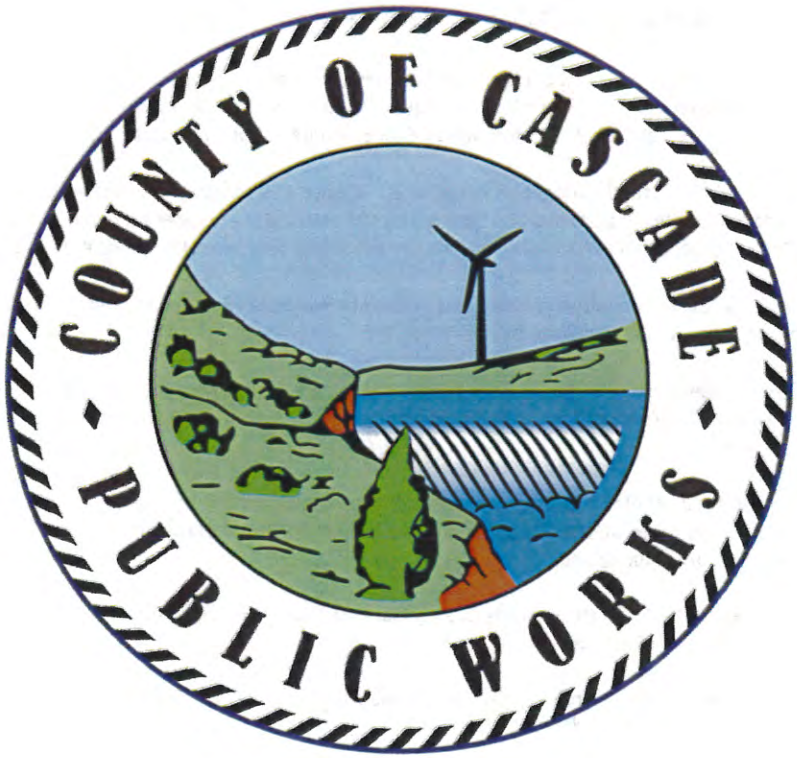

CASCADE COUNTY FLOODPLAIN REGULATIONS

Re Recorded to include attachment.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA

RETURN TO COMMISSION

A Resolution to Adopt Floodplain Management Regulations **Resolution: 13-19**

WHEREAS, The Cascade County Board of Commissioners has the legal authority to adopt, amend, and enforce land use regulations that meet or exceed the minimum requirements of the Montana Floodway Management Act of 1973 as provided for in Sections 76-5-101 through 76-5-406, Montana Code Annotated; and

WHEREAS, As part of the Federal Emergency Management Agency's (FEMA) map modernization process, new Floodplain Management Regulations must be adopted by Cascade County no later than March 19, 2013 in order for Cascade County to remain a participating community in the National Flood Insurance Program (NFIP); and

WHEREAS, By reference, the adoption of new Cascade County Floodplain Regulations will adopt the updated Flood Insurance Rate Maps generated by FEMA by reference; and

WHEREAS, The purposes of the Floodplain Regulations are to generally promote public health, safety and general welfare of the residents of Cascade County and minimize public and private losses due to flooding within the 100-year Floodplain; and

WHEREAS, The current draft of the proposed new Floodplain Regulations has been reviewed by the Department of Natural Resources and Conservation and FEMA and have been found to meet the prescribed minimum standards for development and procedures; and

WHEREAS, On February 19, 2013, the Cascade County Planning Board reviewed and recommended adoption of the proposed Floodplain Regulations; and

WHEREAS, Legal notices for the March 12, 2013 public hearing were published in the Great Falls Tribune on Sunday, February 24, 2013 and Sunday, March 3, 2013.

NOW, THEREFORE, BE IT RESOLVED THAT the Cascade County Board of County Commissioners hereby adopt this Resolution to adopt Cascade County Floodplain Regulations. The previous Cascade County Floodplain Regulations dated February 5, 2002, adopted by Cascade County Resolution 02-08, are hereby replaced by the attached Cascade County Floodplain Regulations.

These regulations are hereby adopted on this 12th day of March, 2013, and will become effective on the 19th day of March, 2013.

BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA

R0270183 CRS
Total Pages 1 R 0.00 By:mesickels 03/12/2013 03:39:05 PM
Cascade County, Rina Ft Moore - Clerk & Recorder

Joe Briggs, Chairman

R0270233 CRS
Total Pages: 41 R 0.00 By:mesickels 03/13/2013 01:12:19 PM
Cascade County, Rina Ft Moore - Clerk & Recorder

Bill Salina, Commissioner

Jane Weber, Commissioner

Attest: Rina Ft Moore by deputy

Rina Ft. Moore, Cascade County Clerk and Recorder

CASCADE COUNTY FLOODPLAIN REGULATIONS

Adopted February 5, 2002 – Resolution #02-08
Revised Version Adopted March 12, 2013 – Resolution #13-19 (Effective March 19, 2013)

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SECTION 1 - GENERAL PROVISIONS

1.1 TITLE These Regulations shall be known and cited as the "Cascade County Floodplain Regulations" or "CCFR".

1.2 GENERAL DESCRIPTION The CCFR establish special flood hazard districts as overlay districts, establishes standards for avoiding or reducing flood damage and hazards; and describes the administration and enforcement of these provisions.

1.3 STATUTORY AUTHORITY The Cascade County Board of County Commissioners (BCC) adopts the CCFR under authority of the Montana Floodplain and Floodway Management Act (Title 76, Chapter 5, MCA).

1.4 PURPOSE

1. The CCFR are intended to promote the public health, safety, and general welfare. To that end, the CCFR shall be implemented for the purposes stated in the enabling statute, for the purposes stated in the Ordinance adopting the CCFR, and for the purposes described herein, including but not limited to the purposes described in the subsections below.

2. The CCFR are also intended to:

    1. Protect human life and health;

    2. Minimize expenditure of public money for costly flood control projects;

    3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

    4. Minimize prolonged business and public service interruptions;

    5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;

    6. 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

    7. Ensure compliance with the minimum standards for the continued participation in the National Flood Insurance Program for the benefit of the residents.

1.5 JURISDICTIONAL AREA The CCFR shall apply to the flood hazard areas within the jurisdiction of Cascade County specifically adopted herein as Regulated Flood Hazard Areas and specifically described in Section 3.

1.6 RELATIONSHIP OF THE CCFR TO OTHER REGULATIONS

1. In addition to meeting the provisions in the CCFR, proposed projects shall comply with all other applicable local, state, and federal rules or regulations.

2. If the requirements of the CCFR conflict with any other local, state, or federal rule or

regulation, the most restrictive requirement or those that impose the highest standard shall control.

1.7 **INTERNAL CONFLICTS** A more specific provision of the CCFR shall be followed in lieu of a more general provision that may be more lenient than or in conflict with the more specific provision. When it is not clear which provision is more specific, the provision that, in the opinion of the Floodplain Administrator or the BCC, best implements the purposes of the CCCR shall prevail.

1.8 **AMENDMENTS** The CCFR may be amended by the BCC during a properly noticed public hearing. Any proposed amendments must first be reviewed and approved by both the DNRC and FEMA.

1.9 **FLOODPLAIN ADMINISTRATOR**

1. Designation. The Cascade County Floodplain Administrator has been designated to be the Cascade County Planning Director. It is the role of the Floodplain Administrator to administer and implement the provisions of the CCFR.

2. Maintenance of Records. Records including permits and applications, elevation and flood proofing certificates, certificates of compliance, fee receipts, and other matters relating to the CCFR 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. (44 CFR 60.3(b)(5)(iii) & 44 CFR 59.22 (a)(9)(iii))

1.10 **DELEGATION OF AUTHORITY** Whenever a provision of the CCFR requires an elected official, department supervisor, or some other county employee to do some act or perform some duty, it is to be construed to authorize that individual to designate, delegate, contract with, or authorize another qualified person to perform the required act or duty, unless otherwise specified.

1.11 **RESPONSIBILITY OF INTERPRETATION** In the event that any question arises concerning any provision or the application of any provision of the CCFR, the Floodplain Administrator shall be responsible for such interpretation and shall look to the overall intent of the CCFR and the Growth Policy, as may be adopted or amended, for guidance. The Floodplain Administrator shall provide such interpretation in writing to the applicant upon request and keep a permanent record of said interpretation.

1.12 **COMPUTATION OF TIME** When a time period is specified in the CCFR, the first day shall be the first day after the event that triggers the time clock to start. For example, if a decision is to be made within 60 days, the time clock starts the day after the application has been deemed sufficient.

1.13 **FEES** A processing fee of $250.00 shall be submitted with each permit application or variance request.

1.14 **DISCLOSURE PROVISION** All owners of property in an identified Regulated Flood Hazard Area as indicated on the official floodplain maps must notify potential buyers or their agents that such property is subject to the provisions of the CCFR.

1.15 **WARNING AND DISCLAIMER OF LIABILITY** The CCFR 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. The CCFR shall not create liability on the part of Cascade County or any official or employee thereof for any flood damages that result from reliance on the CCFR or any administrative decision lawfully made hereunder.

1.16 **ABROGATION** The CCFR do not repeal or impair any existing easements, covenants, deed restrictions or underlying zoning duly recorded in the public records of the County. However, where the CCFR impose greater restrictions, the CCFR shall prevail.

1.17 **SEVERABILITY** If a court of competent jurisdiction holds that a part(s) of the CCFR is invalid for any reason, the validity of the remaining portions shall continue in full force and effect.

1.18 **SUBDIVISION REVIEW** Any subdivision approval including new or expansion of manufactured home parks or campgrounds within the Regulated Flood Hazard Area must be made in accordance with the Cascade County Subdivision Regulations.

SECTION 2 - DEFINITIONS

2.1 **GENERAL DEFINITIONS** Unless specifically defined in this section, words or phrases used in the CCFR shall be defined by the following sources according to the definitions in Title 76 Chapter 5 (including section 76-5-103, MCA); according to the definitions in Administrative Rules of Montana Rule 36.15 (including ARM 36.15.101); and according to federal floodplain law (including 44 CFR 59.1). If more than one definition in the above list applies, the order or authority shall be as provided by law, if applicable, or the definition most restrictive on development in the floodplain shall apply. Other terms shall be interpreted so as to give them the meaning they have in common usage in the area of floodplain management, and to give the CCFR their most reasonable application.

2.2 **DEFINITIONS** Unless specifically defined below, words or phrases used in the CCFR shall be interpreted so as to give them the meaning they have in common usage and to give the CCFR the most reasonable application.

- A -

Alteration means any change or addition to a structure that either increases its external dimensions or increases its potential flood hazard.

Artificial obstruction means 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.

- B -

Bank Stabilization means any effort to harden the bank of a stream to prevent lateral movement. Such measures include: bio-engineering, native material revetments, rip-rap, bin-walls, barbs, vanes, and many other techniques.

Base flood means a flood having a one percent (1%) chance of being equaled or exceeded in any given year. A base flood is the same as a flood of 100-year frequency or 100-year Flood.

Base flood elevation means the elevation above sea level of the base flood in relation to the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988 or unless otherwise specified.

Basement means any area of the building having its lowest floor below ground level on all sides.

BCC means the Cascade Board of County Commissioners.

Building means a structure having a roof supported by walls or columns, or other supports intended for the shelter or enclosure of persons, animals, chattels, or property of any kind.

- C -

Channelization Project means the excavation and/or construction of an artificial channel for the purpose of diverting the flow of a stream from its established course.

- D -

Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. See also Artificial Obstruction.

Digital Flood Insurance Rate Map (DFIRM) means the digital map on which FEMA has delineated both the 100-year Floodplain and the risk premium zones.

DNRC means the Montana Department of Natural Resources and Conservation

Dwelling Unit means a single unit providing independent and permanent living facilities.

- E -

Encroachment means activities or construction within the Floodplain, including fill, new construction, substantial improvements, and other development.

Encroachment Analysis means an analysis performed by a professional engineer to assess the impacts of the proposed artificial obstruction or nonconforming use to the 100-year Floodplain, base flood elevation and velocity.

Establish means to construct, place, insert, or excavate.

Existing Manufactured Home Park or Subdivision means 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 or grading, or pouring of concrete pads.

- F -

FEMA means the Federal Emergency Management Agency.

Fill means material, from any source (including the subject property), placed that raises the ground above natural grade.

Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry lands from the overflow of a stream, or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood, 100-year, means a flood having a one percent (1%) chance of being equaled or exceeded in any given year. A 100-year Flood is the same as a Base Flood.

Flood Elevation, 100-year, means Base Flood Elevation.

Flood Fringe means that portion of the 100-year Floodplain outside the limits of the Floodway.

Flood Insurance Rate Map (FIRM)means the map on which FEMA has delineated both the 100-year Floodplain and the risk premium zones.

Flood Insurance Study means the report prepared and adopted by FEMA that shows flood profiles, as well as the Flood Boundary/Floodway map and the water surface profiles.

Flood Proofing means any combination of structural or 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, HVAC systems, structures and their contents.

Floodplain, 100-year, means the area generally adjoining a body of water that would be covered by water of the Base Flood except for sheetflood areas that receive less than on (1) foot of water per occurrence and are considered Zone B areas by FEMA.

Floodplain means the 100-year Floodplain.

Floodway means the identified portion of the 100-year Floodplain consisting of the channel of a stream and the adjacent overbank areas that must be reserved in order to discharge a base flood without cumulatively increasing the water surface elevation more than one-half (1/2) foot.

- H -

Hazard means any condition, either natural or man-made, which presents a tangible danger to the public health, safety, and general welfare.

Hazardous Material means (1) any hazardous waste; (2) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and the regulations promulgated thereunder; (3) any oil, petroleum products, and their by-products, asbestos, and Polychlorinated Biphenyls (PCB's); and (4) any substance that is or becomes regulated as hazardous by any federal, state or local governmental authority (including but not limited to any material regulated by the "Emergency Planning and Community Right-to-Know Act of 1986" 42 USC 1101-11050, as amended).

Hazardous Waste means a waste or combination of wastes that because of its quantity, concentration, or physical, chemical, or infection characteristics, may (1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed. The term does not include substances governed by Title 82, Chapter 4, Part 2, MCA.

- I -

Instream Structure means a structure of any type placed within the ordinary high water mark of streams for irrigation purposes, for controlling stream bank erosion, or for controlling the movement of the stream channel. This includes but is not limited to rip-rap, barbs, drop structures, dikes, and similar structures.

- L -

Land Use means, as the context would indicate, (1) the development that has occurred on the land, (2) development that is proposed on the land, or (3) the use that is permitted on the land under an adopted and legally enforceable regulatory framework.

Letter of Map Amendment or LOMA means an amendment that the Federal Emergency Management Agency makes to a community's Flood Insurance Rate Map(s). LOMA's are generally issued when properties have been inadvertently included in the floodplain.

Letter of Map Revision or LOMR means a revision that the Federal Emergency Management Agency makes to a community's Flood Insurance Rate Map(s). A LOMR is generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus results in the modification of the floodplain.

Levee means a man-made structure, usually earthen embankment, 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.

Levee system means a flood protection system which consists of a levee, or levees, and associated structures, such as drainage and closure devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means any floor used for living purposes, storage or recreation. This includes any floor that could be converted to such a use.

- M -

Manufactured Home means a structure that 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 but is not limited to park trailers, travel trailers, and other similar vehicles.

Market Value means the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's-length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which is capable of being used.

Mean Sea Level means the North American Vertical Datum of 1988 or other datum to which Base Flood Elevations are referenced.

- N -

New construction means 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 the CCFR and includes any subsequent improvements to such structures.

Nonconforming Structure means any structure that does not conform with the building standards and requirements contained within the CCFR.

- P -

Permanent Foundation means a continuous wall around the perimeter of a building composed of solid concrete or mortared concrete blocks or a series of concrete piers spaced around the perimeter of a building. Permanent foundation design techniques for manufactured homes shall follow the recommendations in FEMA Publication #85.

Permit means a written governmental authorization allowing the holder to take action not otherwise allowed.

Person means any individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

Professional Engineer means a person licensed in conformance with Title 37, Chapter 67, MCA, to practice engineering in the state of Montana.

Professional Land Surveyor means a person licensed in conformance with Title 37, Chapter 67, MCA, to practice surveying in the state of Montana.

Public Notice means the ways in which a governmental body uses or is required to use to formally notify people of a proposed governmental hearing or action.

- R -

Recreation Vehicle means a vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily for use as temporary living quarters for recreation, camping, travel, or seasonal use and not for use as a permanent dwelling.

Regulated Flood Hazard Area means 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, a flood of a 100-year frequency. The Regulated Flood Hazard Area consists of the **Floodway** and **Flood Fringe** where specifically designated.

Remodel means to only change the interior/exterior appearance of a structure, where there is no change in the footprint, and where the change does not constitute *alteration* or *substantial improvement.*

Rip-rap means a structure consisting of stones or rocks (not concrete) that is placed along the banks or bed of a stream to alleviate erosion.

- S -

Scour Depth means the maximum depth of streambed scour caused by erosive forces of the base flood discharge.

Sheetflooding Areas means areas subject to a 100-year Flood with depths less than one (1) foot of water per occurrence and are considered Zone B areas by FEMA.

Start of Construction means the commencement of clearing, grading, filling, or excavating to prepare a site for construction.

Structure means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. A structure is also, bridge, culvert, dam, diversion, wall, revetment, dike, or other projection that may impede, retard, or alter the pattern of flow of water.

Substantial Damage means damage sustained by a structure where the cost of restoring the structure to its before-damage condition would exceed fifty percent (50%) of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which exceeds fifty percent (50%) of the market value of the structure either:

1. Before the improvement or repair is started; or
2. 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.

Suitable fill means material which is stable, compacted, well graded, pervious, generally unaffected by water and frost, devoid of trash, asphalt or other petroleum base material, or similar foreign matter, devoid of tree stumps, or other organic material; and is fitting for the purpose of supporting the intended use of and/or permanent structure.

- V -

Variance means a grant of relief from the strict application of a rule or regulation that would permit development in a manner otherwise prohibited.

Violation means the failure of development to comply with applicable regulations.

SECTION 3 - JURISDICTIONAL AREA

3.1 REGULATED FLOOD HAZARD AREAS

1. The jurisdictional areas referenced herein as the Regulated Flood Hazard Area are the 100-year floodplains illustrated and referenced in:

    1. Flood Insurance Study for Cascade County, Montana, Community Number 300008, dated March 19, 2013; and
    2. Flood Insurance Rate Maps (FIRMs) for Cascade County Montana, Community Number 300008, dated March 19, 2013

2. The Regulated Flood Hazard Area specifically described or illustrated in the specific study including maps that have been delineated, designated and established by order of the DNRC or FEMA pursuant to 76-5-201, MCA.

3. Use allowances, design and construction requirements in the CCFR vary by the specific areas identified as Floodway and Flood Fringe.

3.2 INTERPRETATION OF REGULATED FLOOD HAZARD AREA BOUNDARIES

1. The mapped boundaries illustrated in the referenced studies in this Section are a guide for determining whether property is within the Regulated Flood Hazard Area.

2. 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 of the referenced study in this Section.

3. Boundary points of the Regulated Flood Hazard Area may be illustrated for guidance on reference maps but the boundary is the actual intersection of the applicable base flood elevation with the natural adjacent terrain of the watercourse or channel.

4. The Floodway boundary is as illustrated on the referenced maps and studies.

5. Any owner or lessee of property who believes his property has been inadvertently included in the Regulated Flood Hazard Area may submit scientific and/or technical information to the Floodplain Administrator. Changes to the National Flood Insurance Rate Maps for the National Flood Insurance Program through a FEMA Letter of Map Change process are the responsibility of the owner or lessee.

6. The Floodplain Administrator may require elevation information provided by an engineer or land surveyor or other information as needed for any development that may be considered to be subject to the CCFR. The Floodplain Administrator's interpretation of the boundaries and decision may be appealed as set forth in Section 12.

3.3 ALTERATION OF JURISDICTIONAL AREA

1. An alteration in this paragraph is a change to the existing boundary to the specific maps and data of the referenced studies in this Section that form the basis for the Regulated Flood Hazard Area.

2. An alteration may be the result of new data and information or when technical or scientific flood data show that the base flood elevation has or may be changed or was erroneously established and the boundaries of the Regulated Flood Hazard Area are incorrect.

3. Any alteration must be based on reasonable hydrological certainty.

4. Any alteration or proposed alteration of 0.5 feet or more in the Base Flood Elevation requires approval of the DNRC in addition to an amendment of the adopted jurisdictional.
5. Any additional notices or approvals required by FEMA for the purpose of updating flood insurance rate maps of changes as a result of permitted activity that cause any change in topography by fill or changes in the base flood elevation is the responsibility of the permit applicant. The Floodplain Administer may represent any necessary approvals or endorsements by the permit authority to FEMA.

6. The Floodplain Administrator shall maintain a record of all alterations.(ARM 36.15.502 and 36.15.505)

7. An alteration is not required when property located within the Regulated Flood Hazard Area is shown to be naturally above the base flood elevation. (ARM 36.15.505(2))

8. Except in a Flood Fringe, alteration approval from DNRC is required if property is to be raised to a level above the Base Flood Elevation by suitable fill and where the encroachment by the fill causes a rise in the Base Flood Elevation of more than 0.5 feet. No portion of the fill may be within the floodway. (ARM 36.15.505)(1)(b))

9. No alteration of a Regulated Flood Hazard Area is required when property located within the Regulated Flood Hazard Area is elevated with fill to at or above the base flood elevation and is permitted.

SECTION 4 - ALLOWED USES - WITHOUT A PERMIT

4.1 GENERAL In addition to existing nonconforming uses and artificial obstructions established before the effective date of the CCFR, 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 resolution or statute, do not require structures, and do not require alteration of the Floodplain such as fill, grading, excavation or storage of materials or equipment: (ARM 36.15.601) and (ARM 36.15.701(1))

4.2 ALLOWED USES

1. Agricultural uses, not including related structures, such as tilling, farming, irrigation, ranching, harvesting, grazing, etc; (ARM 36.15.601(1)(a))

2. Accessory uses, not including structures, such as loading and parking areas, or emergency landing strips associated with industrial or commercial facilities; (ARM 36.15.601(1)(b))

3. Forestry, including processing of forest products with portable equipment; (ARM 36.15.601(1)(d))

4. Recreational vehicle use provided that the use 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; (44 CFR 60.3(c)(14))

5. Residential uses such as lawns, gardens, parking areas, and play areas; (ARM 36.15.601(1)(e))

6. Maintenance of existing open space uses or artificial obstructions; (MCA 76-5-404(3)(b))

    1. Preventive maintenance activities such as bridge deck rehabilitation and roadway pavement preservation activities are considered maintenance.

7. Public or private recreational uses not requiring structures such as picnic grounds, swimming areas, parks, 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; (ARM 36.15.601(a)(c))

8. Fences such as those that have a low impact to the flow of water such as barbed wire fences and wood rail fences and shall not include permanent fences crossing channels; (ARM 36.15.601(2)(b))

9. Addition of highway guard rail, signing and utility poles along an existing roadway.

10. 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 18" above the Base Flood Elevation. (ARM 36.15.601(2)(a))

SECTION 5 - PROHIBITED USES

5.1 FLOODWAY The following artificial obstructions and nonconforming uses are prohibited in the Floodway within the Regulated Flood Hazard Area:

1. A building or walled structure including alterations for living purposes, place of assembly or permanent use by human beings, or commercial and industrial buildings, or mobile homes and manufactured homes; (MCA 76-5-403(1), (ARM 36.15.605)(1a)), (ARM 36.15.605(2b), (ARM 36.15.605(2)(a)).

2. 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. (MCA 76-5-403(2)). Minor excavation or fill where compatible and related and incidental may be allowed with a permitted use;

3. The construction or storage of an object (artificial obstruction) subject to flotation or movement during flood level periods; (MCA 76-5-403(3) and ARM 36.15.605(1)(c))

4. Alterations of structures, unless it can be shown that the alteration will not cause an increase in the Base Flood Elevation.

5. Solid and Hazardous waste disposal and individual and multiple family sewage disposal systems unless otherwise allowed pursuant to ARM 17.36.101-116 and ARM 17.36.309-345; (ARM36-15-605(2c))

6. Storage of toxic, flammable, hazardous or explosive materials; and ARM 36.15.605(2d))

7. Cemeteries, mausoleums, or any other burial grounds.

8. Campgrounds.

5.2 FLOOD FRINGE OR REGULATED FLOOD HAZARD AREA WITHOUT A DELINEATED FLOODWAY The following artificial obstructions and nonconforming uses are prohibited within the Flood Fringe or Regulated Flood Hazard Area without a delineated Floodway:

1. Solid and hazardous waste disposal;(ARM 36-15-703(1))

2. Storage of toxic, flammable, hazardous or explosive materials; (ARM 36-15-703(2)) and

3. Cemeteries, mausoleums, or any other burial grounds.

4. Campgrounds.

SECTION 6 - PERMIT REQUIREMENTS

6.1 GENERAL

1. A permit is required within the Regulated Flood Hazard Area for a person to establish or alter an artificial obstruction, nonconforming use or development. (ARM 36.15.101(3) & MCA 76-5-103(1), 44 CFR 60.1 & MCA 76-5-404(2), ARM 36.15.204, ARM 36.15.101(2))

2. Artificial obstructions, nonconforming uses and uses not specifically listed in Sections 8 and 9 requires a permit except as allowed without a permit in Section 4 or as prohibited as specified in Section 5.

3. A permit is required to reconstruct or repair an existing structure that has experienced substantial damage or substantial improvement.

4. Artificial obstruction and nonconforming uses in a Regulated Flood Hazard Area not exempt under Section 4 are to be considered a public nuisance unless a permit has been obtained. (76-5-404(1)MCA)

5. The CCFR do not affect any existing artificial obstruction or nonconforming use in the Regulated Flood Hazard Area in place prior to the adoption of the CCFR. (76-5-404(3) MCA)

6. An alteration that is any change or addition to an artificial obstruction or nonconforming use not exempt under Section 4 that increases the size or increases its potential flood hazard, requires a permit.(76-5-404(3)(b)) (36.15.101(2))

7. Maintenance of an artificial obstruction or nonconforming use is not an alteration. (76-5-404(3)(b) MCA)

6.2 PERMIT APPLICATION INFORMATION

1. The application shall be prepared by a registered professional engineer, registered land surveyor, and/or registered architect, or other qualified individual, as appropriate to the project. When the project entails the practice of engineering, a professional engineer shall complete the application and certification, if required. Examples of such projects include grade control structures, channel shaping/relocation, water diversions, bridges/culverts, utility lines, levees and floodwalls, river channelization, bank stabilization projects in excess of 200 cumulative feet, and dams.

2. The permit application shall include:

    1. An application form (available at the Cascade County Planning Division Office and on the Planning Division's website).

    2. Plans in duplicate drawn to scale showing the location, dimensions, and elevation of the proposed project (i.e. landscape alterations, existing and proposed structures, including the placement of manufactured homes, etc.) and the location of the foregoing in relation to the Regulated Flood Hazard Areas.

    3. A site plan indicating external dimensions of structures, street or road finished

grade elevations, well locations, individual sewage treatment and disposal sites, and excavation and/or fill quantity estimate.

4. A vicinity map showing the location of the subject property and the location and name of adjacent roads and municipal boundaries.

5. The names and complete mailing addresses of all owners of record owning property adjoining the subject property, as identified on the most recent tax rolls of the county.

6. Copies of issued or requested permits where applicable, including but not limited to the following:

    1. 404 Permits, pursuant to Section 404 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. 1334;

    2. 310 Permit generally issued by the Conservation District or SPA 124 Permit generally issued by the Department of Fish Wildlife and Parks, pursuant to the Natural Streambed and Land Preservation Act and the Stream Protection Act.

    3. Short-Term Exemption from Surface Water Quality Turbidity Standards

7. A list of variances, requested or granted, that are relevant to the applicant.

8. A vicinity map showing the location of the subject property and the location and name of adjacent roads and municipal boundaries.

9. As appropriate, certification by a professional engineer, land surveyor, registered architect, or other qualified consultant, that the proposed project has been designed to be in compliance with the CCFR.

10. The Floodplain Administrator may require whatever additional information is necessary to determine whether the proposed activity meets the requirements of the CCFR. Additional information may include the following:

    1. A hydraulic study documenting probable effect on upstream, downstream, or adjacent property owners caused by the proposed development; or

    2. The calculated increase in the 100-year Flood water surface profile caused by the proposed development; and

    3. Additional information related to the specific use or activity that demonstrates the design criteria and construction standards are met or exceeded as specified in Section 9 and 10.

3. To determine that the permit specifications and conditions have been completed, applicants who have received permits are required to furnish the following at the time of an on-site conformance inspection which shall be held prior to the occupation or use of the structure:

    1. Certification by a registered professional engineer or licensed land surveyor of the actual mean sea level elevation of the lowest floor (including basement) of all new, altered, or substantially improved structures.

2. If flood proofing techniques were used for structures, the mean sea level elevation to which the flood proofing was accomplished must be certified by a structural engineer or licensed architect in the same manner.

3. Certification shall also be required, for artificial obstructions other than buildings, verifying that the activity was accomplished in accordance with the CCFR and the design plans submitted with the application for the permit activity. This certification may be waived by the Floodplain Administrator if it can be clearly ascertained by a site inspection that the activity was accomplished in accordance with the CCFR.

4. Certification of flood-proofing and/or elevation shall be provided on a standard form available from the Floodplain Administrator.

5. Flood proofing must be certified by a registered professional engineer or architect that the flood proofing methods are adequate to withstand the flood depths, hydrodynamic and hydrostatic pressures, velocities, impact, buoyancy, and uplift forces associated with the 100-year Flood.

SECTION 7 - APPLICATION EVALUATION

7.1 APPLICATION REVIEW

1. The Floodplain Administrator shall review and evaluate the application and shall approve, approve with conditions, or deny the application within 60 days of receipt of a correct and complete application. (MCA 76-5-405(2))

2. The Floodplain Administrator shall determine whether the application contains the applicable elements required by the CCFR and shall notify the applicant of the Floodplain Administrator's determination.

3. If the application is found insufficient and if the applicant corrects the identified deficiencies and resubmits the application, the Floodplain Administrator shall notify the applicant whether the resubmitted application contains all the elements required by the CCFR, as applicable.

4. This process shall be repeated until the applicant submits a complete application containing all the elements required by the CCFR, or the application is withdrawn.

5. If after a reasonable effort the Floodplain Administrator determines that the application remains incomplete, the Floodplain Administrator shall deny the application and notify the applicant of missing elements. No further action shall be taken on the application by the Floodplain Administrator until the application is resubmitted.

6. A determination that an application contains the appropriate information 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 in requesting additional information during the review process.

7.2 NOTICE REQUIREMENTS FOR FLOODPLAIN PERMIT APPLICATIONS Upon receipt of a complete application for a permit, the Floodplain Administrator shall:

1. Prepare a notice containing the facts pertinent to the application and shall publish the notice at least once in a newspaper of general circulation in the area;

2. Serve notice by 1st class mail upon adjacent and other impacted property owners.

3. The State National Flood Insurance Program Coordinator located in DNRC shall also receive notice by the most efficient method. Notice to other stream activity permitting agencies shall also be considered;

4. The notice shall provide a reasonable period of time, not less than 15 days, for interested parties to submit comments on the proposed activity; and (ARM 36.15.204(2)(c))

5. Prior to any alteration or relocation of a watercourse in the Regulated Flood Hazard Area, additionally provide notice to FEMA and adjacent communities (44 CFR 60.3 (b)(6)

7.3 PERMIT CRITERIA

1. Permits shall be granted or denied on the basis of whether the proposed new construction,

substantial improvement, or alteration of an artificial obstruction is not a prohibited use and meets the requirements of the minimum standards and criteria in Sections 8 and 9.

2. The Floodplain Administrator must determine that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendment of 1972, 36 U.S.C. 1334.(44 CFR 60.3(a)(2)

7.4 DECISION

1. The Floodplain Administrator shall approve, conditionally approve, or deny the proposed application. The Floodplain Administrator shall notify the applicant of the decision and the reasons thereof within 60 days of receipt of a correct and complete application unless otherwise specified. A copy of the approved permit must be provided to DNRC. (ARM 36.15.204(2)(e)

2. The granting of a permit does not affect any other type of approval required by any other statute or ordinance of the state, any political subdivision or the United States but is an added requirement. (76-5-108 MCA)

7.5 FLOODPLAIN PERMIT APPLICATION APPROVAL The Floodplain permit will become valid when all other necessary permits are in place.(44 CFR 60.3(a)(2) Upon approval or conditional approval of the Floodplain permit application, the Floodplain Administrator shall provide the applicant with a permit including but not limited to the following requirements and conditions:

1. Set forth the time limit of up to one year from the date of permit issuance or as commensurate with the project construction time line for completion of the project or development. The applicant may request an extension for completion for up to an additional year. The request must be made at least 30 days prior to the completion deadline;

2. Notify all 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; (ARM 36.15.204(2)(g)

3. Maintain the artificial obstruction or use to comply with the conditions and specifications of the permit;

4. Allow the Floodplain Administrator to perform on-site inspections at select intervals during construction or completion.

5. Impose interim reporting to the Floodplain Administrator of construction data to confirm design elevations and other project design criteria.

6. Submit a certificate of compliance report and elevation certificate where applicable within 30 days of completion or other time as specified; and

7. Require FEMA approval of revisions that affected National Flood Insurance Rate Map.

SECTION 8 - DEVELOPMENT REQUIREMENTS - FLOODWAY

8.1 **USES REQUIRING PERMITS** Uses specifically listed in Section 9 may be allowed by permit within the Floodway, subject to the described requirements.

8.2 **GENERAL REQUIREMENTS** An application for a permit must demonstrate the following goals and criteria are considered and incorporated into the design of any use or artificial obstruction in the Floodway requiring a permit:

1. All projects in the Floodway where specifically required herein as requiring an encroachment analysis, must undergo a thorough hydrologic and hydraulic analysis prepared by an engineer to demonstrate their effect on flood flows, velocities and the Base Flood Elevation. (ARM 36.15.604, 44 CFR 60.3(d)(3 and 4))

    1. A conditional approval from FEMA of any proposed increase of more than zero (0.00) feet in the Base Flood Elevation must accompany the application. An application for a FEMA Conditional Letter of Map Revision approval requires a supporting encroachment analysis. (44CFR 65.12(a))

    2. The maximum allowable increase to the Base Flood Elevation is one half foot (0.50), unless approval of an alteration of the Regulated Flood Hazard Area pursuant to Section 3 occurs with approval of the variance pursuant to Section 11. (ARM 36.15.505)

2. Projects must assure that the carrying capacity of the altered or relocated watercourse is maintained. (44CFR 60.3(b)(7) (ARM 36.15.605(b))

3. Projects must be designed and constructed to ensure that they do not increase the flood hazard on other properties and be reasonably safe from flooding. (44 CFR 60.3(a)(3 and 4)

4. The danger to life and property due to backwater or diverted flow caused by the obstruction or use; (MCA 76-5-406) (ARM 36.15.216(2)(a))

5. The danger that the obstruction or use may be swept downstream to the injury of others; (MCA 76-5-406) (ARM 36.15.216(2)(b))

6. The availability of alternative locations; (MCA 76-5-406) (ARM 36.15.216(2)(c))

7. The construction or alteration of the obstruction or use in such manner as to lessen the flooding danger; (MCA 76-5-406) (ARM 36.15.216(2)(d))

8. The permanence of the obstruction or use; (MCA 76-5-406) (ARM 36.15.216(2e))

9. The anticipated development in the foreseeable future of the area which may be affected by the obstruction or use; (MCA 76-5-406) (ARM 36.15.216(2f))

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

11. Projects must conform to the additional minimum standards and provisions of this ordinance as specified for the use or artificial obstruction specified herein; and

12. Such other factors as are in harmony with the purposes of the CCFR, the Montana Floodplain and Floodway Management Act, and the accompanying Administrative Rules of Montana. (MCA 76-5-406) (ARM 36.15.216(2)(g)

13. The safety of access to property in times of flooding for ordinary and emergency services; (44CFR 60.22 (c)(7))

8.3 MINING OF MATERIAL REQUIRING EXCAVATION FROM PITS OR POOLS provided that:

1. 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;

2. The excavation meets all applicable laws and regulations of other local and state agencies; and

3. Excavated material may be processed on site but is stockpiled outside the Floodplain.(ARM 36.15.602(1))

8.4 RAILROAD, HIGHWAY AND STREET STREAM CROSSINGS provided that:

1. Crossings are designed to offer minimal obstructions to the flood flow; (ARM 36.15.602(2))

2. 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 are designed to pass the base flood discharge and maintain at least two (2) feet freeboard on the crossing surface.

3. If possible, normal overflow channels are preserved to allow passage of sediments to prevent aggradations;

4. Mid stream supports for bridges, if necessary, have footings buried below the maximum scour depth; and

5. An encroachment analysis is prepared by an engineer.

8.5 LIMITED FILLING FOR ROAD, AND RAILROAD EMBANKMENTS not associated with stream crossings and bridges provided that:

1. The fill is the suitable fill;

2. Reasonable alternate transportation routes outside the floodway are not available;

3. The encroachment is located as far from the stream channel as possible; (ARM 36.15.602(3))

4. The project includes mitigation of impacts to other property owners in the vicinity of the project and the natural stream function; and

5. An encroachment analysis is prepared by an engineer.

8.6 BURIED OR SUSPENDED UTILITY TRANSMISSION LINES provided that:

1. 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;

2. Towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows;

3. When technically feasible, the crossing will not disturb the bed and banks of the stream and alternatives such as alternative routes, directional drilling, and aerial crossings are considered; and

4. 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. (ARM 36.15.602(4))

8.7 STORAGE OF MATERIALS AND EQUIPMENT provided that:

1. The material or equipment is not subject to major damage by flooding and is properly anchored to prevent flotation or downstream movement; and

2. 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.(ARM 36.15.602(5))

8.8 DOMESTIC WATER SUPPLY WELLS provided that:

1. They are driven or drilled wells located on ground higher than surrounding ground to assure positive drainage from the well;

2. They require no other structures (e.g. a well house);

3. Well casings are water tight to a distance of at least twenty five (25) feet below the ground surface and the well casing height shall be a minimum of eighteen (18) inches above the base flood elevation;

4. Water supply and electrical lines have a watertight seal where the lines enter the casing;

5. All pumps and electrical lines and equipment are either of the submersible type or are adequately flood proofed; and

6. Check valves are installed on main water lines at wells and at all building entry locations. (44 CFR 60.39(a)(5) & ARM 36.15.(602(6))

8.9 BURIED AND SEALED VAULTS FOR SEWAGE DISPOSAL IN CAMPGROUNDS AND RECREATIONAL AREAS provided they meet applicable laws and standards administered by Montana Department of Environmental Quality. Only those wastewater disposal systems that meet the requirements and separation distances under ARM 17.36.101-116 and ARM 17.36.301-345 are allowed. (44 CFR 60.3(a)(6))

8.10 --reserved--

8.11 STRUCTURES ACCESSORY OR APPURTENANT to permitted uses such as boat docks, loading and parking areas, marinas, sheds, emergency airstrips, permanent fences crossing channels, picnic shelters and tables and lavatory, provided that:

1. The structures are not intended for human habitation or supportive of human habitation;
2. If the structures are substantial as determined by the permit issuing authority, an encroachment analysis must be prepared by an engineer. (ARM 36.15.602(2));
3. The structures will, insofar as possible, be located on ground higher than the surrounding ground and as far from the channel as possible;
4. Only those wastewater disposal systems that meet the requirements and separation distances under ARM 17.36.101-116 and ARM 17.36.301-345 are allowed;
5. Service facilities within these structures such as electrical, heating and plumbing are flood proofed;
6. Structure are firmly anchored to prevent flotation; (ARM 36.15.602(9))
7. The structures do not require fill and/or substantial excavation;
8. No large scale clearing of riparian vegetation within 50 feet of the mean annual high water mark, and;(ARM 36.15.602(9)
9. The structures or use cannot be changed or altered without permit approval.

8.12 CONSTRUCTION OF OR MODIFICATIONS TO SURFACE WATER DIVERSIONS provided that the design is prepared by an engineer and includes:

1. An encroachment analysis is prepared by an engineer. (ARM 36.15.606(2));
2. Minimize potential erosion from a base flood;
3. Safely withstand up to the base flood; and (ARM 36.15.603)
4. Construction is under the supervision of an engineer.

8.13 FLOOD CONTROL AND BANK PROTECTION MEASURES Must be designed by an engineer and constructed to withstand the flood depths, hydrodynamic and hydrostatic pressures, velocities, impact, buoyancy, and uplift forces associated with the base flood and include an encroachment analysis. The design shall also show compliance with the following additional criteria: (CFR 60.3(a)(3), CFR 60.3(d)(3), ARM 36.15.606)

1. **Levee and Floodwall** construction or alteration:

    1. The proposed construction or alteration of a levee or floodwall must be designed and constructed with suitable fill and to safely convey a base flood;

    2. Except to protect agricultural land only, are constructed at least 3 feet higher than the elevation of the base flood;

    3. Unless to protect only agricultural land, protection of structures of more than one land owner requires engineering and construction to meet state and federal levee standards and be publically owned for the purpose of construction, operation and maintenance; and (36.15.505(1)(c)(ii)and (iii))

    4. For any increase in the elevation of the base flood the following information must be provided:

        1. The estimated cumulative effect of other reasonably anticipated future permissible uses;

        2. The type and amount of existing flood prone development in the affected area; and

        3. Impacts to existing or foreseeable development. (ARM 36.15.606(a))

2. **Bank Stabilization Projects, Pier and Abutment Protection** projects if:

    1. The Materials for the project should be the least environmentally damaging and practicable designed to withstand a base flood within 5 years or other time as required by the Floodplain Administrator and does not require substantial yearly maintenance after that period.

    2. Materials for the project may be designed to erode over time but not fail catastrophically and impact others. Erosions and raveling of the materials may be designed to be a least similar in amount and rate to existing natural stream banks during the base flood.

    3. The project must not increase erosion upstream, downstream, or adjacent to the site.(ARM 36.15.606(1)(b))

    4. Materials for the project may include but not limited to rip rap, root wads, brush mattresses, willow watting, woody debris or combinations of analogous materials. (36.15.606(b))

    5. The stream's biological capacity and habitat potential shall be incorporated in the project design.

3. **Channelization Projects** where the excavation and/or construction of an artificial channel is for the purpose of diverting the entire flow of a stream from its established course (ARM 36.15.101(7)) and provided the projects do not increase velocity to a level that will cause erosion. (ARM 36.15.606(1)(c))

4. **Dams** provided:

1. The design and construction is in accordance with the Montana Dam Safety Act and applicable safety standards; and

2. The project will not increase flood hazards downstream either through operational procedures or improper hydrologic/hydraulic design. (ARM 36.15.606(1)(d)

8.14 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:

1. The project design is reviewed and approved by an engineer.

2. The project will not increase velocity or erosion upstream, downstream, across from or adjacent to the site.

3. Materials may include but are not limited to rip rap, boulders, rock cobble, gravel, native stream bed materials, root wads, brush mattresses, willow watting, natural woody debris or combinations of analogous materials.

4. Erosion, sedimentation, and transportation of the materials are similar in amount and rate to existing natural stream banks during the base flood.

5. The project may be designed to withstand a base flood once the project is mature, or within five (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.

6. The stream's biological capacity and habitat potential is not degraded and the project is designed to enhance or restore the terrestrial and aquatic resource capabilities of the area. (ARM 36.15.606(1)(c))

SECTION 9 - DEVELOPMENT REQUIREMENTS – FLOOD FRINGE OR REGULATED FLOOD HAZARD AREA WITH NO FLOODWAY

9.1 USES REQUIRING PERMITS All uses and the associated requirements allowed by permit in the Floodway shall also be allowed by permit within the Flood Fringe or Regulated Flood Hazard area with no Floodway. Additionally, new construction, substantial improvements, alterations to structures (including, but not limited to residential, commercial, agricultural and industrial), and suitable fill shall be allowed by permit subject to the minimum development requirements in General Requirements, Section 8.2 and this section. (ARM 36.15.701(2)):

9.2 GENERAL REQUIREMENTS

1. The appropriate Base Flood Elevation(s) shall be determined by appropriate methods and utilized in the design and layout of the project by an engineer demonstrating the appropriate design and construction criteria herein are met. Regulated Flood Hazard Areas that do not have computed and published base flood elevations in the adopted flood hazard study referenced in Section 3, Jurisdictional Area, the Base Flood Elevation must be computed as well, utilizing appropriate engineering methods and analysis;

2. Projects must be constructed by methods and practices that minimize flood damage and are reasonably safe from flooding; (44 CFR 60.3(a)(3)(iii))

3. Structures are reasonably safe from flooding and constructed with materials resistant to flood damage; and (44 CFR 60.3(a)(3)(ii)

4. Structures 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; (ARM 36.15.701(3)(a)) ((ARM 36.15.701(3)(b))

5. All construction and substantial improvements shall 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;(44CFR 60.3(a)(3)

6. Certification by an engineer, architect, or other qualified person must accompany the application as to an encroachment analysis where required, adequacy of structural elevations, determination of the base flood elevation, flood-proofing, wet proofing, dry proofing, design and construction to withstand the flood depths, hydrodynamic and hydrostatic pressures, velocities, impact, buoyancy, and uplift forces associated with the base flood. A certification is not intended to constitute a warranty or guarantee of performance, expressed or implied;

7. Allowable encroachment for developments in the Regulated Flood Hazard Area without a Floodway must be supported by an encroachment analysis and cannot exceed 0.5 feet increase to the Base Flood Elevation. 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;

8. **Electrical Systems**

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 elevation of 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 or manually operated electrical disconnect equipment located at an accessible remote location outside the Floodplain 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. (ARM 36.15.901)

9. **Heating and Cooling Systems**

1. Be installed with float operated automatic control valves so that fuel supply is automatically shut off when flood waters reach the floor level where located;

2. Have manually operated gate valves installed in gas supply lines. The gate valves must be operable from a location above the Base Flood Elevation;

3. Be installed in accordance with the provisions of Electrical Systems Flood proofing; and

4. Have furnaces and cooling units and ductwork installed at least two (2) feet above the Base Flood Elevation. (ARM 36.15.902)

10. **Plumbing Systems**

1. Sewer lines, except those to be buried and sealed, 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 entry is at least two (2) feet above the Base Flood Elevation. (ARM 36.15.903)

11. **Structural Fill** Fill used to elevate structures, including but not limited to residential, commercial, and industrial structures must be suitable and meet the following requirements:

1. The filled area is at or above the Base Flood Elevation and extends at least 15 feet beyond the structure in all directions (see Figure 1);

2. The fill is compacted to minimize settlement and compacted to 95 percent of the maximum density. Compaction of earthen fill must be certified by a registered professional engineer;

3. No portion of the fill is within the floodway;

4. 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. The erosion protection for fill slopes exposed to velocities of four feet per second and less may consist of vegetative cover consisting of grasses or similar undergrowth as approved by the permit issuing authority. Slopes exposed to velocities greater than four feet per second shall be protected by armoring with stone or rock slope protection; and (ARM 36.15.701&702)

5. The fill must be a minimum of 0.5 feet above the Base Flood Elevation;

6. No portion of the fill is in the estimated floodway if one has been designated; and

7. Mitigation may be required for lost natural flood storage due to added fill.

12. **Water And Sewage Systems** All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other services designed and located so as to prevent waters from entering or accumulating within the components during conditions of flooding or to prevent impairment or contamination during flooding;(44 CFR 60.3 (a)(5 and 6))

9.3 RESIDENTIAL REQUIREMENTS New construction, alterations, and substantial improvements of residential dwellings including manufactured homes and recreational vehicles on site for more than 180 consecutive days must be constructed such that (see Figure 1):

1. The lowest floor elevation (including basement) including electrical, heating, duct work, ventilation, plumbing and air conditioning equipment and other services is two (2) feet above the Base Flood Elevation. Elevating may be by either suitable fill, stem walls, pilings or other acceptable means;

2. Crawl spaces must be designed so that the crawl space floor is at or above the Base Flood Elevation. Crawl spaces having an inside dimension of more than five (5) feet from the ground to the living floor level must meet the requirements in this section for a basement;

3. Where existing streets, utilities, lot dimensions, or additions onto existing structures make strict compliance with these provisions impossible, a lesser amount of fill or alternative flood proofing measures may be permitted only by variance approval; and (ARM 36.15.702(a))

4. All **manufactured homes** for residential use shall:

    1. Use methods and practices which minimize flood damage;

    2. Elevate the lowest floor two (2) feet above the base flood elevation;

    3. Elevate on suitable fill or be raised on a permanent foundation;

    4. Have a foundation consisting of reinforced concrete, reinforced-mortared block, reinforced piers, or other foundation elements of equal strength; and

5. Secure the chassis, including additions by anchoring to the foundation system so that it will resist flotation, collapse or lateral movement. Anchoring may include, but are not limited to:

    1. Over-the-top ties to ground anchors be provided at each of the four (4) corners of the mobile home, with two additional ties per side at intermediate locations for manufactured homes less than fifty (50) feet long;

    2. Frame ties to ground anchors be provided at each corner of the home with five (5) additional ties per side at intermediate points, for manufactured homes more than fifty (50) feet long; and

    3. Components of the anchoring system capable of carrying a force of 4,800 pounds.

6. Adequate surface drainage and access for a hauler. (44 CFR 60.3(c)(6)&(12)

9.4 NON-RESIDENTIAL REQUIREMENTS New construction, alterations, and substantial improvements of commercial and industrial buildings must be constructed on suitable fill, stem walls, pilings or other suitable means such that the lowest floor elevation (including basement) is two (2) feet above the Base Flood Elevation (see Figure 1), or if not the building must be adequately dry or wet flood proofed as follows. Manufactured homes proposed for use as commercial or industrial buildings cannot be wet or dry flood proofed. Also, agricultural structures used solely for agricultural purposes and used exclusively in connection with the production, harvesting, storage, drying, or raising agricultural commodities including raising of livestock, not be intended for human habitation, and having low flood damage potential are exempt from dry or wet flood proofing but shall:

1. Be located on higher ground and as far from the channel as possible;

2. Offer minimum obstruction to flood flows;

3. Be adequately anchored to prevent flotation or collapse;

4. Where electrical, heating and plumbing systems are installed, must flood proofing requirements in this Section; and

5. Meet the elevation or dry flood proofing requirements if the structure is an animal confinement facility.

(ARM 36.15.701(3)(e)) (44 CFR 60.3(c)(3)(ii) & 44 CFR 60.3(b)(5)(ii)) (ARM 36.15.702(2) & 44 CFR 60.3(c)(3) & (4)).

9.5 FLOOD PROOFING REQUIREMENTS

1. **Wet Flood proofing** Building designs to allow internal flooding of the lowest floor must:

    1. Limit uses to parking, loading areas, and storage of equipment or materials not appreciably affected by floodwaters;

    2. Use materials for walls and floors that are resistant to flooding to an elevation two (2) feet or more above the Base Flood Elevation;

3. Equalize hydrostatic forces on walls by designing for entry and exit of floodwaters that include screens, louvers, valves, and other coverings or devices that:

    1. Automatically allow entry and exit of floodwaters;

    2. Have two(2) or more openings with a total net area of not less than one(1) square inch for every one(1)square foot of enclosed area subject to flooding; and

    3. Have the bottom of all openings no higher than one (1) foot above grade. (ARM 36.15.702(2)(a) & 44 CFR 60.3(c)(5))

2. **Dry Flood proofing** Buildings designs that not allow internal flooding of the lowest floors must be:

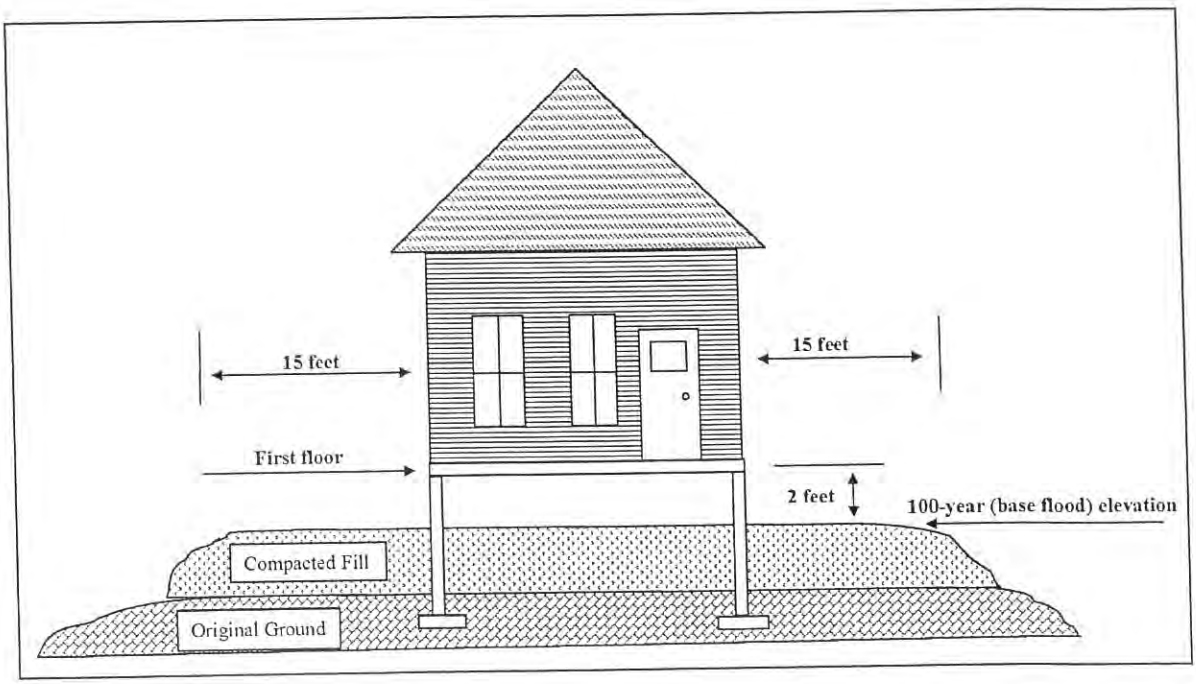
    1. Used for a purpose other than parking, loading, or storage of materials resistant to flooding shall be dry flood proofed;

    2. Flood proofed to an elevation no lower than two (2) feet above the BFE;

    3. Constructed of impermeable membranes or materials for floors and walls and watertight enclosures for all windows, doors and other openings; and

    4. Designed to withstand the hydrostatic pressures and hydrodynamic forces resulting from the base flood.

Figure 1
Elevation Standards for Dwelling Units and Commercial and Industrial Structures. (NOTE: Elevation may be accomplished with fill, stem walls, pilings or other acceptable means.)



SECTION 10 - EMERGENCY PERMITTING

10.1 GENERAL

1. Emergency repair and replacement of severely damaged artificial obstructions and development including public transportation facilities, public water and sewer facilities, flood control works, and private projects in the Regulated Flood Hazard Area are subject to the permitting requirements of the CCFR.

2. The provisions of the CCFR are not intended to affect other actions that are necessary to safeguard life or structures during periods of emergency.

10.2 EMERGENCY APPLICATION REQUIREMENTS

1. Prior to any action, the property owner and or the person responsible for taking emergency action shall notify the Floodplain Administrator and follow-up by submitting an Emergency Notification Form within five (5) days of the action taken as a result of an emergency.

2. 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 the CCFR. (ARM 36.15.217)

3. Authorization to undertake emergency repair and/or replacement work may be given verbally if the Floodplain Administrator feels that such a written authorization would unduly delay the emergency works. Such verbal authorization must be followed by a written authorization stating the emergency condition, the type of emergency work agreed upon, and stating that a verbal authorization had been previously given.

10.3 PERMIT EVALUATION A person who has undertaken an emergency action may be required to modify or remove the project in order to meet the permit requirements.

SECTION 11 - VARIANCES

11.1 GENERAL A variance from the minimum development standards of the CCFR may be allowed. An approved variance would permit construction in a manner otherwise as required or prohibited by the CCFR. (44 CFR 59.1)

11.2 VARIANCE APPLICATION REQUIREMENTS:

1. A completed Floodplain Permit Application and required supporting material must be submitted.

2. Additionally, a completed Variance Application specific to the variance request including facts and information addressing the criteria in this section must be submitted; and

3. 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.

11.3 EVALUATION OF VARIANCE APPLICATION

1. A variance shall only be issued upon a determination that the variance is the minimum allowance necessary, considering the flood hazard, to afford relief from the CCFR and provided all of the findings are met:

    1. There is a good and sufficient cause; (44 CFR 60.6(a)(3))

    2. Failure to grant the variance would result in exceptional hardship to the applicant; (44 CFR 60.3(a)(3)) & ARM 36.15.218(b))

    3. There are no basements or residential dwelling that has the lowest floor elevation below the Base Flood Elevation.

    4. The lowest floor of crawl spaces are no more than two(2) feet below the exterior lowest adjacent grade and must have an inside dimension from interior ground to the bottom of the living floor of less than five (5) feet. The crawl spaces must meet the dry flood proofing requirements in Section 9.5.2.

    5. Granting of a variance will not result in increased flood heights to existing insurable 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; (44 CFR 60.6 (a)(3) & (ARM 36.15.218(a)).

    6. The proposed use is adequately flood proofed; (ARM 6.15.218(c))

    7. The variance is the minimum necessary, considering the flood hazard, to afford relief; (44CFR 60.6(a)(4)

    8. Reasonable alternative locations are not available; (MCA 76-5-406(3) & ARM 36.15.218(d))

9. There is no danger to life and property by water that may be backed up or diverted by the obstruction or use; (MCA 76-5-406(1))

10. There is no danger that the obstruction or use will be swept downstream to the injury of others;(MCA 76-5-406(2))

11. Incorporates measures in the construction or alteration of the obstruction or use that lessens the danger; (MCA 76-5-406(4))

12. The permanence of the obstruction or use; (MCA 76-5-406(5)).

13. There is no adverse affect to anticipated development in the foreseeable future of the area that may be affected by the obstruction or use; (44 CFR 60.6(a)(3), MCA 76-5-406(6) & ARM 36.15.218)).

14. There is no adverse affect to existing properties or structures; and

15. Any increase to the Base Flood Elevation in a Floodway has been approved by FEMA for flood insurance purposes and any increase to the Base Flood Elevation in the Floodway or Floodplain of more than 0.5 feet is an alteration of the Regulated Flood Hazard Area has been duly amended pursuant to Section 4. (44 CFR 60.6(a)(1))

2. Special Considerations for variance approval:

1. If the new construction or substantial improvements on a lot of one-half acres or less is contiguous to and surrounded by lots of existing structures constructed below the base flood elevation, a variance may be approved. However, as lot sizes increase beyond one-half acre additional technical justification may be required; and (44CFR60.6(a))

2. 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 a historic structure and the variance is the minimum relief necessary to preserve the historic character and design of the structure. (44 CFR 60.6(a))

11.4 REVIEW PROCEDURE

1. Within ten (10) days, of submittal, the Floodplain Administrator shall determine whether the application is complete or incomplete and notify the applicant of any deficiencies. If the application is incomplete, the applicant has six (6) months to resubmit the application or forfeit the application fee. The Floodplain Administrator shall take no further steps to process the application until the deficiencies are remedied.
2. Following a determination of completeness, the Floodplain Administrator shall provide for appropriate public notice as outlined in Section 7.2.
3. The BCC shall conduct a public hearing to review the application.
4. Within sixty (60) days of the determination of completeness (unless the applicant consents in writing to an extension of the review period) the Floodplain Administrator shall notify the applicant that additional information is needed to adequately evaluate the application or the BCC after considering the comments of the general public and after reviewing the staff report, shall make a decision, based on the criteria as described in Section 11.3, to either:

1. approve the application,
2. approve the application with conditions, or
3. deny the application.

5. Within ten (10) days following the decision, the Floodplain Administrator shall mail the variance decision to the applicant and the Department of Natural Resources and Conservation.
6. Within the notification letter for a variance approved or approved with conditions, the applicant shall be informed that the construction of any structure below the base flood elevation may result in increased premium rates for flood insurance and that flood insurance premiums are determined by actuarial risk and will not be modified by the granting of the variance. (44CFR 60.6(a))

11.5 LIMITATIONS ON ISSUING A VARIANCE A variance shall not be processed for the establishment of a use otherwise prohibited by these regulations.

11.6 JUDICIAL REVIEW Any person or persons aggrieved by the variance decision may appeal such decision to the Eighth Judicial District Court within thirty (30) days after the BCC's decision. Service of notice of the appeal must be made upon the BCC. (MCA 76-5-209(1))

SECTION 12 - APPEALS

12.1 GENERAL An appeal is a formal review by the BCC of the Floodplain Administrator's order or granting or denial of a floodplain permit.

1. An applicant or person aggrieved by a decision of the Floodplain Administrator to approve, approve with conditions, or deny a floodplain permit or variance, may appeal the decision to the BCC within 30 days after the decision's effective date.

2. A person aggrieved may not appeal to the Eighth Judicial District until the person has exhausted all administrative proceedings.

12.2 REQUIREMENTS

1. 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;

2. An appeal must be submitted by an applicant or anyone who may be aggrieved by the Floodplain Administrator's decision or order;

3. Appeals must be received within 30 days of the date of the decision or order of the Floodplain Administrator; and

4. Additional information specific to the appeal request may be requested.

12.3 NOTICE AND HEARING

1. Notice of the pending appeal and public hearing shall be provided pursuant to Section 7.2. The Floodplain Administrator may notify DNRC and FEMA of pending appeals.

2. A public hearing must be held within 30 days of the Notice unless set otherwise.

12.4 DECISION A judgment on an appeal shall be made within 30 days of the hearing unless set otherwise. The decision must grant the permit, modify or deny the permit or remand the application to the Flood Plain Administrator with instructions or directions. A decision on an appeal of a permit cannot grant or issue a variance.

SECTION 13 - ENFORCEMENT AND PENALTIES

13.1 **INVESTIGATION REQUEST** An investigation of an artificial obstruction or nonconforming use within the Regulated Flood Hazard Area may be made either on the initiative of the Floodplain Administrator or on the written request of three titleholders of land which may be affected by the activity within the Regulated Flood Hazard Area. The names and addresses of the persons requesting the investigations shall be released if requested. (MCA 76-5-105)

13.2 **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 the CCFR.

1. The Floodplain Administrator shall provide notice of entry by mail, electronic mail, phone call, personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered.

2. 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 for five (5) days.

3. If the owners do not respond, cannot be located or refuse entry to the Floodplain Administrator, the Floodplain Administrator may only enter the property through a Search Warrant.

13.3 **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 or respond requesting an administrative review within thirty (30) days.

13.4 **ADMINISTRATIVE REVIEW** The order 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 before the Floodplain Administrator. A request for an administrative review does not stay the order.

13.5 **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 to the BCC in concert with Section 12.

13.6 **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.

13.7 **JUDICIAL REVIEW** An applicant or a person aggrieved by any floodplain decision by the BCC may appeal to the Eighth Judicial District Court within 30 days after the BCC's decision. Service of notice of the appeal must be made upon the BCC. (76-5-209, MCA)

13.8 **OTHER REMEDIES** This section 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 the CCFR by injunction or other appropriate remedy.

13.9 MISDEMEANOR Violation of the provisions of the CCFR or failure to comply with any of the requirements, including failure to obtain permit approval prior to development in the Regulated Flood Hazard Area, shall constitute a misdemeanor and may be treated as a public nuisance.

13.10 PENALTY Any person who violates the CCFR 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 ten (10) days or both. Each day's continuance of a violation shall be deemed a separate and distinct offense. (MCA 76-5-110)

13.11 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 of flood insurance policies for a structure upon finding a valid violation declaration. The Floodplain Administrator shall provide the Federal Insurance Administrator the following declaration:

1. The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;

2. A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;

3. A clear statement that the public body making the declaration has authority to do so and a citation to that authority;

4. Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and

5. A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended. (44CFR73.3)