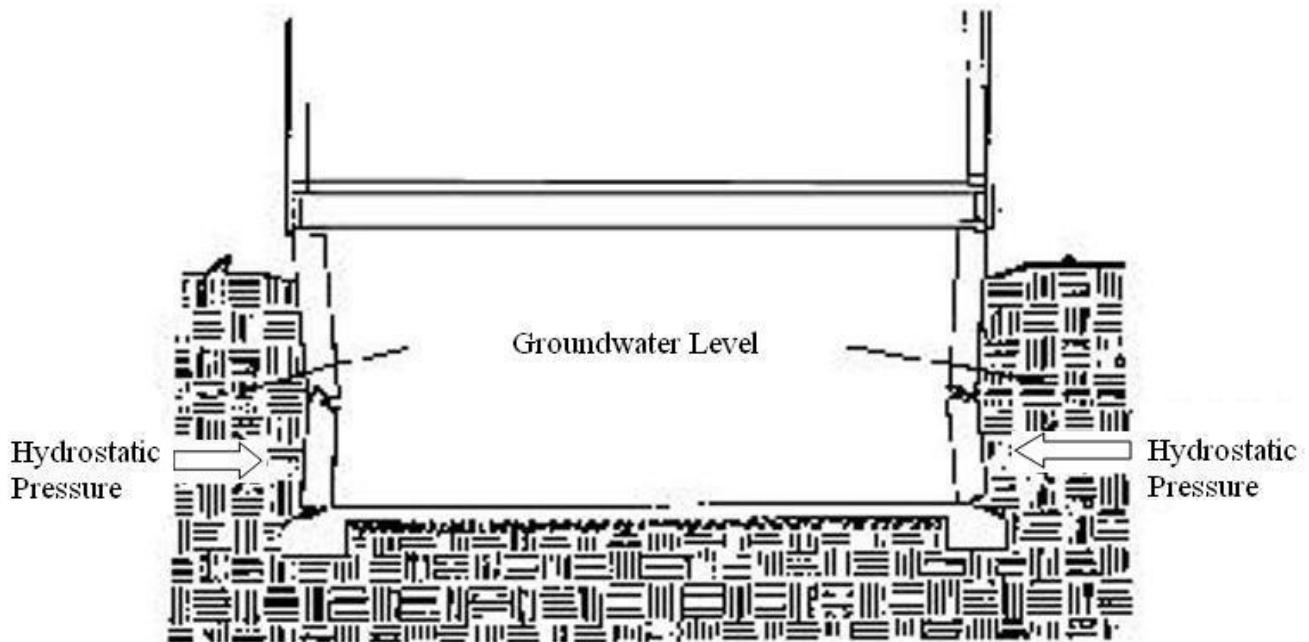
HIGHEST ADJACENT GRADE (HAG): The highest natural elevation of the ground surface prior to construction, adjacent to the proposed walls of a structure.

HYDRAULICS: The depth of water (elevation) in a drainage way, watercourse, river or stream channel.

HYDRONYNAMICS: The force of moving water, including the impact of debris and high velocities, along a structure.



HYDROSTATIC: The pressure put on a structure by the weight of standing water. The deeper the water, the more it weighs and the greater the pressure.



LETTER OF MAP CHANGE: An official response from FEMA that amends or revises the FEMA Special Flood Hazard Area and FEMA Flood Insurance Study for flood insurance purposes and/or flood risk hazard. FEMA Letters of Map Change specific to an amendment or revision include:

Letter of Map Amendment (LOMA): A revision based on technical data, showing that a property or structure was incorrectly included in a designated Special Flood Hazard Area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property or structure is not located in Special Flood Hazard Area.

Letter of Map Revision (LOMR): A revision based on technical data showing that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination that a structure or parcel has been elevated by fill above the base flood elevation and is excluded from the Special Flood Hazard Area.

Conditional Letter of Map Revision (CLOMR): A formal review and comment by FEMA as to whether a proposed project complies with the minimum National Flood Insurance Program floodplain management criteria. A CLOMR does not amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps or Flood Insurance Studies.

LEVEE: A manmade embankment, usually earth, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LOWEST ADJACENT GRADE (LAG): The lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

LOWEST FLOOR: Any floor used for living purposes, storage, or recreation. This includes any floor that could be converted to such a use.

MAINTENANCE: Customary and historical cleaning and removal of silt, branches, trees, sticks and other debris as well as minor repair or restoration of an existing structure or artificial obstruction to the size, shape, position and height it had immediately prior to its deterioration or destruction.

MANUFACTURED HOME: A building that may be residential or nonresidential, is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities and includes park trailers, travel trailers, and other vehicles placed on a site for greater than 180 consecutive days.

MANUFACTURED HOME PARK OR SUBDIVISION: A parcel or contiguous parcels of land divided into two or more manufactured home spaces or lots for rent or sale. This definition includes the construction of facilities for servicing the manufactured home lots and, at a minimum, includes the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

MEAN SEA LEVEL: The North American Vertical Datum of 1988 (NAVD88).

NATIONAL FLOOD INSURANCE PROGRAM: The federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the federal government and the private insurance industry.

NEW CONSTRUCTION: Structures for which the commencement of clearing, grading, filling, or excavating to prepare a site for construction occurs on or after the effective date of these regulations and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed includes, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads and is completed on or after the effective date of these regulations.

NONRESIDENTIAL STRUCTURE: Buildings, including manufactured homes that are not residential including commercial agricultural, industrial buildings and accessory buildings.

NO RISE CERTIFICATION: A certification by an engineer that a project will not cause a set increase in flood heights.

OWNER: Any person has dominion over, control of, or title to an artificial obstruction.

PERSON: Any individual, or group of individuals, corporation, partnership, association or any other entity, including State and local governments and agencies.

RECREATIONAL VEHICLE: A park trailer, travel trailer, or other similar vehicle which is: a) built on a single chassis; b) 400 square feet or less when measured at the largest horizontal projections; c) designed to be self-propelled or permanently towable by a motorized vehicle; and d) designed primarily for use as temporary living quarters for recreation, camping, travel, or seasonal use, not for use as a permanent dwelling.

REGULATED FLOOD HAZARD AREA: A floodplain whose limits have been designated pursuant to Part 2, Chapter 5 of Title 76, MCA, and is determined to be the area adjoining the watercourse that would be covered by the floodwater of a Base Flood. The Regulated Flood Hazard Area consists of the floodway and flood fringe where specifically designated.

RESIDENTIAL BUILDING: A dwelling or building for living purposes or place of assembly or permanent use by human beings and including any mixed use of residential and nonresidential uses. All other buildings are nonresidential.

RIPRAP: Stone, rocks, concrete blocks, or analogous material that is placed along the banks or bed of a watercourse or drainway for the purpose of alleviating erosion.

RIVERINE: Relating to, formed by, or resembling a river, including tributaries, stream, or brook.

SCOUR DEPTH: The maximum depth of streambed scour caused by erosive forces of the base flood discharge.

SPECIAL FLOOD HAZARD AREA (SFHA): The land area which has been specifically identified by FEMA on the FIRM as the floodplain within a community subject to a one-percent or greater chance of flooding in any given year where federal flood insurance may be required.

START OF CONSTRUCTION: The actual start of construction is either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation. The actual start of construction is also the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation of a basement, footings, piers, foundations, or the erection of temporary forms. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE: Any artificial obstruction.

SUB GRADE CRAWLSPACE: A crawlspace foundation enclosure that has its interior floor no more than 5 feet below the top of the next higher floor and no more than 2 feet below the lowest adjacent grade on all sides. A foundation exceeding either dimension is a basement.

SUBSTANTIAL DAMAGE: Damage of any origin sustained by a structure where the cost of restoring the structure to its condition before damage would equal or exceed fifty percent (50%) of the market value before the damage occurred.

SUBSTANTIAL IMPROVEMENT: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:

A. Before the improvement or repair is started, or

B. If the structure has been damaged and is being restored before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first construction to any wall, ceiling, floor, or other structural part of the building commences. The term does not include:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or,
2. Any alteration of a structure listed on the national register of historic places or state inventory of historic places provided that the alteration will not preclude the structure's continued designation as an "historic structure."

SUITABLE FILL: Fill material which is stable, compacted, well graded, pervious, and generally unaffected by water and frost, devoid of trash or similar foreign matter, devoid of tree stumps or other organic material, and is fitting for the purpose of supporting the intended use and/or permanent structure.

VARIANCE: A grant of relief from the requirements of these regulations which would permit construction in a manner that would otherwise be prohibited by these regulations.

VIOLATION: The failure of a structure or other development to be fully compliant with these regulations. A structure or other development without elevation certificate, certification by a licensed engineer or architect of compliance with these regulations, or other evidence of compliance is presumed to be in violation until such time as proper documentation is provided.

Chapter 3. **FORMS AND FEES**

3.01 Forms

The following forms may be required by the Floodplain Administrator and can be obtained from the Flathead County Planning and Zoning Office:

- A. **Floodplain Permit Application Form** – The “Joint Application for Proposed Work in Montana’s streams, Wetlands, Regulated Flood Hazard Areas, and Other Water Bodies”, or other designated application form. A completed FEMA MT-1 form may be required to accompany the application when required by the Floodplain Administrator.

- B. **Floodplain Permit Compliance Report** – A report required to be submitted by the Applicant to the Floodplain Administrator once the permitted project in the Regulated Flood Hazard Area is completed or within the designated time stipulated on the Floodplain permit. A compliance report, including elevation and or flood proofing certification may be required where specified for the purpose of documenting compliance with the requirements of the permits.

- C. **Floodplain Variance Application Form** – An application submitted by the Applicant to the Floodplain Administrator to initiate a proposed variance from the requirements of these regulations as described in Chapter 12 .

- D. **Floodplain Appeal Notice Form**– A form submitted by the Applicant or an aggrieved party to initiate the appeal process described in Chapter 13.

- E. **Floodplain Emergency Notification Form**– A written notification form required pursuant to Chapter 11 of these regulations.

- F. **Official Complaint Form** – A form that may be used by any person to notify the Floodplain Administrator of an activity taking place that appears to be noncompliant with the requirements of these regulations.

3.02 Fees

A reasonable application fee for processing of permit applications may be imposed. Fees may be adopted for costs of permit applications, notices, variances, inspections, certifications or other administrative actions required by these regulations.

Chapter 4.
REGULATED FLOOD HAZARD AREA

4.01 REGULATED FLOOD HAZARD AREAS

- A. The Regulated Flood Hazard Areas are the 100-year floodplains illustrated and referenced in the following specific studies and reports described as follows:
 - 1. Flood Insurance Study (FIS) for Flathead County, Montana dated November 4, 2015, Flood Insurance Rate Maps (FIRM) for Flathead County, Montana dated November 4, 2015 and September 28, 2007 and any subsequent revisions thereto (See Appendix A).
- B. The Regulated Flood Hazard Areas specifically described or illustrated in the above referenced studies and maps of the 100-year floodplain have been delineated, designated and established by order or determination by the DNRC pursuant to 76-5-201 et. seq., MCA.
- C. Use allowances, design and construction requirements specifically in Chapters 5, 6, 9, and 10 in these regulations vary by the specific Floodplain areas including areas identified as Floodway and Flood Fringe within the Regulated Flood Hazard Area.

4.02 INTERPRETATION OF REGULATED FLOOD HAZARD AREA BOUNDARIES

- A. The mapped boundaries of the Floodplain illustrated in the referenced studies and maps in this Chapter are a guide for determining whether property is within the Regulated Flood Hazard Area.
- B. A determination of the outer limits and boundaries of the Regulated Flood Hazard Area or the Flood Fringe and Floodway within the Regulated Flood Hazard Area includes an evaluation of the maps as well as the particular study data referenced in this Chapter. Supporting study material for Base Flood Elevation takes precedence over any map illustrations if it exists.
- C. The Regulated Flood Hazard Area boundary is delineated by the Base Flood Elevation. The physical field regulatory boundary of the Regulated Flood Hazard Area is the actual intersection of the applicable study Base Flood Elevation with the existing adjacent terrain of the watercourse or drainage way.
- D. The Floodway boundary where identified within the Floodplain is as illustrated on the referenced maps and studies. Since the Floodway boundary is a study feature, the location of the boundary may be physically located by referencing the study data to a ground feature. The Floodplain Administrator's interpretation of the boundary and decision may be appealed as set forth in Chapter 13.
- E. The Floodplain Administrator may request additional information described below to determine whether or not the proposed development is within the Regulated Flood Hazard Area:
 - 1. Where Base Flood Elevations exist, the property owner may provide additional information which may include elevation information provided by an engineer or land surveyor in order to determine if the proposed development is subject to these regulations.
 - 2. Where Base Flood Elevations do not exist, the property owner may provide additional information to be considered to determine the location of the regulatory boundary or alternatively provide a computed Base Flood Elevation provided by an engineer.
 - 3. The Floodplain Administrator's interpretation of the boundaries and decision may be appealed as set forth in Chapter 13.

- F. Any owner or lessee of property who believes his property has been inadvertently included in the Regulated Flood Hazard Area including the Floodway or Flood Fringe may submit scientific and/or technical information to the Floodplain Administrator for a determination if the property is appropriately located. Scientific or technical information submitted to FEMA by an owner to affect the insurance rating for insurance purposes may be considered by the Floodplain Administrator. A determination by the Floodplain Administrator is independent of any determination by FEMA for insurance purposes.

4.03 ALTERATION OF REGULATED FLOOD HAZARD AREA

- A. Revisions or updates to the specific maps and data that alter the established Floodplains or Floodways of the Regulated Flood Hazard Area requires DNRC approval pursuant to 75-5-203, MCA. An alteration of the Regulated Flood Hazard Area is a DNRC approved amendment to the DNRC order that originally delineated and designated the 100-year floodplain and is the basis of the Regulated Flood Hazard Area referenced in Section 4.01(A). A DNRC approved alteration consists of revisions or updates to the specific maps and data of the referenced studies in this Chapter and forms the basis for an amendment to the Regulated Flood Hazard Area in these regulations.
- B. Any change to the Regulated Flood Hazard Area as a result of a DNRC alteration is effective upon amendment to the Regulated Flood Hazard Area described in Chapter 4.01(A).
- C. Substantial natural physical change or new technical or scientific flood data showing that the Base Flood Elevation has or may be changed or was erroneously established shall be brought to the attention of DNRC and FEMA.
- D. Any Floodplain permit application for an alteration of a Regulated Flood Hazard Area must be denied until a DNRC alteration pursuant to 76-5-203, MCA is approved if it causes an increase of 0.5 feet or more to the Base Flood Elevation of a Regulated Flood Hazard Area without a Floodway or an increase of more than 0.00 feet to the Base Flood Elevation of a Floodway.
- E. To propose an alteration a petition must be submitted to DNRC and must include the following information:
 - 1. Certification that no buildings are located in the areas which would be impacted by the increased Base Flood Elevation;
 - 2. Evidence of notice to all property and land owners of the proposed impacts to their properties, explaining the proposed impact on their property;
 - 3. Information that demonstrates that alternatives are not feasible;
 - 4. Information that demonstrates that development is for a public use or benefit; and
 - 5. Any other supporting information and data as needed for approvals.
 - 6. The Floodplain Administrator may represent the permit authority for any necessary applications, approvals or endorsements such as the FEMA Community Acknowledgement Form to FEMA where affecting the FEMA Special Flood Hazard Area.
 - 7. A determination by the Floodplain Administrator that land areas located within the Regulated Flood Hazard Area are above the Base Flood Elevation as proven by a certified elevation survey does not constitute or require an alteration or an amendment

of the Regulated Flood Hazard Area and may be maintained as a public record that more explicitly defines the Regulated Flood Hazard Area boundary.

8. Elevating with suitable fill as permitted does not alter the Regulated Flood Hazard Area or remove the elevated area from the Regulated Flood Hazard Area.
9. A floodplain permit implementing the physical change cannot be approved until a CLOMR has been issued by FEMA.

Chapter 5.
USES ALLOWED WITHOUT A PERMIT WITHIN THE REGULATED FLOOD HAZARD
AREA

5.01 GENERAL

Existing artificial obstructions or nonconforming uses established before land use regulations pursuant to Chapter 76-5-301, MCA were effective, are allowed without a permit. However, alteration or substantial improvement of an existing artificial obstruction or nonconforming use requires a floodplain permit. Maintenance of an existing artificial obstruction or nonconforming use does not require a floodplain permit if it does not cause an alteration or substantial improvement.

5.02 OPEN SPACE USES

The following open space uses shall be allowed without a permit in the Regulated Flood Hazard Area, provided that such uses are not prohibited by any other regulation or statute, do not require structures, and do not require fill, grading, excavation or storage of materials or equipment:

- A. Agricultural uses, not including related structures, such as tilling, farming, irrigation, ranching, harvesting, grazing, etc.
- B. Accessory uses, not including structures, such as loading and parking areas, or emergency landing strips associated with industrial or commercial facilities.
- C. Forestry, including processing of forest products with portable equipment;
- D. Recreational vehicle use provided that the vehicle is on the site for fewer than 180 consecutive days and the vehicle is fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system with wheels intact, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
- E. Residential uses such as lawns, gardens, parking areas, and play areas.
- F. Maintenance of the existing state of existing open space uses including preventive maintenance activities such as bridge deck rehabilitation and roadway pavement preservation activities. Maintenance cannot increase the external size or increase the hazard potential of the existing open space use.
- G. Public or private recreational uses not requiring structures such as picnic grounds, swimming areas, boat ramps, parks, campgrounds, golf courses, driving ranges, archery ranges, wildlife management and natural areas, alternative livestock ranches (game farms), fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails.
- H. Fences that have a low impact to the flow of water such as barbed wire fences and wood rail fences, and not including permanent fences crossing channels. Fences that have the potential to stop or impede flow or debris such as chain link or privacy fence requires a floodplain permit and meet the requirements of Section 9.11
- I. Addition of highway guard rail, signing and utility poles that have a low impact to the flow of water along an existing roadway.
- J. Irrigation and livestock supply wells, provided that they are located at least 500 feet from domestic water supply wells and with the top of casing is 18" above the Base Flood Elevation.

Chapter 6.
PROHIBITED USES, ACTIVITIES AND STRUCTURES WITHIN THE REGULATED FLOOD HAZARD AREA

6.01 FLOODWAY

The following artificial obstructions and nonconforming uses are prohibited in the Floodway of the Regulated Flood Hazard Area, except for those established before land use regulations pursuant to Chapter 76-5-301, MCA have been adopted:

- A. A building for residential or non-residential purposes.
- B. A structure, fill, or excavation that would cause water to be diverted from the Floodway, cause erosion, obstruct the natural flow of waters or reduce the carrying capacity of the Floodway. Notwithstanding these requirements, excavation or fill may be allowed when it is a component to a permitted use allowed in these regulations.
- C. The construction or storage of an object (artificial obstruction) subject to flotation or movement during flood level periods.
- D. Solid and hazardous waste disposal and individual and multiple family sewage disposal systems unless the systems meet the local health and sanitation regulations and when permitted pursuant to these regulations and are designed to minimize or eliminate infiltration of flood waters and avoid impairment or contamination.
- E. Storage of toxic, flammable, hazardous or explosive materials.
- F. Cemeteries, mausoleums, or any other burial grounds.

6.02 FLOOD FRINGE OR REGULATED FLOOD HAZARD AREA WITHOUT A FLOODWAY

The following artificial obstructions and nonconforming uses are prohibited in the Flood Fringe or Regulated Flood Hazard Area without a Floodway, except for those established before land use regulations have been adopted:

- A. Solid and hazardous waste disposal and individual and multiple family sewage disposal systems unless the systems meet the local health and sanitation regulations and when permitted pursuant to these regulations and are designed to minimize or eliminate infiltration of flood waters and avoid impairment or contamination.
- B. Storage of toxic, flammable, hazardous or explosive materials
- C. The construction or storage of an artificial obstruction subject to flotation or movement during flood level periods.
- D. Cemeteries, mausoleums, or any other burial grounds.
- E. Critical facilities, including buildings and associated structures that provide essential community care and emergency operation functions such as schools, hospitals, nursing home facilities, fire stations and police stations.

Chapter 7.
FLOODPLAIN PERMIT APPLICATION REQUIREMENTS

7.01 GENERAL

- A. A Floodplain permit is required for a person to establish, alter or substantially improve an artificial obstruction, nonconforming use or development within the Regulated Flood Hazard Area;
- B. A Floodplain permit is required for artificial obstructions, developments and uses not specifically listed in Chapters 9 and 10, except as allowed without a Floodplain permit in Chapter 5, or as prohibited as specified in Chapter 6, within the Regulated Flood Hazard Area;
- C. Artificial obstructions and nonconforming uses in a Regulated Flood Hazard Area not exempt under Chapter 5 are public nuisances unless a Floodplain permit has been obtained;
- D. A Floodplain permit is required for an alteration of an existing artificial obstruction or nonconforming use that increases the external size or increases its potential flood hazard and not exempt under Chapter 5;
- E. A Floodplain permit is required to reconstruct or repair an existing artificial obstruction that has experienced substantial damage and will undergo substantial improvement; and
- F. Maintenance of an existing artificial obstruction or use that is a substantial improvement or an alteration requires a Floodplain permit.

7.02 REQUIRED FLOODPLAIN PERMIT APPLICATION INFORMATION

- A. A Floodplain permit application shall include, but is not limited to the following:
 - 1. A completed and signed Floodplain Permit Application;
 - 2. The required review fee;
 - 3. Plans in duplicate drawn to scale showing the location, dimensions, and elevation of the proposed project, including landscape alterations, existing and proposed structures, and the location of the foregoing in relation to the Regulated Flood Hazard Areas and, if applicable, the Floodway boundary.
 - 4. A copy of other applicable permits or pending applications required by Federal or State law as submitted which may include but are not limited to a 310 permit, SPA 124 permit, Chapter 404 Permit, 318 Authorization, 401 Certification or a Navigable Rivers Land Use License or Easement for the proposed project; and the applicant must show that the Floodplain permit application is not in conflict with the relevant and applicable permits; and
 - 5. Additional information related to the specific use or activity that demonstrates the design criteria and construction standards are met or exceeded as specified in Chapters 9 and 10.

Chapter 8.
FLOODPLAIN PERMIT APPLICATION EVALUATION

8.01 FLOODPLAIN PERMIT APPLICATION REVIEW

- A. The Floodplain Administrator shall review and evaluate the Floodplain permit application and shall approve, approve with conditions, or deny the application within 60 days of receipt of a correct and complete application.
- B. The Floodplain Administrator shall determine whether the Floodplain permit application contains the applicable elements required in these regulations and shall notify the applicant of the Floodplain Administrator's determination.
- C. If the Floodplain permit application is found to be missing the required elements and if the applicant corrects the identified deficiencies and resubmits the Floodplain application, the Floodplain Administrator shall notify the applicant whether the resubmitted Floodplain application contains all the elements required by these regulations, as applicable.
- D. This process shall be repeated until the applicant submits a completed Floodplain permit application containing all the elements required by these regulations, or the application is withdrawn.
- E. If after a reasonable effort the Floodplain Administrator determines that the Floodplain application remains incomplete, the Floodplain Administrator shall deny the Floodplain permit application and notify the applicant of missing elements. No further action shall be taken on the Floodplain permit application by the Floodplain Administrator until the Floodplain permit application is resubmitted.
- F. A determination that a Floodplain permit application is correct and complete for review does not ensure that the Floodplain permit application will be approved or conditionally approved and does not limit the ability of the Floodplain Administrator to request additional information during the review process.

8.02 NOTICE REQUIREMENTS FOR FLOODPLAIN PERMIT APPLICATIONS

- A. Upon receipt of a complete application for a Floodplain permit, the Floodplain Administrator shall prepare a notice containing the facts pertinent to the Floodplain permit application and shall:
 - 1. Publish the notice at least once in a newspaper of general circulation in the area;
 - 2. Serve notice by first-class mail upon adjacent property owners;
 - 3. Serve notice to the State National Flood Insurance Program Coordinator located in DNRC by the most efficient method. Notice to other permitting agencies or other impacted property owners may be provided; and
 - 4. Prior to any alteration or relocation of a watercourse in the Regulated Flood Hazard Area, additionally provide notice to FEMA and adjacent communities.
- B. The notice shall provide a reasonable period of time, not less than 15 days, for interested parties to submit comments on the proposed activity.

8.03 FLOODPLAIN PERMIT CRITERIA

- A. Floodplain permit applications shall be approved provided the proposed new construction, substantial improvement, or alteration of an artificial obstruction meets the requirements of the

minimum standards and criteria in Chapters 9 and 10 and other requirements of these regulations.

- B. A Flood Plain permit application for a development that will cause an increase of more than 0.00 feet to the Base Flood Elevation of the Floodway or more than 0.50 feet to the Base Flood Elevation of the Regulated Flood Hazard Area without a Floodway shall not be approved until approval for an Alteration pursuant to Section 4.03 has been approved, the Regulated Flood Hazard Area is amended and a FEMA CLOMR where required is issued.
- C. The Floodplain Administrator shall determine that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Chapter 404 of the Federal Water Pollution Control Act Amendment of 1972, 36 U.S.C. 1334.

8.04 DECISION

- A. The Floodplain Administrator shall approve, conditionally approve, or deny the proposed Floodplain permit application. The Floodplain Administrator shall notify the applicant of his action and the reasons thereof within 60 days of receipt of a correct and complete Floodplain permit application unless otherwise specified. A copy of the approved Floodplain permit must be provided to DNRC.
- B. The approval of a Floodplain permit application does not affect any other type of approval required by any other statute or ordinance of the state or any political subdivision or the United States, but is an added requirement.

8.05 FLOODPLAIN PERMIT CONDITIONS AND REQUIREMENTS

- A. Upon approval or conditional approval of the Floodplain permit application, the Floodplain Administrator shall provide the applicant with a Floodplain permit with applicable specific requirements and conditions including but not limited to the following:
 - 1. The Floodplain permit will become valid when all other necessary permits required by Federal or State law are in place;
 - 2. Completion of the development pursuant to the Floodplain permit shall be completed within one year from the date of Floodplain permit issuance or a time limit commensurate with the project construction time line for completion of the project or development. The applicant may request an extension for up to an additional year. The request must be made at least 30 days prior to the permitted completion deadline;
 - 3. The applicant shall notify subsequent property owners and their agents and potential buyers of the Floodplain development permit issued on the property and that such property is located within a Regulated Flood Hazard Area and shall record the notice with the Floodplain Administrator.
 - 4. The applicant shall maintain the artificial obstruction or use to comply with the conditions and specifications of the permit;
 - 5. The applicant shall allow the Floodplain Administrator to perform on-site inspections at select intervals during construction or completion;
 - 6. The applicant shall provide periodic engineering oversight and/or interim reports during the construction period to be submitted to the Floodplain Administrator, as necessary, to confirm constructed elevations and other project elements;

7. The applicant shall submit a compliance report including certifications where required and applicable, including flood proofing, elevation, surface drainage, proper enclosure openings and materials to the Floodplain Administrator within 30 days of completion or other time as specified;
 8. The applicant shall submit an annual performance and maintenance report on bank stabilization or other projects utilizing maturing vegetative components to the Floodplain Administrator for a period of 5 years or a time specified in the permit.
- B. The approval of a Floodplain permit application does not affect any other type of approval required by any other statute or ordinance of the state or any political subdivision or the United States, but is an added requirement.

Chapter 9.
DEVELOPMENT REQUIREMENTS IN THE FLOODWAY

9.01 USES REQUIRING PERMITS

Artificial obstructions including alterations and substantial improvements specifically listed in Sections 9.03 to 9.15 may be allowed by permit within the Floodway, provided the General Requirements in Section 9.02 and the applicable requirements in Sections 9.03 to 9.15 are met.

9.02 GENERAL REQUIREMENTS

An application for a permit shall meet the following requirements:

- A. All projects shall be designed and constructed to ensure that they do not adversely affect the flood hazard on other properties and are reasonably safe from flooding.

- B. All projects shall assure that the carrying capacity of the Floodway is not reduced. All projects in the Floodway shall meet the following:
 1. Demonstrate that the project does not increase the Base Flood Elevation by conducting an encroachment analysis certified by an engineer. A minimal or qualitative encroachment analysis may be accepted when the project or development does not require a structure, alteration of the Floodway, involve fill, grading, excavation or storage of materials or equipment but is also certified by an engineer to not exceed the allowable encroachment to the Base Flood Elevation; and

 2. The allowable encroachment to the Base Flood Elevation is 0.00 feet, and no significant increase to the velocity or flow of the stream or water course unless approval of an alteration of the Regulated Flood Hazard Area pursuant to Section 4.03 and an approved FEMA Conditional Letter of Map Amendment occurs before permit issuance;

- C. An application for a Floodplain permit must also demonstrate the following factors are considered and incorporated into the design of the use or artificial obstruction in the Floodway:
 1. The danger to life and property due to backwater or diverted flow caused by the obstruction or use;

 2. The danger that the obstruction or use may be swept downstream to the injury of others;

 3. The availability of alternative locations;

 4. Construct or alter the obstruction or use in such manner as to lessen the flooding danger;

 5. The permanence of the obstruction or use and is reasonably safe from flooding;

 6. The anticipated development in the foreseeable future of the area which may be affected by the obstruction or use;

 7. Relevant and related permits for the project have been obtained;

 8. Such other factors as are in harmony with the purposes of these regulations, the Montana Floodplain and Floodway Management Act, and the accompanying Administrative Rules of Montana; and

9. The safety of access to property in times of flooding for ordinary and emergency services.

9.03 MINING OF MATERIAL REQUIRING EXCAVATION FROM PITS OR POOLS provided, in addition to the requirements of Section 9.02, that:

- A. A buffer strip of undisturbed land of sufficient width as determined by an engineer to prevent flood flows from channeling into the excavation is left between the edge of the channel and the edge of the excavation.
- B. The excavation meets all applicable laws and regulations of other local and state agencies.
- C. Excavated material may be processed on site but is stockpiled outside the Floodway.

9.04 RAILROAD, HIGHWAY AND STREET STREAM CROSSINGS, including other transportation related crossings provided, in addition to the requirements of Section 9.02, that:

- A. Crossings are designed to offer minimal obstructions to the flood flow.
- B. Where failure or interruption of public transportation facilities would result in danger to public health or safety and where practicable and in consideration of FHWA Federal-Aid Policy Guide 23CFR650A:
 1. Bridge lower chords shall have freeboard to at least two (2) feet above the Base Flood Elevation to help pass ice flows, the base flood discharge and any debris associated with the discharge; and
 2. Culverts shall be designed to pass the Base Flood discharge and maintain at least two (2) feet freeboard on the crossing surface;
 3. Normal overflow channels, if possible are preserved to allow passage of sediments to prevent aggradations; and
 4. Mid-stream supports for bridges, if necessary, have footings buried below the maximum scour depth.

9.05 LIMITED FILLING FOR ROAD AND RAILROAD EMBANKMENTS, including other transportation related embankments not associated with stream crossings and bridges provided, in addition to the requirements of Section 9.02, that:

- A. The fill is suitable fill.
- B. Reasonable alternate transportation routes outside the floodway are not available.
- C. The encroachment is located as far from the stream channel as possible.

9.06 BURIED OR SUSPENDED UTILITY TRANSMISSION LINES provided, in addition to the requirements of Section 9.02, that:

- A. Suspended utility transmission lines are designed such that the lowest point of the suspended line is at least six (6) feet higher than the Base Flood Elevation.
- B. Towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows.
- C. Alternatives such as alternative routes, directional drilling, and aerial crossings are considered when technically feasible.

- D. Utility transmission lines carrying toxic or flammable materials are buried to a depth of at least twice the calculated maximum scour depth determined by an engineer for the Base Flood.

9.07 STORAGE OF MATERIALS AND EQUIPMENT provided, in addition to the requirements of Section 9.02, that

- A. The material or equipment is not subject to major damage by flooding and is properly anchored to prevent flotation or downstream movement; or
- B. The material or equipment is readily removable within the limited time available after flood warning. Storage of flammable, toxic or explosive materials shall not be permitted.

9.08 DOMESTIC WATER SUPPLY WELLS provided, in addition to the requirements of Section 9.02, that:

- A. They are driven or drilled wells located on ground higher than surrounding ground to assure positive drainage from the well.
- B. They require no other structures (e.g. a well house).
- C. Well casings are water tight to a distance of at least twenty five (25) feet below the ground surface and the well casing height is a minimum of two (2) feet above the Base Flood Elevation or capped with a watertight seal and vented two (2) feet above the Base Flood Elevation.
- D. Water supply lines have a watertight seal where the lines enter the casing.
- E. All pumps and electrical lines and equipment are either of the submersible type or are adequately flood proofed.
- F. Check valves are installed on main water lines at wells and at all building entry locations.

9.09 BURIED AND SEALED VAULTS FOR SEWAGE DISPOSAL IN CAMPGROUNDS AND RECREATIONAL AREAS provided, in addition to the requirements of Section 9.02, demonstrate approval by Montana Department of Environmental Quality and local health and sanitation permits or approvals.

9.10 PUBLIC AND PRIVATE CAMPGROUNDS provided, in addition to the requirements of Section 9.02, that:

- A. Access roads require only limited fill and do not obstruct or divert flood waters.
- B. The project meets the accessory structures requirements in this Chapter.
- C. No dwellings or permanent mobile homes are allowed.
- D. Recreational vehicles and travel trailers are ready for highway use with wheels intact, with only quick disconnect type utilities and securing devices, and have no permanently attached additions.
- E. There is no large-scale clearing of riparian vegetation within 50 feet of the mean annual high water mark.

9.11 STRUCTURES ACCESSORY OR APPURTENANT to permitted uses such as boat docks, loading and parking areas, marinas, sheds, emergency airstrips, permanent fences crossing channels that may impede or stop flows or debris, picnic shelters and tables and lavatories, that are incidental to a principal structure or use, provided in addition to the requirements of Section 9.02, that:

- A. The structures are not intended for human habitation or supportive of human habitation.
- B. The structures will have low flood damage potential.
- C. The structures will, insofar as possible, be located on ground higher than the surrounding ground and as far from the channel as possible.
- D. The structures will be constructed and placed so as to offer a minimal obstruction to flood flows.
- E. Only those wastewater disposal systems that are approved under health and sanitation regulations are allowed.
- F. Service facilities within these structures such as electrical, heating and plumbing are flood proofed according to the requirements in Chapter 10.
- G. The structures are firmly anchored to prevent flotation.
- H. The structures do not require fill and/or substantial excavation.
- I. The structures or use cannot be changed or altered without permit approval.
- J. There is no clearing of riparian vegetation within 50 feet of the mean annual high water mark.

9.12 CONSTRUCTION OF OR MODIFICATIONS TO SURFACE WATER DIVERSIONS provided, in addition to the requirements of Section 9.02, that the design is reviewed and approved by an engineer and includes:

9.13 FLOOD CONTROL AND STREAM BANK STABILIZATION MEASURES provided, in addition to the requirements of Section 9.02, that the design is reviewed and approved by an engineer and constructed to substantially resist or withstand the forces associated with hydrodynamic and hydrostatic pressures, including flood depths, velocities, impact, ice, buoyancy, and uplift associated with the Base Flood. The design must also show compliance with the following applicable criteria:

- A. Levee and floodwall construction or alteration:
 - 1. Must be designed and constructed with suitable fill and be designed to safely convey a Base Flood;
 - 2. Must be constructed at least 3 feet higher than the elevation of the Base Flood unless the levee or floodwall protects agricultural land only;
 - 3. Must meet state and federal levee engineering and construction standards and be publically owned and maintained if it protects structures of more than one landowner; and
 - 4. For any increase in the elevation of the Base Flood, an alteration of the Regulated Flood Hazard Area requires approvals pursuant to Section 4.03.
- B. Stream bank stabilization, pier and abutment protection projects:
 - 1. Must be designed and constructed using methods and materials that are the least environmentally damaging yet practicable, and should be designed to withstand a Base Flood once the project's vegetative components are mature within a period of up to 5 years or other time as required by the Floodplain Administrator. Once vegetation is

mature and established it should not require substantial yearly maintenance after the initial period;

2. Materials for the project may be designed to erode over time but not fail catastrophically and impact others. Erosion, sedimentation, and transport of the materials may be designed to be at least similar in amount and rate of existing stable natural stream banks during the Base Flood;
 3. Must not increase erosion upstream, downstream, across from or adjacent to the site in excess of the existing stable natural stream bank during the Base Flood; and
 4. Materials for the project may include but are not limited to riprap, root wads, brush mattresses, willow wattles, natural woody debris or combinations of analogous materials.
- C. Channelization projects where the excavation and/or construction of a channel is for the purpose of diverting the entire or a portion of the flow of a stream from its established course, the project must:
1. Not increase the magnitude, velocity, or elevation of the Base Flood; and
 2. Meet the requirements of Section 9.13(B).

D. Dams:

The design and construction shall be in accordance with the Montana Dam Safety Act and applicable safety standards; and

The project shall not increase flood hazards downstream either through operational procedures or improper hydrologic/hydraulic design.

9.14 STREAM AND BANK RESTORATION PROJECTS intended to reestablish the terrestrial and aquatic attributes of a natural stream and not for protection of a structure or development provided, in addition to the requirements of Chapter 9.02, that:

- A. The project will not increase velocity or erosion upstream, downstream, across from or adjacent to the site.
- B. Materials may include but are not limited to boulders, rock cobble, gravel, native stream bed materials, root wads, brush mattresses, willow wattles, natural woody debris or combinations of analogous materials and that reasonably replicates the bed and bank of the natural stream.
- C. Erosion, sedimentation, and transport of the materials are not more than the amount and rate of existing natural stream banks during the Base Flood.
- D. The project may be designed to allow vegetative materials to mature within a period up to 5 years or other time as required by the Floodplain Administrator. Once vegetation is mature and established it should not require substantial yearly maintenance after the initial period.

9.15 EXISTING RESIDENTIAL AND NON-RESIDENTIAL BUILDINGS in the floodway any alteration or substantial improvement to an existing building must meet the requirements of Section 9.02 and the applicable requirements in Chapter 10 for residential or non-residential buildings.

Chapter 10.
DEVELOPMENT REQUIREMENTS IN THE FLOOD FRINGE OR REGULATED FLOOD
HAZARD AREA WITH NO FLOODWAY

10.01 USES REQUIRING PERMITS

All uses allowed by permit in the Floodway shall also be allowed by permit within the Flood Fringe or Regulated Flood Hazard Area with no Floodway. Such uses are subject to the requirements in Chapter 9, with the exception of the encroachment limit of Section 9.02(B). Instead, such uses are subject to the encroachment limits of Section 10.02(I).

Except for prohibited artificial obstructions in Section 6.02, all other artificial obstructions including new construction, substantial improvements, alterations to residential, and nonresidential structures including manufactured homes, and related suitable fill or excavation shall be allowed by permit and are subject to the requirements in this Chapter and General Requirements of Section 9.02, with the exception of the encroachment limit of Section 9.02(B).

10.02 GENERAL REQUIREMENTS An application for a Floodplain permit must demonstrate or meet the following applicable requirements:

- A. **Base Flood Elevation** Where necessary to meet the appropriate elevation requirement in these regulations, the Base Flood Elevation(s) must be determined by an engineer and utilized in the design layout of the project, demonstrating the design and construction criteria herein are met. For Regulated Flood Hazard Areas that do not have computed and published Base Flood Elevations (un-numbered A zone) in the adopted flood hazard study referenced in Chapter 4, a Base Flood Elevation must be determined or obtained from a reliable source, utilizing appropriate engineering methods and analyses.
- B. **Flood Damage** Structures must be constructed by methods and practices that minimize flood damage and structures must be reasonably safe from flooding;
- C. **Surface Drainage** Adequate surface drainage must be provided around structures;
- D. **Materials** Structures must be constructed with materials resistant to flood damage;
- E. **Artificial Obstructions** Structures, excavation or fill must not be prohibited by any other statute, regulation, ordinance, or resolution, and must be compatible with subdivision, zoning and any other land use regulations, if any;
- F. **Anchoring** All construction and substantial improvements must be designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- G. **Certification** Certification by an engineer, architect, land surveyor, or other qualified person must accompany the application where required, including for an encroachment analysis, adequacy of structural elevations, Base Flood elevation determinations, flood proofing, enclosure flood openings, and design and construction to withstand the hydrodynamic forces and hydrostatic pressures of flood depths, velocities, impact, buoyancy, uplift forces associated with the Base Flood and surface drainage. A certification is not intended to constitute a warranty or guarantee of performance, expressed or implied.
- H. **Access** Structures must have safe access during times of flooding up to the Base Flood for ordinary and emergency services provided there are no reasonable alternate locations for structures.

I. **Encroachment Analysis**

1. All applications in the Regulated Flood Hazard Area without a Floodway must be supported by an encroachment analysis of the proposed use, a thorough hydrologic and hydraulic analysis except as provided in paragraph 4 below, prepared by an engineer to demonstrate the effect of the structure on flood flows, velocities and the Base Flood Elevation;
2. The maximum allowable encroachment is certified to be at or less than 0.5 feet increase to the Base Flood Elevation unless approval of an alteration of the Regulated Flood Hazard Area pursuant to Chapter 4 and an approved FEMA Conditional Letter of Map Revision occurs before permit issuance;
3. An encroachment analysis is not required for any development in the Flood Fringe where an accompanying Floodway has been designated within the Regulated Flood Hazard Area; and
4. Although all other development standards herein apply, a minimal or qualitative encroachment analysis may be accepted when the project or development does not require a structure, alteration of the Floodplain, involve fill, grading, excavation or storage of materials or equipment and also is certified by an engineer to not exceed the allowable encroachment.

J. **Electrical Systems Flood Proofing** All electrical service materials, equipment and installation for uses in a Regulated Flood Hazard Area must be certified to meet the following requirements:

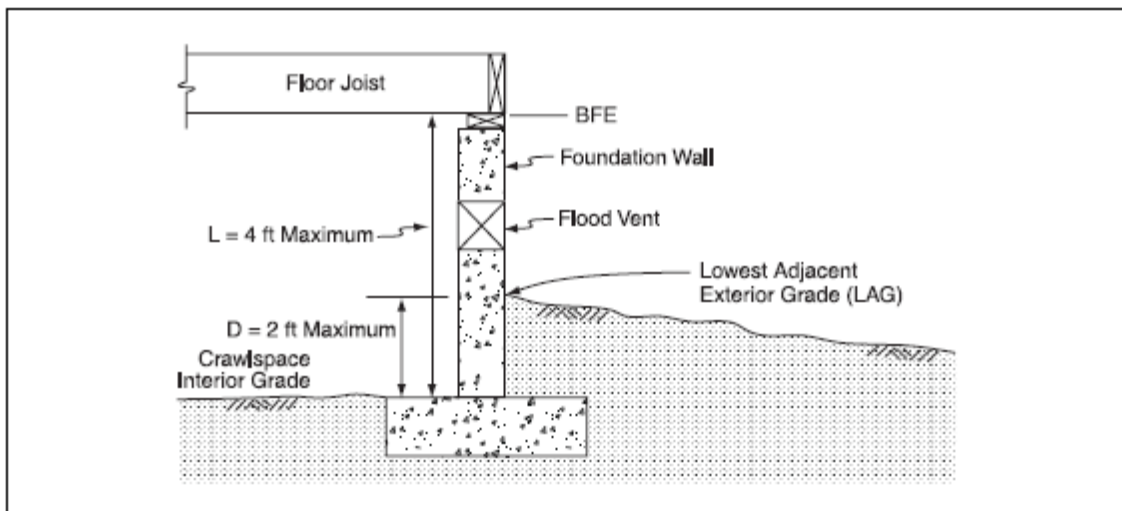
1. All incoming power service equipment including all metering equipment, control centers, transformers, distribution and lighting panels and all other stationary equipment must be located at least two feet above the Base Flood Elevation;
2. Portable and movable electrical equipment may be placed below the Base Flood Elevation, provided that the equipment can be disconnected by a single plug and socket assembly of the submersible type;
3. The main power service lines must have automatically operated electrical disconnect equipment located at an accessible remote location outside the Regulated Flood Hazard Area or two feet above the Base Flood Elevation; and
4. All electrical wiring systems installed below the Base Flood Elevation must be suitable for continuous submergence and may not contain fibrous components.

K. **Heating and Cooling Systems Flood Proofing** Heating and cooling systems for uses in a Regulated Flood Hazard Area must be certified to meet the following requirements:

1. Float operated automatic control valves must be installed so that fuel supply is automatically shut off when flood waters reach the floor level where the heating and cooling systems are located;
2. Manually operated gate valves must be installed in gas supply lines. The gate valves must be operable from a location above the Base Flood Elevation;

3. Electrical Systems flood proofing must be met; and
 4. Furnaces and cooling units must be installed at least two (2) feet above the Base Flood Elevation and the ductwork installed above the Base Flood Elevation.
- L. **Plumbing Systems Flood Proofing** Plumbing systems for uses in the Regulated Flood Hazard Area must be certified to meet the following requirements:
1. Sewer lines, except those to a buried and sealed vault, must have check valves installed to prevent sewage backup into permitted structures; and
 2. All toilets, stools, sinks, urinals, vaults, and drains must be located so the lowest point of possible flood water entry is at least two (2) feet above the Base Flood Elevation.
- M. **Elevation of the Lowest Floor** Elevating the lowest floor may be by either suitable fill, foundation wall enclosure, crawl space, stem walls, pilings, posts, piers, columns or other acceptable means.
- N. **Structural Fill** Fill used to elevate structures, including but not limited to residential and non-residential buildings must be certified to meet the following requirements:
1. The fill must be a minimum of 0.5 feet above the Base Flood Elevation and extend at least fifteen (15) feet beyond the structure in all directions.
 2. Fill material must be suitable fill, that is stable, compacted, well graded, and pervious, not adversely affected by water and frost, devoid of trash or similar foreign matter, tree stumps or other organic material; and is fitting for the purpose of supporting the intended use and/or permanent structure.
 3. The fill must be compacted to minimize settlement and compacted to 95 percent of the maximum density. Compaction of earthen fill must be certified by an engineer;
 4. No portion of the fill is allowed within the floodway;
 5. The fill slope must not be steeper than 1 ½ horizontal to 1 vertical unless substantiating data justifying a steeper slope is provided and adequate erosion protection is provided for fill slopes exposed to floodwaters.
- O. **Foundation Wall Enclosure/Crawl Space** Building designs with an enclosure below the lowest floor (crawl space), as outlined in FEMA Technical Bulletin 11-01, *Crawl/Space Construction for Buildings Located in Special Flood Hazard Areas*, must be certified to meet the following:
1. Materials resistant to flood damage, as outlined in FEMA Technical Bulletin 2, *Flood Damage Resistant Materials Requirements*, shall extend two (2) feet above BFE. This includes the foundation walls and all other associated framing needed to elevate the structure.
 2. The enclosure must be designed to equalize hydrostatic forces on walls by allowing for entry and exit of floodwaters. Opening designs must either be certified by an engineer or architect or meet or exceed the following:
 - a. Automatically allow entry and exit of floodwaters through screens, louvers, valves, and other coverings or devices;

- b. Have two (2) or more openings on at least two different foundation walls with a total net area of not less than one (1) square inch for every one (1) square foot of enclosed area below the lowest floor, except if the enclosure is partially subgrade, a minimum of 2 openings may be provided on a single wall; and
 - c. Have the bottom of all openings no higher than one (1) foot above the higher of the exterior or interior adjacent grade or floor immediately below the openings.
3. The height of the crawl space, measured from the lowest interior grade of the crawl space to the top of the crawl space foundation wall shall not exceed four (4) feet (see Figure below).
 4. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.
 5. Because of hydrodynamic loads, crawl space construction is not allowed in areas where flood velocities are greater than five (5) per second. Foundations for structures in areas with flood velocities that exceed five (5) per second shall use alternative methods for elevating the structure.
 6. The interior grade of a crawl space below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.



P. **Dry Flood Proofing** Building designs that do not allow internal flooding must be certified according to these regulations to meet the following:

1. Building use must be for non-residential use only and does not include mixed residential and non-residential use;
2. Be flood proofed to an elevation no lower than two (2) feet above the Base Flood Elevation;

3. Be constructed of impermeable membranes or materials for floors and walls and have water tight enclosures for all windows, doors and other openings; and
4. Be designed to withstand the hydrostatic pressures and hydrodynamic forces resulting from the Base Flood and the effects of buoyancy.

Q. Manufactured Home Anchors For new placement, substantial improvement or replacement of manufactured homes for residential or non-residential use, including additions, the cassis must be secure and must resist flotation, collapse or lateral movement by anchoring with anchoring components capable of carrying a force of 4,800 pounds as follows:

1. For manufactured homes less than fifty (50) feet long, over-the-top ties to ground anchors are required at each of the four (4) corners of the home, with two additional ties per side at intermediate locations; or
2. For manufactured homes more than fifty (50) feet long, frame ties to ground anchors are required at each corner of the home with five (5) additional ties per side at intermediate points.

R. Access Access for emergency vehicles is provided. For manufactured homes, access for a manufactured home hauler is also provided.

10.03 RESIDENTIAL BUILDING, EXCEPTIONS OR ADDITIONAL REQUIREMENTS New construction, alterations, and substantial improvements of residential dwellings, manufactured homes, including replacement of manufactured homes, must be constructed such that:

- A. **Elevation of the Lowest Floor** The Lowest Floor of the building including an attached garage or basement must be two (2) feet or more above the Base Flood Elevation.
- B. **Enclosure** Enclosures of elevated buildings cannot be dry flood proofed. Use for an enclosure is limited to facilitating building component access. The enclosure including a crawlspace must be wet flood proofed. An attached garage floor must be two (2) or more feet above the Base Flood Elevation.
- C. **Recreation Vehicles** Recreational vehicles on site for more than 180 days or not ready for highway use must meet the requirements for manufactured homes for residential use.

10.04 NON-RESIDENTIAL BUILDING, EXCEPTIONS OR ADDITIONAL REQUIREMENTS New construction, alterations, and substantial improvements of non-residential including agricultural, commercial and industrial buildings and residential and non-residential accessory buildings must be constructed such that:

- A. **Elevation of the Lowest Floor** The Lowest Floor of the building must be elevated two (2) feet above the Base Flood Elevation or adequately dry flood proofed according to this Chapter. The Lowest Floor may be wet proofed provided the use is limited to only parking, loading and storage of equipment or materials not appreciably affected by floodwater.
- B. **Enclosure** Enclosures below the Lowest Floor on elevated buildings must be wet flood proofed and the use must be limited to parking, access or storage or must be adequately dry flood proofed according to the requirements of this Chapter.
- C. **Manufactured homes** Manufactured homes proposed for use as non-residential buildings cannot be dry flood proofed.

D. **Agricultural structures** Agricultural structures not intended to be insurable, used solely for agricultural purposes, having low flood damage potential, used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including raising of livestock, and not intended for human habitation are exempt from the elevation requirement, but shall:

1. Be located on higher ground and as far from the channel as possible;
2. Offer minimal obstruction to flood flows;
3. Be adequately anchored to prevent flotation or collapse;
4. If the lowest floor is below the BFE, must provide flood openings as outlined in Section 10.02(O);
5. Where electrical, heating and plumbing systems are installed, meet the flood proofing requirements in Sections 10.02(J), 10.02(K), and 10.02(L); and
6. Meet the elevation or dry flood proofing requirements if the structure is an animal confinement facility.

Chapter 11. **EMERGENCIES**

11.01 General

- A. Emergency repair and replacement of severely damaged artificial obstructions and development in the Regulated Flood Hazard Area, including public transportation facilities, public water and sewer facilities, flood control works, and private projects are subject to the permitting requirements of these regulations.
- B. The provisions of these regulations are not intended to affect other actions that are necessary to safeguard life or structures during periods of emergency.

11.02 Emergency Notification and Application Requirements

- A. The property owner and or the person responsible for taking emergency action must notify the Floodplain Administrator prior to initiating any emergency action in a Regulated Flood Hazard Area normally requiring a Floodplain permit. An Emergency Notification Form must be submitted to the Floodplain Administrator within five (5) days of the action taken as a result of an emergency.
- B. Unless otherwise specified by the Floodplain Administrator, within 30 days of initiating the emergency action, a person who has undertaken an emergency action must submit a Floodplain Permit Application that describes what action has taken place during the emergency and describe any additional work that may be required to bring the project in compliance with these regulations.
- C. A person who has undertaken an emergency action may be required to modify or remove the project in order to meet the permit requirements.

Chapter 12. **VARIANCES**

12.01 GENERAL

A variance from the minimum development standards of these regulations may be allowed. An approved variance would permit construction in a manner otherwise as required or prohibited by these regulations.

12.02 VARIANCE APPLICATION REQUIREMENTS:

- A. Prior to any consideration of a variance from any development standard in these regulations, a completed Floodplain Permit application and required supporting material must be submitted.
- B. Additionally, supporting materials in a Variance application specific to the variance request including facts and information addressing the criteria in this Chapter must be submitted.
- C. If the Floodplain permit application and Variance application is deemed not correct and complete, the Floodplain Administrator shall notify the applicant of deficiencies within a reasonable time not to exceed 30 days. Under no circumstances should it be assumed that the variance is automatically granted.

12.03 NOTICE REQUIREMENTS FOR FLOODPLAIN VARIANCE APPLICATION

Public Notice of the Floodplain permit application and Variance application shall be given pursuant to Chapter 8.2.

12.04 EVALUATION OF VARIANCE APPLICATION

- A. A Floodplain permit and Variance shall only be issued upon a determination that the variance is the minimum allowance necessary, considering the flood hazard, to afford relief from these regulations and provided all of the following criteria are met:
 1. There is a good and sufficient cause. Financial hardship is not a good and sufficient cause;
 2. Failure to grant the variance would result in exceptional hardship to the applicant;
 3. Residential and nonresidential buildings are not in the Floodway except for alterations or substantial improvement to existing buildings, Residential dwellings including basements and attached garages do not have the lowest floor elevation below the Base Flood Elevation;
 4. Any enclosure including a crawl space must meet the requirements of Section 10.02(O) if the enclosure interior grade is at or below the Base Flood Elevation;
 5. Granting of a variance will not result in increased flood heights to existing buildings, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances;
 6. The proposed use is adequately flood proofed;
 7. The variance is the minimum necessary, considering the flood hazard, to afford relief;
 8. Reasonable alternative locations are not available;
 9. Crawl spaces are no more than two (2) feet below the exterior lowest adjacent grade and must have an inside dimension from the interior grade to the bottom of the next

highest floor of less than five (5) feet. The crawl space shall meet the wet flood proofing requirements in Section 10.02(O);

10. The Montana Department of Natural Resources and Conservation (DNRC) has considered and provided comments, based on technical review.
 11. An encroachment does not cause an increase to the Base Flood Elevation that is beyond that allowed in these regulations; and
 12. All other criteria for a Floodplain permit besides the specific development standard requested by variance are met.
- B. An exception to the variance criteria may be allowed as follows:
1. For either new construction of a structure outside of the Floodway only or for substantial improvements or an alteration of a structure, on a lot of one-half acre or less that is contiguous to and surrounded by lots with existing structures constructed below the Base Flood Elevation; or
 2. For Historic Structures, variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum relief necessary to preserve the historic character and design of the structure. The historic nature of the building must be designated as a preliminary or historic structure by the U.S. Secretary of Interior or an approved state or local government historic preservation program.

12.05 DECISION

- A. The Board of Adjustment shall:
1. Evaluate the Floodplain permit application and Variance application using the criteria in Section 12.04, and the application requirements and minimum development standards in Chapters 9 and 10;
 2. Make findings, and approve, conditionally approve or deny a Floodplain permit and variance within 60 days of a complete application.
 3. If approved, attach conditions to the approval of Floodplain permit and Variance including a project completion date and inspections during and after construction.
 4. Notify the applicant that the issuance of a Floodplain permit and Variance to construct a structure not meeting the minimum building requirements in these regulations may result in increased flood insurance premium rates for flood insurance and that flood insurance premiums are determined by actuarial risk and will not be modified by the granting of a variance.
 5. Submit to the Floodplain Administrator a record of all actions involving a Floodplain permit and variance, including the findings and decision and send a copy of each variance granted to DNRC.

12.06 JUDICIAL REVIEW

Any person or persons aggrieved by the Floodplain permit and variance decision may appeal such decision in a court of competent jurisdiction.

Chapter 13. **ADMINISTRATIVE APPEALS**

13.01 GENERAL

An administrative appeal may be brought before the Flathead County Board of Adjustments for review of the Floodplain Administrator's order, decision to grant, condition, or deny a floodplain permit or interpretation of the Regulated Flood Hazard Area boundary.

13.02 APPEALS REQUIREMENTS The following provisions apply to administrative appeals:

- A. An appeal shall include the basis of the appeal and supporting information including specific findings and conclusions of the Floodplain Administrator's decision being appealed.
- B. An appeal may be submitted by an applicant and/or anyone who may be aggrieved by the Floodplain Administrator's decision or order.
- C. Appeals must be received within 30 days of the date of the decision or order of the Floodplain Administrator.
- D. Additional information specific to the appeal request may be requested by the review panel.

13.03 NOTICE AND HEARING

- A. Notice of the pending appeal and hearing shall be provided pursuant to Chapter 8.02 at least fifteen (15) days prior to the Board hearing. The Floodplain Administrator may notify DNRC and FEMA of pending appeals.
- B. A public hearing on the appeal must be held within 30 days of the Notice unless set otherwise.

13.04 DECISION

A judgment on an appeal shall be made within 30 days of the hearing unless set otherwise. The decision may affirm, modify, or overturn the Floodplain Administrator's decision. A decision on an appeal of a permit cannot grant or issue a variance. A decision may support, reverse or remand an order or determination of a boundary of the Regulated Flood Hazard Area by the Floodplain Administrator.

13.05 JUDICIAL REVIEW

Any person or persons aggrieved by the decision on an administrative appeal may appeal such decision in a court of competent jurisdiction.

Chapter 14.
REGULATED FLOOD HAZARD AREAS WITHIN THE LAKE AND LAKESHORE
PROTECTION ZONE

14.01 JOINT APPROVAL

Projects regulated by the Flathead County Lake and Lakeshore Regulations that have been issued a lake and lakeshore construction permit may need to obtain a floodplain development permit for activities the Floodplain Administrator finds will have a significant impact on the Regulated Flood Hazard Area.

A. A floodplain development permit may not be required for some of the following projects:

1. Single residential pier docks;
2. Single residential portable docks;
3. Shore stations;
4. Walkways;
5. Buoys;
6. Tie off piers;
7. Small scale projects that do not require adding fill or dredging.

Chapter 15. **ENFORCEMENT**

15.01 INVESTIGATION REQUEST

An investigation to determine compliance with these regulations for an artificial obstruction or nonconforming use within the Regulated Flood Hazard Area may be made either on the initiative of the Floodplain Administrator, on the written request of adjacent land owner(s) which may be affected by the activity, or on the written request of the Board of Commissioners. The names and addresses of the persons requesting the investigation shall be released if requested.

15.02 NOTICE TO ENTER AND INVESTIGATE LANDS OR WATERS

The Floodplain Administrator may make reasonable entry upon any lands and waters for the purpose of making an investigation, inspection or survey to verify compliance with these regulations.

- A. The Floodplain Administrator shall provide notice of entry by mail, electronic mail, phone call, or personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered.
- B. If none of these persons can be found, the Floodplain Administrator shall affix a copy of the notice to one or more conspicuous places on the property.
- C. If the owners do not respond, cannot be located or refuse entry to the Floodplain Administrator, the Floodplain Administrator may initiate a Search Warrant.

15.03 NOTICE TO RESPOND AND ORDER TO TAKE CORRECTIVE ACTION

When the Floodplain Administrator determines that a violation may have occurred, the Floodplain Administrator may issue written notice to the owner or an agent of the owner, either personally or by certified mail. Such notice shall cite the regulatory offense and include an order to take corrective action within a reasonable time or to respond by requesting an administrative review by the Floodplain Administrator.

15.04 ADMINISTRATIVE REVIEW

The order to take corrective action is final, unless within five (5) working days or any granted extension, after the order is received, the owner submits a written request for an administrative review by the Floodplain Administrator. A request for an administrative review does not stay the order.

15.05 APPEAL OF ADMINISTRATIVE DECISION

Within ten (10) working days or any granted extension of receipt of the Floodplain Administrator's decision concluding the administrative review, the property owner or owner's agent may appeal the decision pursuant to Chapter 13.

15.06 FAILURE TO COMPLY WITH ORDER TO TAKE CORRECTIVE ACTION

If the owner fails to comply with the order for corrective action, remedies may include administrative or legal actions, or penalties through court.

15.07 OTHER REMEDIES

This Chapter does not prevent efforts to obtain voluntary compliance through warning, conference, or any other appropriate means. Action under this part shall not bar enforcement of these regulations by injunction or other appropriate remedy.

Chapter 16. **PENALTIES**

16.01 MISDEMEANOR

Violation of the provisions of these regulations or failure to comply with any of the requirements, including failure to obtain permit approval prior to development in the Regulated Flood Hazard Area except for an emergency, shall constitute a misdemeanor and may be treated as a public nuisance.

Any person who violates these regulations or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100 or imprisoned for not more than 10 days or both. Each day's continuance of a violation shall be deemed a separate and distinct offense.

16.02 DECLARATION TO THE FEDERAL FLOOD INSURANCE ADMINISTRATOR

Upon finding of a violation and failure of the owner to take corrective action as ordered, the Floodplain Administrator may submit notice and request a 1316 Violation Declaration to the Federal Insurance Administrator. The Federal Insurance Administrator has the authority to deny new and renewal flood insurance for a structure upon finding a valid violation declaration. The Floodplain Administrator shall provide the Federal Insurance Administrator the following:

- A. The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location.
- B. A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance.
- C. A clear statement that the public body making the declaration has authority to do so and a citation to that authority.
- D. Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance.
- E. A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

APPENDIX A

Flathead County Flood Insurance Study – Community Number 300023

<u>Study #</u>	<u>Suffix</u>	<u>Effective Date</u>	<u>Description</u>
30029CV001	C	November 04, 2015	Revised Countywide FIS Report Vol. 1 of 2
30029CV002	C	November 04, 2015	Revised Countywide FIS Report Vol. 2 of 2

Flathead County FIRMS – Community Number 300023

<u>Panel #</u>	<u>Suffix</u>	<u>Effective Date</u>
30029C0425	G	September 28, 2007
30029C0450	G	September 28, 2007
30029C0725	G	September 28, 2007
30029C0730	G	September 28, 2007
30029C0735	G	September 28, 2007
30029C0740	G	September 28, 2007
30029C0745	G	September 28, 2007
30029C0775	G	September 28, 2007
30029C0825	G	September 28, 2007
30029C0845	G	September 28, 2007
30029C0850	G	September 28, 2007
30029C0865	G	September 28, 2007
30029C1050	G	September 28, 2007
30029C1055	G	September 28, 2007
30029C1060	G	September 28, 2007
30029C1065	J	November 04, 2015
30029C1070	J	November 04, 2015
30029C1080	G	September 28, 2007
30029C1090	J	November 04, 2015
30029C1095	J	November 04, 2015
30029C1110	G	September 28, 2007
30029C1115	J	November 04, 2015
30029C1120	G	September 28, 2007
30029C1130	G	September 28, 2007
30029C1135	G	September 28, 2007
30029C1140	G	September 28, 2007
30029C1145	G	September 28, 2007
30029C1155	G	September 28, 2007
30029C1180	G	September 28, 2007
30029C1185	G	September 28, 2007
30029C1195	G	September 28, 2007
30029C1370	G	September 28, 2007
30029C1380	G	September 28, 2007
30029C1385	J	November 04, 2015
30029C1390	J	November 04, 2015
30029C1395	J	November 04, 2015

<u>Panel #</u>	<u>Suffix</u>	<u>Effective Date</u>
30029C1405	J	November 04, 2015
30029C1410	J	November 04, 2015
30029C1415	J	November 04, 2015
30029C1420	J	November 04, 2015
30029C1430	J	November 04, 2015
30029C1435	J	November 04, 2015
30029C1440	J	November 04, 2015
30029C1445	J	November 04, 2015
30029C1590	G	September 28, 2007
30029C1595	G	September 28, 2007
30029C1625	G	September 28, 2007
30029C1800	J	November 04, 2015
30029C1805	J	November 04, 2015
30029C1810	J	November 04, 2015
30029C1815	J	November 04, 2015
30029C1820	J	November 04, 2015
30029C1830	J	November 04, 2015
30029C1835	J	November 04, 2015
30029C1840	J	November 04, 2015
30029C1845	J	November 04, 2015
30029C1865	J	November 04, 2015
30029C1975	G	September 28, 2007
30029C1980	G	September 28, 2007
30029C2225	G	September 28, 2007
30029C2250	G	September 28, 2007
30029C2275	J	November 04, 2015
30029C2280	J	November 04, 2015
30029C2285	J	November 04, 2015
30029C2300	J	November 04, 2015
30029C2305	J	November 04, 2015
30029C2310	J	November 04, 2015
30029C2315	J	November 04, 2015
30029C2320	J	November 04, 2015
30029C2330	J	November 04, 2015
30029C2340	G	September 28, 2007
30029C2725	J	November 04, 2015
30029C2750	J	November 04, 2015