White Paper – Floodplain Permitting for Montana Stream Restoration Projects

Prepared For: Joint Stream Restoration Committee

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1 Introduction

1.1 Purpose

Regulatory permitting of stream projects in Montana can be a confusing and daunting experience. Numerous Montana Conservation Districts (CDs) have experienced first-hand the delay or abandonment of stream projects due to the complications and costs associated with floodplain permitting. The Joint Stream Restoration Committee (JSRC) was created to bring interested parties together to share concern and seek a solution to project delays and high costs for permitting. The purposes of this white paper are to:

- Assess example stream restoration projects and complications associated with floodplain permitting; and
- Present options for reducing project delays and permitting efforts due to floodplain regulation requirements.
- Act as a permitting educational tool for stream project sponsors.

1.2 Joint Stream Restoration Committee

The JSRC Mission Statement is:

“The Stream Restoration Committee is a multi-agency committee which was formed to investigate potential avenues to improve the process for permitting small stream restoration projects in rural areas. The committee is specifically investigating ways to reduce the engineering costs associated with floodplain requirements for rural stream restoration projects. These projects are in areas which have no potential for impact on structures, properties, or other infrastructure. The goals are to establish guidelines which could:

1) Help steam line the permitting application process.
2) Provide potential funding sources for stream restoration projects; and
3) Significantly reduce engineering costs associated with proposed projects.

The committee works closely with FEMA Region VIII personnel and is dedicated to finding ways to modify permitting and engineering requirements to help complete these small restoration projects in a timely and cost-effective manner.”

2 Laws and Permits

Stream projects may fall under numerous laws and the associated permits depending on the where the proposed project will take place: streambed, streambanks, wetlands, or floodplain. Potential permits, the associated laws/purpose, and what entity is responsible for overseeing the laws are summarized below from the Montana Department of Natural Resources & Conservation’s web site (dnrc.mt.gov/divisions/cardd/conservation-districts/the-310-law):

A. **Montana Natural Streambed and Land Preservation Act (310 permit)** – To minimize soil erosion and sedimentation and to protect and preserve streams and rivers in their natural or existing state. **Contact -** Local Conservation District.

B. **Montana Stream Protection Act (SPA 124 Permit)** – To protect and preserve fish and wildlife resources, and to maintain streams and rivers in their natural or existing stage. **Contact -** Montana Fish Wildlife & Parks.

C. **City or County Floodplain Development Permit** – To promote the public health, safety and general welfare of the residents and to minimize public and private losses due to flood conditions in Regulated Flood Hazard Areas. Review and permit appropriate uses, within the designated floodplain and floodway areas, that will not be seriously damaged or present a hazard to life, if flooded, thereby limiting the expenditure of public tax dollars for emergency operations and disaster relief. **Contact -** City or County with assistance from Montana Department of Natural Resources and Conservation (DNRC).

D. **Federal Clean Water Act (404 Permit)** - To restore and maintain the chemical, physical, and biological integrity of the nations' water. **Contact -**U.S. Army Corps of Engineers (USACOE) Montana Regulatory Program.

E. **Federal Rivers and Harbors Act (Section 10 Permit) - Contact -**USACOE Montana Regulatory Program.

F. **Short-Term Water Quality Standard for Turbidity (318 Authorization)** - To provide a short-term water quality turbidity standard for construction activities. Activities must be carried out in accordance with conditions prescribed by the Department of Environmental Quality. To protect water quality. To minimize sedimentation. **Contact -** Montana Department of Environmental Quality (DEQ) Water Protection Bureau.

G. **Montana Land-Use License or Easement on Navigable Waters** - To protect riparian areas and the navigable status of the water body. to provide for the beneficial use of state lands for public and private purposes in a manner that will provide revenues without harming the long-term capability of the land or restricting the original commercial navigability. **Contact -** DNRC Land Office

H. **Montana Water Use Act (Water Right Permit and Change Authorization)** - To provide a permit and certificate system for water rights administration that operates within the bounds of the prior appropriation doctrine ("first in time is first in right"). A person's right to use a specific quantity of water depends on when the use of water began. The first person to use water from a source established the first right, the second person could establish a right to what water was left, and so on. To maintain a general adjudication of all existing water rights in the state. To implement a centralized record system. **Contact -** DNRC Water Rights Bureau.

I. **Montana Water Use Act (Water Reservation)** - To provide water for existing and future beneficial uses of water. To maintain a minimum flow, level, or quality of water. **Contact -** DNRC Water Reservations.

J. **Stormwater Discharge General Permits** - To prevent degradation of surface waters from pollutants such as sediment, waste materials, industrial chemicals or materials, heavy metals, and petroleum products. To protect existing water quality. To

implement and monitor the effectiveness of Best Management Practices (erosion and sediment controls, etc.) used to reduce pollutant loads. **Contact -** DEQ Water Protection Bureau.

K. **Streamside Management Zone Law** - To protect the quality and quantity of forest waters. To conserve the integrity of Montana's streamside zones. **Contact -** DNRC Conservation Forestry Division.

Each of these laws and permits is focused on a different aspect of stream health, function, and public safety. Therefore, each has overlapping but slightly different requirements for a permit application. A Joint Permit Application has been developed to simplify the permitting process to the degree possible given the varied goals of each law. A copy of the Joint Permit Application is included as Appendix A

2.1 Floodplain Permit

A floodplain development permit is unique to other stream project permits in the potential level of detailed analysis needed to demonstrate compliance with the associated Act. Any project within a **designated** Special Flood Hazard Area (SFHA) must apply for a Floodplain Development Permit. This includes stream restoration projects and bank stabilization projects.

2.1.1 Floodplain Laws

Congress established the National Flood Insurance Program (NFIP) with the passage of the National Flood Insurance Act of 1968. Since the inception of NFIP, additional legislation has been enacted. The NFIP goes through periodic Congressional reauthorization to renew the NFIP's statutory authority to operate. (https://www.fema.gov/flood-insurance/rules-legislation). Details for the NFIP are found in 44 CFR 60.3 - Flood plain management criteria for flood-prone areas. The primary Acts of interest for this paper include:

- The National Flood Insurance Act of 1968 launched the National Flood Insurance Program.
- The Flood Insurance Protection Act of 1973 mandated that lenders require flood insurance on loans secured by properties located within high-risk flood areas
- The National Flood Insurance Reform Act of 1994 strengthened the NFIP with a number of reforms that included increasing the focus on lender compliance, creating mitigation insurance and developing a mitigation assistance program to further reduce the costly and devastating impacts of flood.
- The Flood Insurance Reform Act of 2004 further strengthened the NFIP with a number of reforms that included reducing losses to properties for which repetitive flood insurance claim payments have been made, creating policyholder awareness about individual flood insurance policies, increasing policyholder information on guidance about the flood insurance claims process and establishing a minimum flood insurance training and education requirement for insurance professionals.

DNRC developed model floodplain hazard management regulations (Appendix B) based on federal requirements. Each City and County within Montana participating in the NFIP has adopted these regulations with the option to make them more stringent. These model regulations along with the federal Acts listed above are the basis of discussion in the following sections.

2.1.2 Floodplain Definitions

Some of the key definitions from the Montana model floodplain regulations are presented below.

100-year Flood – One percent (1%) annual chance flood. See Base Flood

Base Flood (Flood of 100 Year Frequency) – A flood having a one percent (1%) chance of being equaled or exceeded in any given year (ARM 36.15.101(4) & (44 CFR 59.1)

Base Flood Elevation (BFE) – The elevation above sea level of the Base Flood in relation to the National Geodic Vertical Datum of 1929 or the North American Vertical Datum of 1988 or unless otherwise specified. (ARM 36.15.101(5))

Encroachment – Activities or construction within the Regulated Flood Hazard Area including fill, new construction, substantial improvements, and 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.

Floodplain – The area of the Regulated Flood Hazard Area including and adjoining the watercourse or drainway that would be covered by the floodwater of a Base Flood. The area is partitioned into a Flood Fringe and Floodway where specifically designated. See Regulated Flood Hazard Area.

Floodway – The identified portion of the Floodplain of the Regulated Flood Hazard Area that is the channel and the area adjoining the channel that is reasonably required to carry the discharge of the Base Flood without cumulatively increasing the water surface by more than one half foot. (MCA 76-5-103(11)) (MCA 76-5-103(5)) determining if a property or structure is within the Regulated Flood Hazard area and subject to these regulations.

Letter of Map Change (LOMC) – 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 letter of determination from FEMA issued in response to a request that a property or structure is not subject to the mandatory flood insurance requirement because it was inadvertently located the effective FEMA Special Flood Hazard Area. The material submitted and response from FEMA may be considered by the Floodplain Administrator for determining if a property or structure is within the Regulated Flood Hazard area and subject to these regulations

Letter of Map Revision Based on Fill (LOMR-F) – A letter of approval from FEMA removing the mandatory requirement for flood insurance on property based on placement of fill or an addition. Placement of fill or an addition must be preceded by a permit pursuant to these regulations. Placement of fill does not remove the development from the Regulated Flood Hazard Area or these regulations.

Letter of Map Revision (LOMR) – An official FEMA amendment to the currently effective FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map based on a physical change to the floodplain of the Special Flood Hazard Area. It is issued by FEMA and changes flood zones, delineations, and elevations on the FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map and may amend the FEMA Flood Insurance Study. It must be preceded by an approved alteration of the designated floodplain from DNRC and subsequently an amendment to the Regulated Flood Hazard Area.

Conditional Letter of Map Revision (CLOMR) – A FEMA letter of approval for a proposed physical change that when completed would propose to change the flood zones, delineation or elevations on the FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map and may amend the FEMA Flood Insurance Study through a subsequent LOMR,. The CLOMR may be considered in an evaluation by DNRC and the Floodplain Administrator during consideration of a proposed alteration to the Regulated Flood Hazard Area.

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. (ARM 36.15.101(20)) (44 CFR 59.1)

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. (MCA 76-5-103(4)), (MCA 76-5-103(10), (ARM 36-15-101(11))

Special Flood Hazard Area (SFHA) – Land area which has been specifically identified by the Federal Emergency Management Agency as the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. It is useful for the purposes of identifying flood hazards by local subdivisions of government for regulatory purposes as well as use by the National Flood Insurance Program for establishing risk zones and flood insurance premium rates. The FEMA flood hazard area zone designation or flood risk potential is as illustrated on FEMA's Flood Hazard Boundary Map or Flood Insurance Rate Map.

Zone A - Areas subject to inundation by the 1-percent-annual-chance flood event. Because detailed hydraulic analyses have not been performed, no Base Flood Elevations (BFEs) or flood depths are shown.

AE, A1-A30 - Areas subject to inundation by the 1-percent-annual-chance flood event determined by detailed methods. BFEs are shown within these zones. (Zone AE is used on new and revised maps in place of Zones A1–A30.)

2.1.3 Floodplain Development Permit Requirements

Once a community has designated a floodway it must prohibit development within that floodway unless it has been demonstrated through hydrologic and hydraulic analyses that the development will not cause an increase in flood stages at any point in the community, 44 CFR Section 60.3(d)(3). This analysis is usually called a “no-rise” or a “zero-rise” analysis and results in a “no-rise certification” if the analysis demonstrates that there will not be any increase in the base flood elevation due to the development. Montana model floodplain regulations include this in Section 9.2 which states:

9.2 GENERAL REQUIREMENTS An application for a permit shall meet the following requirements:

1) 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;

2) All projects shall assure that the carrying capacity of the Floodway is not reduced. All projects in the Floodway shall meet the following:

    a) 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

    b) 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 4.3 and an approved FEMA Conditional Letter of Map Revision occurs before permit issuance; and ((ARM 36.15.604) (ARM 36.15.505) (ARM 36.15.605(b)) (44 CFR 60.3(a)(3 and 4)) (44CFR 65.12(a)).

The consequences for a community to not adhere to their adopted floodplain regulations can result in being placed on probation or suspended from participating in the NFIP program. If suspended, flood insurance under the NFIP is not available within that community. Furthermore, Section 202(a) of Public Law 93-234, as amended, prohibits Federal officers or agencies from approving any form of financial assistance for acquisition or construction purposes in a Special Flood Hazard Area (SFHA). For example, this would prohibit loans guaranteed by the Department of Veterans Affairs, insured by the Federal Housing Administration, or secured by the Rural Housing Services. Under Section 202(b) of Public Law 93-234, if a Presidentially declared disaster occurs because of flooding in a non-participating community, no Federal financial assistance can be provided for the permanent repair or reconstruction of insurable buildings in SFHAs. Eligible applicants may receive those forms of disaster assistance that are not related to permanent repair and reconstruction of buildings

3 Example Projects

The JSRC has discussed numerous example projects where floodplain permitting resulted in project delays, abandonment of the project, or significant increases in project costs. These projects fall under two general types and are generically summarized below along with how floodplain regulations apply.

Stream Restoration in Rural Area. Several projects presented by Conservation Districts fall into this category and summary of the projects is presented.

Description: Project is in a very rural area with a single landowner or conservation easement for a considerable distance upstream and downstream. In one case, the downstream end of the proposed project was with in a SFHA, but the project extended upstream beyond the SFHA boundary. The existing channel had been relocated to accommodate agricultural use of fields, resulting in straightening and downcutting of the stream. The project proposed to relocate the channel and reconnect the channel with the historic floodplain.

Argument: Due to rural nature of this project and the perhaps the presence of a conservation easement, it was argued that although the floodplain boundaries and base-flood elevations would change due to the project all changes would be contained within an area that would never be developed. On similar projects, all changes could confidently be assumed to be contained within the applicant's property due to project location (i.e., distance to neighbors, bridge, culvert, irrigation check dam, etc.). Therefore, there is no increased flooding risk for neighboring properties and the extra cost of floodplain analysis and time delay for a CLOMR review should be waived.

Discussion: This project as proposed clearly changes the SFHA boundary and is a mappable change. The proposed change in the BFE requires a CLOMR prior to construction and a LOMR post construction. Although the property is currently rural and under one landowner there is a possibility of some future sale of the property. The new landowner would not be accurately informed of the known flood risks. Not applying the regulations would set a precedent for not meeting CFR requirements and therefore could result in probation from the NFIP for the community.

Streambank Stabilization. The typical project is a stream meander that is eroding a bank and threatening some type of infrastructure (i.e., road, pumphouse, center pivot, etc.). The project is in a Zone A SFHA or a Zone AE without a floodway.

Description: The eroding bank is near vertical and continues to calve large blocks of soil due to bank toe erosion. Proposed solution is to slope the bank back, provide toe protection (i.e., riprap, rootwads, willow revetment, etc.) and revegetate the upper bank.

Argument: The proposed solution increases the conveyance area available to the stream and a qualitative discussion would indicate the BFE does not increase over pre-construction conditions. The floodplain boundary is moved a distance less than the accuracy of the floodplain map. Therefore, a detailed encroachment analysis should not be required.

Discussion: Montana model floodplain regulations are clear that if a floodway is present and the project includes grading or fill placement, an encroachment analysis is required (9.2(2)). In this example, there is no designated floodway. Therefore Section 9.2(1) applies: "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". A qualitative discussion (rather than quantitative analysis) could be presented that the increased conveyance area from laying back the vertical bank more than compensates for any increased roughness associated with establishing vegetation. Such a statement would need to be made and signed by a registered professional engineer (PE). The qualitative discussion would be a significant cost savings over a quantitative hydraulic analysis. The Community would need to be comfortable that accepting a qualitative discussion addresses their adopted floodplain regulations. Discussions with FEMA Region VIII indicate this is a bit of a grey area and the community has some leeway. The engineer signing the qualitative discussion would need to be well versed in hydraulic analysis and working within his/her area of expertise.

4 Discussion

Based on the materials present in the paper, three options to reduce cost and time required for floodplain permitting are suggested.

1) Clarify when/if a qualitative discussion of project impacts is appropriate. Communities need a clearer idea of when accepting a PE's signed qualitative discussion rather than a quantitative hydraulic analysis is acceptable. This solution will require additional conversations with FEMA Region VIII and DNRC to ensure that codified requirements from the NFIP and State of Montana law are met. The clarification would not change any regulations but outline under what project conditions a qualitative discussion could be used rather than a quantitative hydraulic analysis. This option would greatly decrease both the cost and time required to obtain a floodplain permit for the appropriate projects.
2) Educate professionals preparing floodplain permit applications. During numerous JRSC discussions stream projects were mentioned that required numerous rounds of revisions to permit applications and CLOMR/LOMR submittals. This indicates that individuals preparing these documents could be more efficient at addressing application requirements. Both DNRC and FEMA have existing guidance documents that explain the process and requirements. However, this information could be better distributed and easier to access. DNRC currently offers training to professionals in semi-regular seminars. DNRC could compile a list of individuals that have taken these courses as well as a list of Certified Floodplain Managers. These lists could be made available to project owners to help reduce the cost and time required for floodplain permitting.
3) Educate professionals on design changes that can reduce the cost and time required to obtain floodplain permits. Presentations could be included in DNRC's training seminars. Examples include:

a. For streambank stabilization projects, don't propose to extend the toe of the bank out into the stream to recover lost property. That option encroaches on the existing conveyance area and negatively impacts the BFE. Instead, reduce the bank angle by keeping the bank toe in the current location and laying the bank back. This increases the channel conveyance area and potentially allows a qualitative discussion of project impacts. In a SFHA with a floodway, this design alternative should show a "no-rise" or reduction in the BFE between the existing and proposed conditions, avoiding the time-consuming need of a CLOMR (6-12 months).

b. For stream restoration projects ensure that the overall floodplain conveyance is greater in the proposed conditions over the existing conditions then verify a "no-rise" or reduction in the BFE. This will avoid the need for a CLOMR.

c. For bridge and culvert replacement projects increase the structure's conveyance area then verify a "no-rise" or reduction in the BFE. This will avoid the need for a CLOMR

5 References

Federal Emergency Management Agency. (2019). *Guidance for Flood Risk Analysis and Mapping – Floodway Analysis and Mapping.* https://www.fema.gov/sites/default/files/2020-02/FloodwayAnalysis_and_Mapping_Nov_2019.pdf

Federal Emergency Management Agency. (2021). *Flood Insurance Rules and Legislation*. Retrieved from https://www.fema.gov/flood-insurance/rules-legislation.

Montana Department of Natural Resources and Conservation. (2012). *A guide to Stream permitting in Montana.* Retrieved from http://dnrc.mt.gov/divisions/cardd/conservation-districts/the-310-law.

Montana Department of Natural Resources and Conservation. (2014). *2014 Model Regulations – Floodplain Hazard Management Regulations.* http://dnrc.mt.gov/divisions/water/operations/floodplain-management/permitting-and-regulations/model_regulations_2014_rev2017.pdf.

Montana Department of Natural Resources and Conservation. (2015). *Montana Joint Application.* http://dnrc.mt.gov/divisions/water/operations/floodplain-management/permitting-and-regulations/jointapplication6515.doc/view.

National Archives. (2018). *Code of Federal Regulations – Section 60.3 Flood plain management criteria for flood-prone areas*. https://www.ecfr.gov/current/title-44/chapter-I/subchapter-B/part-60/subpart-A/section-60.3

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Appendix A. Joint Permit Application

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JOINT APPLICATION FOR PROPOSED WORK IN MONTANA'S STREAMS, WETLANDS, FLOODPLAINS, AND OTHER WATER BODIES
INFORMATION FOR APPLICANT
Please read carefully.

BEFORE YOU BEGIN

1. Review "*A Guide to Stream Permitting in Montana*" to determine which permits are applicable to your project. This guide is available from all participating agencies and on line at www.dnrc.mt.gov/licenses-and-permits/stream-permitting. Please note: permits may be required from other agencies than those listed on this form. You must apply to those agencies on separate forms if the law applies.
2. Attach a plan or drawing to the application. Some agencies require that this be provided by a professional engineer or other expert.
3. Keep in mind that you will be required to design your project in a manner that minimizes impacts, including sedimentation and erosion during and after project construction. Your project must be designed to preserve and protect the river or stream keeping it in as natural condition as possible. Contact agencies to find out if specific criteria apply to your project.
4. It is recommended that you do not purchase materials for project construction until all permits are issued. The size and type of materials may be modified during the permitting process.
5. You will need a project site legal description and a site map. You may obtain land descriptions by contacting the county assessor or clerk and recorder office. Aerial photographs sometimes may be obtained by contacting your local conservation district, or if you have the internet, you may obtain photos of the project site through the state's natural resource inventory system (www.nris.mt.gov), or through a mapping website such as map quest or google earth.
6. Know that vegetation is important to the stability and health of the stream. Vegetation removal must be kept to a minimum and bare ground must be replanted. Weeds must be controlled in the area until vegetation is established.
7. To prevent the spread of aquatic invasive species, use clean equipment. Make sure your equipment is free of weeds, weed seeds, and excess grease before using it in a waterway. Clean mud and aquatic plants from heavy machinery or other equipment before moving between waters and work sites. Drain water from machinery let dry before moving to another location. The following website shows waterbodies that are known to be infested with invasive species: www.fwp.mt.gov/fishAndWildlife/species/ais/.
8. For a reference guide, most participating agencies have copies of a notebook entitled "*Montana Stream Permitting: A Guide for Conservation District Supervisors and Others,*" that contains information about stream dynamics and describes various options for projects. The book is also available on DNRC's website: at www.dnrc.mt.gov/licenses-and-permits/stream-permitting.

HOW TO APPLY:

The joint application form can be used to obtain permits from the local, state, and federal agencies listed in the box below. The box below describes the joint application participants and the permits covered; contact information; application procedures; time frames; and fees.

After completing this form, send the required number of copies, with original signatures, to each applicable agency. Each agency issues separate permits. You must obtain individual authorizations or permits from each agency to which you apply before conducting your work.

Fees listed are for information only. Contact the responsible agency for information about fees.

√	PERMIT/ WHO MUST APPLY	AGENCY	AGENCY CONTACTS / ADDRESSES AND ADDITIONAL INFORMATION	APPROX. REVIEW TIME	FEES –
	310 Permit Private citizens and companies working in or near perennial streams.	Local Conservation District	Submit three copies of application, maps, and plans to conservation district. To locate local office, call MT Assoc. of Conservation Districts (406) 443-5711 or Conservation Districts Bureau, DNRC (406) 444-6667; or visit http://dnrc.mt.gov/divisions/cardd/conservation-districts	30 – 60 days	No fee
	SPA 124 Permit Governmental entities working in any stream.	Montana Department of Fish, Wildlife & Parks	Submit a set of preliminary plans or sketches with application. To locate appropriate office, call DFWP in Helena (406) 444-2449. For projects sponsored by DOT, send two sets of plans to Helena DFWP, Box	30 days	No fee

		(DFWP)	200701, Helena, MT 59620-2701.		
	Floodplain Permit Applicants proposing new construction within designated floodplains.	City or County Floodplain Administrator	All required local, state, and federal permits must be issued before a floodplain permit can be issued. An applicant may be required to hire a professional engineer. Prior to submitting this application form, contact the local floodplain administrator at the city or county office. To locate the appropriate office, contact DNRC Water Resources Division (406) 444-0860 or visit: http://dnrc.mt.gov/divisions/water/operations/floodplain-management	60 days	Varies city or county. Inquire locally. ($25 - $500+)
	Section 404 Permit Applicants working in any stream and in wetlands. **Section 10 Permit** Applicants working on Yellowstone, Missouri, or Kootenai Rivers or their reservoirs.	U.S. Army Corps of Engineers (COE)	Submit one copy of application plus a set of construction plans or sketches of the proposed project, if available. See special signature requirements following "Information for Applicant". US Army Corps of Engineers, 10 West 15th Street Suite 2200, Helena MT 59626; (406) 441-1375.	30 - 120 days	Varies ($0 - $100) You will be contacted if fee applies.
	318 Authorization Activities that cause temporary turbidity in any state water. Applies only for work carried out in water.	Montana Department of Environmental Quality (DEQ)	**Do not send this form directly to DEQ if applying for a 310 or 124 permit**. You will be notified if you must apply directly to DEQ during the 310 or 124 permit review. If you are not applying for a 310 or 124 permit, apply directly to DEQ with $250 fee enclosed. Dept. of Environmental Quality, Permitting and Compliance Division, Water Protection Bureau, Box 200901, Helena MT 59620-0901; (406) 444-3080.	30 days after application and fee are received.	$250 (318)
	401 Certification Activities that may adversely affect state water quality standards.	Montana Department of Environmental Quality (DEQ)	Depending on the type of 404 permit you may have obtained from the U.S. Army Corps of Engineers, a 401 Water Quality Certification of that 404 permit by DEQ might be necessary. To determine if a 401 Certification is necessary, contact the U.S. Army Corps of Engineers (406) 441-1375 or DEQ (406) 444-3080.		$400 - $20,000 (401)
	Navigable Rivers Land Use License/Lease/ Easement -- Projects in, on, under, or over navigable waters.	Montana Department of Natural Resources and Conservation (DNRC)	Additional fees, a land survey, and other information will be required. Contact the local DNRC land office for information about whether a waterway is navigable. To locate appropriate Land Office, call (406) 444-2074.	License – up to 60 days. Lease or Easements – up to 90 days.	$50, plus additional fee

INSTRUCTIONS FOR FILLING OUT THE JOINT APPLICATION:

The sections indicated below correspond with sections on the application form. Sections A, B, and C must be completed for all applications. Section D is to be completed only if you are applying for a Floodplain Permit, Section 404 Permit, or Section 10 permit.

A. APPLICANT INFORMATION. The applicant must possess the authority to undertake the work described in the application or to act as the duly authorized agent of the landowner. The applicant is the responsible party for the project and the main point of contact for permitting questions, scheduling inspections, and other project details. The landowner's name and address is required if different from the applicant. If a contractor will be used to do the work, provide the contractor's name and contact information. Be aware that the issuance of any permit does not give permission to carry out a project on land that is not owned by the applicant. The applicant has the duty to secure necessary landowner authorization.

B. PROJECT SITE INFORMATION. This information is required to locate the site and the water body where the work will be completed. If it is not clear how to get to the site, be sure to include written directions. Attach an additional sheet or site map that clearly shows the project location and any identifying landmarks. Geocodes help locate the property where the project will be constructed and are available online at: **http://geoinfo.msl.mt.gov/.** Leave the Geocode line blank if you don't have access to the internet.

Contact DNRC at 406-444-2074 to determine if your project will be conducted on a state navigable waterway. If so, a copy of this application must be mailed to DNRC's Trust Land Management office along with the non-refundable $50 application fee. You can call any local Land Office or the number listed above.

C. PROJECT INFORMATION. This section provides space for you to describe your project and the steps you will take to minimize impacts. Projects must be constructed in a way that minimizes impacts to the water body and that keeps rivers and streams in as natural state as possible. Some agencies and conservation districts may require you to follow specific standards for project design, materials used, or re-vegetation.

1. Type of Project. Check all boxes that apply to the proposed work. If your project type is not listed, check "Other" and describe what type of project you are proposing.

2. Be sure to attach a plan or drawing that includes the information requested. Your application will be rejected if project plan or drawing is not provided.

3. Annual Maintenance. Conservation districts may authorize minor maintenance activities for up to ten years. If the proposed work will be conducted each year, check this box and attach an annual plan of operation. An annual plan of operation must include the nature and extent of work to be conducted each year. It should also include, at minimum, a detailed description of the work to be done, the timing of the work proposed, and the amount of streambed materials to be removed or disturbed, as well as other information required by the district. If the conservation district authorizes an annual maintenance permit, you still may be required to seek approval from other agencies each year prior to doing work.

4. Proposed Construction Date. The timing of construction is an important factor in determining impacts to water quality, fish, and aquatic life. Authorizations/permits may contain timing restrictions on construction activities. Note when you plan to start work and how long it will take to complete. Keep in mind it can take 30-120 days or more after an application is complete to receive permits needed to begin your project. Plan ahead.

5. Purpose. Describe the need and purpose of the proposed work. What will it be used for and why?

6. Brief Description. Describe briefly what you propose to do and how you plan to construct it. Other places in the application will allow for more detailed information.

7. Current Condition. Describe the current condition of the site. Include the bank condition, slope, and height of bank. Note structures such as riprap, dikes, bridges, irrigation facilities, road crossings, or homes that are near the site. Also include a description of any nearby wetlands that may be disturbed as a result of the proposed project. You may provide photos in addition to the description.

8. Project Dimensions. Generally describe the impact area of your project and provide dimensions of your project, including linear feet, distance the work will encroach into the water body, as well as extend away from the water body. Use the high water mark as a point of measure. If you are unsure of the high water mark or it isn't applicable to the project, specify another point of measure.

9. Vegetation. Vegetation is important for bank stability and maintaining water quality. Agencies require that only the vegetation necessary to conduct the work be removed. Describe the vegetation at the site (woody trees and shrubs, grasses, weeds, etc.) and how much will be disturbed or covered with fill material during project installation. Reseeding and replanting all disturbed areas of the project site is usually required. Describe, in detail, your plan to re-vegetate the area.

10. Materials. What materials are going to be used for your project? Where were they obtained? How much are you planning to use? All materials used must be of adequate size and dimension for the project and be free of pollutants. If streambed or other materials are removed from the bed of a stream, they must be removed from the area so they don't reenter the stream. When possible, choose materials that are natural to the area to construct your project. It is recommended that you do not purchase materials until all permits are issued because the size and type may be modified during the permitting process.

11. Equipment. List all equipment that will be used for construction of the project. How will the equipment be used on the bank and/or in the water body? Make sure your equipment is clean and free of weeds, weed seeds, and excess grease before using it in the waterway. To prevent the spread of aquatic invasive species, to the extent practical, remove mud and aquatic plants from heavy machinery and other equipment before moving between waters and work sites, especially in waters known to be infested with aquatic invasive species. Drain water from machinery and let machinery dry before moving to another location.

12. Describe planned efforts to minimize project impacts. Consider the impacts of the proposed project, even if they are temporary. All projects create impacts. Projects must be designed and constructed in a manner that minimizes impacts and keeps natural rivers and streams in as natural a state as possible. Use the space provided to describe what you plan to do to minimize the impact of the proposed project during and after construction. Examples would include using sediment fences along the bank or below the proposed work, installing coffer dams to direct flow away from the project area, constructing fish friendly diversions or stream crossings, protecting existing vegetation or re-vegetating disturbed areas, timing of the project, designing projects that fit into the natural area, minimizing disturbance to the area, or selecting carefully the sites and methods used to construct the project, including practices that avoid spreading of aquatic invasive species.

13. Project Benefits. Describe anticipated natural resource benefits that will occur as a result of your project, such as improved water quality, improved riparian vegetation, improved fish habitat, etc.

14. Alternatives. List other projects you considered before selecting the project for which you are applying. Describe the reason why you chose the project you selected.

For 310 applicants only: The criteria listed below will be used by an inspection team and the conservation district in reviewing your application. In addition to filling out this question, during the review process, you may be requested to provide more specific information about the alternatives you considered. The kind of information that may be requested from you may include, but is not limited to:

a. Other reasonable alternatives that may have been considered prior to selecting the project described in the application.
b. Costs of the alternatives.
c. Impacts of the alternatives, including:
    1. Sedimentation and/or erosion.
    2. Stream channel alterations.
    3. Disturbance to vegetation.
    4. Water quality changes (during and after construction).
    5. Stream flow changes.
    6. Fish and aquatic habitat.
    7. Changes to the natural condition of the area.

D. ADDITIONAL INFORMATION FOR SECTION 404, SECTION 10, AND FLOODPLAIN PERMITS ONLY.
Information in Section D is specific to Section 404, Section 10, and Floodplain permits. Answer Questions 1-3 if you are applying for a Section 404 or Section 10 permit from the US Army Corps of Engineers. Answer Questions 3-6 if you are applying for a Floodplain Permit from the local floodplain administrator. (Question 3 is required for both.)

1. See definitions listed below for aquatic areas, wetlands, fill material, ordinary high water mark, waters of the US, and for information on how to calculate materials and impacted areas.

2. Provide a brief explanation of avoidance, minimization, and compensation describing how impacts to waters of the United States are being avoided and minimized on the project site. Also provide a brief description of how impacts to waters of the United States will be compensated for, or a brief statement explaining why compensatory mitigation should not be required for those impacts. See definition of compensatory mitigation below.

3. Attach a list of adjacent property owners and their mailing addresses. This includes properties adjacent to and across from the project site. Be advised that many communities require a certified adjoining property owner list. (You can get this information from the community's planning/zoning/GIS office or through a title company). At its discretion, the permitting agency may contact these landowners.

4. For floodplain permits, all local, state, and federal permits must be in place before a floodplain permit can be issued. Provide copies of each issued, waived, denied, or pending permits.

5. If your project site is in a designated floodplain, the waterway should have a Flood Insurance Study (FIS) and/or floodplain map number (FHBM, FIRM, DFIRM). Contact the local floodplain administrator to obtain this information.

6. Check with the local government to see if special planning or zoning regulations apply.

Definitions:

- **Aquatic areas** include (but are not limited to) rivers, streams, creeks, lakes, reservoirs, wetlands, wet meadows, oxbows, and sloughs. Named and unnamed drainages that flow intermittently, as well as streams with perennial flow, are aquatic areas (waters of the United States).
- **Dredged material** means material that is excavated or dredged from waters of the United States, including material removed or excavated from wetlands, lakes, ponds, streams, and other waters.
- **Fill material** refers to rock, sand, soil, or any material that replaces an aquatic area with dry land, or changes the bottom elevation of a water body. Prohibited fill material includes junk metal, car bodies, construction debris, trash, etc.
- **Mitigation** means avoiding and/or minimizing impacts to aquatic areas, and compensating for unavoidable impacts. **Compensatory mitigation** refers to replacing aquatic resources that have been lost, with similar aquatic resources. Compensatory mitigation may include creating new, restoring degraded, or enhancing existing aquatic areas.
- **Waters of the United States** includes the area below the ordinary high water mark of stream channels and lakes or ponds connected to the tributary system, and wetlands adjacent to these waters. Isolated waters and wetlands, as well as man-made channels, may be waters of the United States in certain circumstances, which must be determined on a case-by-case basis.
- **Wetlands** include areas that are inundated or saturated with water long enough to support vegetation typically adapted for life in saturated conditions. Wetlands are generally determined on a site-by-site basis. If you are not sure whether a wetland will be impacted by your proposed project, contact the Corps of Engineers.
- **To calculate impacted area**, measure the length and width that the fill material will occupy. Length x width = area, usually expressed in square feet, square yards or acres. If your project involves a stream, measure the length of bank that will be affected on both sides of the stream.
- **To calculate the volume of material**, measure the length, width, and depth of the fill material. Length x width x depth = volume, usually stated in cubic feet or cubic yards.

ADDITIONAL INFORMATION REQUIRED FOR FLOODPLAIN PERMIT APPLICATIONS ONLY:

Provide the following on separate sheets and attach to the floodplain permit application copy of the joint application.

1. A detailed site plan of the proposed project, drawn to scale, showing the following:
    a. Property boundary lines of the subject property and those in the immediate vicinity of the proposed project;
    b. Approximate location of all floodplain boundaries in the vicinity of the proposed project as depicted on the floodplain maps mentioned above;
    c. Location of the existing improvements in the vicinity of the proposed project, including driveways, roads, culverts, bridges, buildings, wells, septic systems, other improvements;
    d. Location of all existing physical features in the vicinity of the proposed project, including ponds, swales, streams, and irrigation ditches;
    e. Location and dimensions of all proposed improvements, including driveways, roads, culverts, bridges, ponds, buildings, wells, and other structures;
    f. Location for all fill proposed to be placed into the floodplain.
2. A statement specifying the type of material and total amount of the fill proposed to be placed within the floodplain along with supporting calculations.
3. Certain projects may require an licensed Montana engineer to design to the following criteria:
    a. The project can withstand a 100-year flood event;
    b. The project will not adversely affect surrounding landowners upstream, downstream, across stream, or adjacent to the proposed project area;
    c. The effect of the proposed project on the 100-year base flood elevation.

E. SIGNATURE REQUIREMENTS:

***If you are a landowner** submitting this application and proposing to undertake a project on your own behalf on your own property, please sign and date both the "Signature of Applicant" and "Signature of Landowner" lines.

*If you are an applicant, other than the owner of the site, submitting this application and proposing to undertake a project, sign and date the "Signature of Applicant" only.

***If you are a contractor/agent** acting as an agent on behalf of a landowner, or applicant, please sign and date only the line designated "Signature of Agent" and indicate your title. The applicant/landowner must sign and date the

"Signature of Applicant" and "Signature of Landowner" lines to indicate authorization for you to act on his/her behalf.

***If a utility company submits this application**, a representative of the company should sign and date the "Signature of Applicant" line. Landowner signatures are not required.

***It is the applicant's responsibility to obtain landowner permission** to do work on land not owned by the applicant.

DISPUTES:

For 310 permit applicants only: If you disagree with the conservation district's decision to approve, modify, or deny your permit, you may request arbitration to settle the dispute, or you may seek judicial review in district court. The conservation district will provide you with more information with their permit decision.

If you disagree with the conservation district jurisdictional issues, and wish a formal decision from the conservation district, you should petition the conservation district for a declaratory ruling (see 75-7-125, MCA, for more information). If this petition is submitted while you have a pending application before the conservation district, you should ask for an extension of time while the conservation district is processing the declaratory ruling petition.

SUBMITTAL REQUIREMENTS FOR MISSOULA COUNTY FLOODPLAIN PERMIT APPLICATION

To initiate the permit process, you will need to submit <u>two</u> hard copies of a completed Joint Permit Application (or one hard copy and one electronic copy) to Community and Planning Services. These instructions apply to all construction/projects within designated 100-year floodplains including Shaded Zone-X delineated on the FEMA Flood Insurance Rate Maps (FIRMs). The items listed below are minimum submittal requirements. Additional items may be required after an initial review by the Floodplain Administrator.

1. A list of adjacent property owners and their mailing addresses.

2. If the proposal is to be completed on parcels owned by multiple parties, a letter from each property owner and signature(s) on the permit application authorizing the proposed work.

3. A detailed site plan, drawn to scale, showing the following:

- ◊ Property boundary lines of the subject property and those in the immediate vicinity of the project (you may be able to obtain the applicable survey from the Surveyor's Office or the internet)
- ◊ Approximate location of all floodplain boundaries in the vicinity of the project as depicted on the Floodplain Maps available at Community and Planning Services or http://www.co.missoula.mt.us/mccaps/CurrentPlanningPermitting/Floodplain.htm
- ◊ Location of existing improvements in the vicinity of the project, including driveways, roads, culverts, bridges, buildings, wells, septic systems, and other improvements
- ◊ Location of all existing physical features in the vicinity of the project, including ponds, swales, streams, and irrigation ditches
- ◊ Location and dimensions of all proposed improvements including driveways, roads, culverts, bridges, ponds, excavations, buildings, wells and other structures

5. For a house submit:

- ◊ The parcel's existing topography in 1' contours including the ground elevation at the location of the proposed house and the calculated height of the 100-year floodplain as identified by a licensed surveyor or engineer
- ◊ Construction plans using filled stemwalls with lowest floor 2' above the 100-year flood elevation
- ◊ Calculations and specifications for any fill (in cubic yards) to be placed in the floodplain
- ◊ A completed Elevation Certificate based on construction drawings prepared by a licensed surveyor or engineer

6. For any other building submit:

- ◊ The parcel's existing topography in 1' contours including the ground elevation at the location of the proposed structure and the calculated height of the 100-year floodplain as identified by a licensed surveyor or engineer.
- ◊ Construction plans for the building
- ◊ A statement indicating which of the two development standards will apply: stemwall construction or commercial floodproofing
- ◊ A completed Elevation Certificate based on construction drawings completed by a licensed surveyor or engineer

7. For bank stabilization submit:
   - ◊ a description of existing conditions
   - ◊ a historical overview of trends in the river movement, if any.
   - ◊ a description of the problem
   - ◊ a description of the objectives of the project
   - ◊ a short description of design alternatives that were considered, if any, but rejected, and an explanation of why each one was rejected
   - ◊ typical cross-section (based on survey data) of the river from bank to bank, which shows the existing condition and proposed treatment and the height of the 100-year flood event, the base flow elevation, and the bank full elevation.
   - ◊ a longitudinal profile of the river surface and bed in the project area.
   - ◊ a plan view (using an aerial photograph as a base) of the project area which shows the beginning and ending points of the treatment and the various types of treatment.
   - ◊ specifications for the treatment material (type of material, sizes, quantities, etc.
   - ◊ calculations and hydraulic model documenting that the proposed project will not raise the elevation of the 100-year flood as documented on the floodplain maps & flood insurance study.
   - ◊ a description of the project implementation (project phases, sediment control, staging areas, cleanup, etc.)

8. For a bridge submit:
   - ◊ drawings and specifications for the bridge as certified by professional engineer
   - ◊ calculations for the amount of fill to be placed in the floodplain
   - ◊ calculations and hydraulic model documenting that the proposed project will not raise the elevation of the 100-year flood (i.e. .00') as documented on the floodplain maps. If located in a detailed study area, the issuance of a CLOMR by FEMA prior to permitting and LOMR upon completion may be required.
   - ◊ a minimum of five (5) cross-sections including one at the location of the bridge which shows the existing condition and the elevation of the 100-year flood event. If located in a detailed study area, the cross-sections must tie into the existing FEMA cross-sections at the upstream and downstream end.

9. For a pond or excavation submit:
   - ◊ The parcel's existing topography in 1' contours including the ground elevation at the location of the proposed pond or excavation
   - ◊ a description of existing conditions
   - ◊ a description of the objectives of the project
   - ◊ calculations for the amount of material to be removed from the pond
   - ◊ a description of where the material will be placed outside of the floodplain

10. For a road(s) submit:
   - ◊ a description of existing conditions
   - ◊ a description of the objectives of the project
   - ◊ calculations to show that the culverts will be large enough to handle the expected flows.

11. Appropriate permit application fee.

Once your final application is received, it will be reviewed to make sure the information is sufficient. If it is not sufficient, you will receive a letter that explains the deficiencies. Provided any additional information requested is submitted, a decision is typically made within 60 days of when your application is deemed sufficient and legal notice is published. As part of the review process, the adjoining property owners will be notified letting them know about the proposed work, and a legal notice will be placed in the newspaper containing a brief description of the application. Note that a floodplain permit cannot be issued until all other applicable permits are issued first including, but not limited to building, septic and zoning permits, State navigability, 318 and 124 permits, Conservation District 310 permits and Federal Army Corps 404 permits.

Revised: 6/5/15 (310 form 270). Form may be downloaded from: www.dnrc.mt.gov/licenses-and-permits/stream-permitting	**AGENCY USE ONLY**: Application # _____ Date Received _____ Date Accepted _____/ Initials _____ Date Forwarded to DFWP _____

This space is for all Department of Transportation and SPA 124 permits (government projects).
Project Name _____
Control Number _____ Contract letting date _____
MEPA/NEPA Compliance ☐ Yes ☐ No If yes, #14 of this application does not apply.

JOINT APPLICATION FOR PROPOSED WORK IN MONTANA'S STREAMS, WETLANDS, FLOODPLAINS, AND OTHER WATER BODIES

Use this form to apply for one or all local, state, or federal permits listed below. The applicant is the responsible party for the project and the point of contact unless otherwise designated. **"Information for Applicant"** includes agency contacts and instructions for completing this application. T**o avoid delays**, submit all required information, including **a project site map and drawings.** Incomplete applications will result in the delay of the application process. **Other laws may apply**.

The applicant is responsible for obtaining all necessary permits and landowner permission before beginning work.

✓	PERMIT	AGENCY	FEE
	310 Permit	Local Conservation District	No fee
	SPA 124 Permit	Department of Fish, Wildlife and Parks	No fee
	Floodplain Permit	Local Floodplain Administrator	Varies by city/county ($25 - $500+)
	Section 404 Permit, Section 10 Permit	U. S. Army Corps of Engineers	Varies ($0 - $100)
	318 Authorization 401 Certification	Department of Environmental Quality	$250 (318); $400 - $20,000 (401)
	Navigable Rivers Land Use License, Lease, or Easement	Department of Natural Resources and Conservation, Trust Lands Management Division	$50, plus additional fee

A. APPLICANT INFORMATION

NAME OF **APPLICANT** (person responsible for project)**:**_____
Has the landowner consented to this project? □ Yes □ No
Mailing Address: _____
Physical Address: _____
Day Phone: _____Evening Phone: _____ E-Mail: _____

NAME OF **LANDOWNER** (if different from applicant):_____
Mailing Address: _____
Physical Address: _____
Day Phone: _____Evening Phone: _____ E-Mail: _____

NAME OF **CONTRACTOR/AGENT** (if one is used):_____
Mailing Address: _____
Physical Address: _____
Day Phone: _____Evening Phone: _____ E-Mail: _____

B. PROJECT SITE INFORMATION

NAME OF **STREAM** or **WATER BODY** at project location _____ Nearest Town _____
Address/Location:_____Geocode (if available): _____
____1/4 ____1/4 ____1/4, Section _____, Township _____, Range _____ County _____
Longitude _____, Latitude _____

The state owns the beds of certain state navigable waterways. Is this a state navigable waterway? Yes or No.
If yes, send copy of this application to appropriate DNRC land office – see Information for Applicant.

ATTACH A PROJECT SITE MAP OR A SKETCH that includes: 1) the water body where the project will take place, roads, tributaries, landmarks; 2) a circled "X" representing the exact project location. IF NOT CLEARLY STATED ON THE MAP OR SKETCH, **PROVIDE WRITTEN DIRECTIONS TO THE SITE.**

C. PROJECT INFORMATION

1. **TYPE OF PROJECT** (check all that apply)

☐ Bridge/Culvert/Ford Construction	☐ Fish Habitat	☐ Mining
☐ Bridge/Culvert/Ford Removal	☐ Recreation (docks, marinas, etc.)	☐ Dredging
☐ Road Construction/Maintenance	☐ New Residential Structure	☐ Core Drill
☐ Bank Stabilization/Alteration	☐ Manufactured Home	☐ Placement of Fill
☐ Flood Protection	☐ Improvement to Existing Structure	☐ Diversion Dam
☐ Channel Alteration	☐ Commercial Structure	☐ Utilities
☐ Irrigation Structure	☐ Wetland Alteration	☐ Pond
☐ Water Well/Cistern	☐ Temporary Construction Access	☐ Debris Removal
☐ Excavation/Pit	☐ Other _____	

2. **PLAN OR DRAWING** of the proposed project **MUST** be attached. **This plan or drawing must include**:

- a plan view (looking at the project from above)
- dimensions of the project (height, width, depth in feet)
- location of storage or stockpile materials
- drainage facilities
- an arrow indicating north
- a cross section or profile view
- an elevation view
- dimensions and location of fill or excavation sites
- location of existing or proposed structures, such as buildings, utilities, roads, or bridges

3. **IS THIS APPLICATION FOR** an annual maintenance permit? ☐ Yes ☐ No
(If yes, an annual plan of operation must be attached to this application – see "Information for Applicant")

4. **PROPOSED CONSTRUCTION DATE**. Include a project timeline. Start date _____/_____/_____
Finish date_____/_____/_____ Is any portion of the work already completed? ☐ Yes ☐ No
(If yes, describe the completed work.)

5. **WHAT IS THE PURPOSE** of the proposed project?

6. **PROVIDE A BRIEF DESCRIPTION** of the proposed project.

7. **WHAT IS THE CURRENT CONDITION** of the proposed project site? Describe the existing bank condition, bank slope, height, nearby structures, and wetlands.

8. **PROJECT DIMENSIONS**. How many linear feet of bank will be impacted? How far will the proposed project encroach into and extend away from the water body?

9. **VEGETATION.** Describe the vegetation present on site. How much vegetation will be disturbed or covered with fill material during project installation? (Agencies require that only vegetation necessary to do the work be removed.) Describe the revegetation plan for all disturbed areas of the project site in detail.

10. **MATERIALS**. Describe the materials proposed to be used. Note: This may be modified during the permitting process. It is recommended you do not purchase material until all permits are issued.

Cubic yards/Linear feet	Size and Type	Source

11. **EQUIPMENT**. List all equipment that will be used for construction of the project. How will the equipment be used on the bank and/or in the water? Note: Make sure equipment is clean and free of weeds, weed seeds, and excess grease before using it in the water waterway. To prevent the spread of aquatic invasive species, to the extent practical, remove mud and aquatic plants from heavy machinery and other equipment before moving between waters and work sites, especially in waters known to be infested with aquatic invasive species. Drain water from machinery and let dry before moving to another location.

12. **DESCRIBE PLANNED EFFORTS TO MINIMIZE PROJECT IMPACTS**. Consider the impacts of the proposed project, even if temporary. What efforts will be taken to:

- Minimize erosion, sedimentation, or turbidity?
- Minimize stream channel alterations?
- Minimize effects to stream flow or water quality caused by materials used or removal of ground cover?
- Minimize effects on fish and aquatic habitat?
- Minimize risks of flooding or erosion problems upstream and downstream?
- Minimize vegetation disturbance, protect existing vegetation, and control weeds?

13. **WHAT ARE THE NATURAL RESOURCE BENEFITS** of the proposed project?

14. **LIST ALTERNATIVES** to the proposed project. Why was the proposed alternative selected?

D. ADDITIONAL INFORMATION FOR SECTION 404, SECTION 10, AND FLOODPLAIN PERMITS ONLY.
If applying for a Section 404 or Section 10 permit, fill out questions 1-3. If applying for a floodplain permit, fill out questions 3-6. (Additional information is required for floodplain permits – See "Information for Applicant.")

1. Will the project involve placement of dredged (excavated) and/or fill material below the ordinary high water mark, in a wetland, or other waters of the US? If yes, what is the surface area to be filled? How many cubic yards of fill material will be used? Note: Wetland delineations are required if wetlands are affected.

2. Description of avoidance, mitigation, and compensation (see Information for Applicant). Attach additional sheets if necessary.

3. List the names and address of landowners adjacent to the project site. This includes properties adjacent to and across from the project site. (Some floodplain communities require certified adjoining landowner lists).

   _____

   _____

   _____

4. List all applicable local, state, and federal permits and indicate whether they were issued, waived, denied, or pending. Note: All required local, state, and federal permits, or proof of waiver must be issued prior to the issuance of a floodplain permit.

5. Floodplain Map Number _____

6. Does this project comply with local planning or zoning regulations? ☐ Yes ☐ No

E. SIGNATURES/AUTHORIZATIONS -- Each agency must have original signatures signed in blue ink.

After completing the form, make the required number of copies and **then sign each copy.** Send the copies with original signatures and additional information required directly to each applicable agency.

The statements contained in this application are true and correct. The applicant possess' the authority to undertake the work described herein or is acting as the duly authorized agent of the landowner. The applicant understands that the granting of a permit does not include landowner permission to access land or construct a project. Inspections of the project site after notice by inspection authorities are hereby authorized.

APPLICANT (Person responsible for project):
Print Name: _____

_____
Signature of Applicant Date

LANDOWNER:
Print Name: _____

_____
Signature of Landowner Date

*CONTRACTOR/AGENT:
Print Name: _____

_____
Signature of Contractor/Agent Date
*Contact agency to determine if contractor signature is required.

Appendix B. Montana DNRC 2014 Regulations Floodplain Hazard Management Regulations

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2014 MODEL REGULATIONS

September 3, 2013
Revision February 20, 2014

FLOODPLAIN HAZARD MANAGEMENT REGULATIONS

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
WATER RESOURCES DIVISION
1424 9TH Avenue
P.O. Box 201601
Helena, Montana 59620-1601

http://www.mtfloodplain.mt.gov

2014 Model Regulations
Purpose and Considerations

PURPOSE:

- Provide communities with current (2013) Model Regulations; the 1989, 1990, 1992 and 2006 versions are obsolete. Draft versions of the 2014 Model were utilized in 2012 and 2013 by several communities and should be updated.
- Provides a model and template for local land use regulations for local floodplain hazard management.
- Communities participating in the National Flood Insurance Program are required to have up to date floodplain management regulations.
- Includes State and FEMA minimum procedural and development standards.

CONSIDERATIONS:

- Substantial adherence to the Model will facilitate reviews by DNRC and FEMA.
- Legal cites to supporting federal and state statutes and regulations are noted in the Model and are for reference during drafting and should be removed before final adoption. The information within the boxes is informational and should be removed as well.
- Communities may adopt higher standards pursuant to 76-5-301(1), MCA and are denoted as "(Higher Standard)" following the specific regulation in this model. Higher standards as well as those suggested in the Model may have health and safety as well as economic and ecological benefits to the community. Those communities may have to make findings of fact when adopting floodplain management regulations as to why the higher standards are appropriate in their community.
- The Regulated Flood Hazard Area is required to be specifically described and updated if necessary.
- Local regulations require local notice and adoption.
- The special review panel needs to be specified in the Variance and Administrative Appeals Sections.

- DNRC must find the local Floodplain Hazard Mitigation Regulations are adequate before local adoption, allow 30 days for review.
- FEMA Region VIII must find the regulations adequate and acceptable before community adoption as well, allow 30 days for review.
- Local regulations are required to be updated to the current State and FEMA minimum regulatory standards within 6 months of a State or FEMA revision or update to the Regulated Flood Hazard Area.
- Adopting the requirements by regulation, resolution or ordinance as the appropriate vehicle must be determined by the political subdivision.

TABLE OF CONTENTS

SECTION 1. TITLE, PURPOSE, AUTHORITY AND GENERAL PROVISIONS

1.1 FLOODPLAIN HAZARD MANAGEMENT REGULATIONS

These regulations are known and may be cited as the "Floodplain Hazard Management Regulations;" hereinafter referred to as "these regulations."

1.2 STATUTORY AUTHORITY

1. 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.

2. The authority to regulate development in specifically identified flood hazard areas has been accepted pursuant to 76-5-301, MCA.

1.3 FINDINGS OF FACT

1. 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.
2. 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. (76-5-302, MCA, ARM 36.15.202, 44 CFR60.1(b), 42USC 4022)

1.4 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:

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 METHODS TO REDUCE LOSSES

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

1. 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;
2. 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;
3. Regulate the alteration of natural floodplains, stream channels, and natural protective barriers which are needed to accommodate floodwaters;
4. Regulate filling, grading, dredging and other development which may increase flood damage;
5. Prevent or regulate the construction of flood barriers which will impact other land, flood water depth or velocity of floodwaters;
6. 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;
7. Apply more restrictive land use regulations within the floodway of the Regulated Flood Hazard Area; and
8. Ensure that regulations and minimum standards balance the greatest public good with the least private injury.

1.6 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 Section 4. Requirements and approvals for alterations to the Regulated Flood Hazard Area are specified in Section 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 the 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 political subdivision by these regulations. 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.

1.7 FLOODPLAIN ADMINISTRATOR

A Floodplain Administrator is hereby officially appointed and is the responsibility of the office of _____. 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 the political subdivision. ((44 CFR 59.22(b)(1)) (ARM 36.15.204(2)(h))

1.8 COMPLIANCE Development, New Construction, Alteration or Substantial Improvement may not commence without full compliance with the provisions of these regulations.

1.9 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. (44 CFR 60.1(d))

1.10 REGULATION INTERPRETATION

In the interpretation and application of these regulations, all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under state statutes. (44 CFR 60.1)

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 the community 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 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 Floodplain Administrator's office.
(ARM 36.15.204(2)(g))

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. (44 CFR 60.3(b)(5)(iii) & 44 CFR 59.22 (a)(9)(iii))

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:

1. The Base Flood Elevations and boundary of the Regulated Flood Hazard area must be determined and considered during lot layout and building location design;

2. Locations for future structures and development must be reasonably safe from flooding; (44CFR 60.3(a)(4))

3. Adequate surface water drainage must be provided to reduce exposure to flood hazards; (44 CFR 60.3 (a)(4)(iii))

4. Public utilities and facilities such as sewer, gas, electrical and water systems must be located and constructed to minimize or eliminate flood damage; and (44 CFR 60.3(a)(4)(ii))

5. Floodplain permits must be obtained according to these regulations before development occurs that is within the Regulated Flood Hazard Area. (44 CFR 60.3(b))

FOR INFORMATIONAL PURPOSES ONLY Consider a companion regulation in the subdivision regulations.

FOR INFORMATIONAL PURPOSES ONLY

The National Flood Insurance Program (NFIP) program standard for community Floodplain management ordinances specifies that the local government is to consider flood hazards when reviewing and approving subdivisions within the Special Flood Hazard Area. Floodplain Administrators should check their subdivision ordinances to ensure flood hazards outside of Regulated Flood Hazard Areas are addressed in development proposals. For example, the Montana Model Subdivision Regulations suggests that for any portion of a proposed subdivision that is within 2,000 horizontal feet and 20 vertical feet of a stream draining an area of 25 square miles or more, where no official floodplain studies of the stream have been made, the subdivider may be required to conduct a flood hazard evaluation study. The Montana Department of Natural Resources and Conservation may, if requested, review the flood hazard analysis on the merit of its technical adequacy and make a recommendation back to the Floodplain Administrator. A technical review by DNRC is not intended to be a formal designation of a floodplain or floodway pursuant to MCA 76-5-201 et.seq. for floodplain management regulatory purposes unless specifically requested and subsequently adopted by DNRC.

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.((MCA 76-5-404(3)(b) (ARM 36.15.702) (44 CFR 60.3(c)(2 and 3))

SECTION 2. DEFINITIONS

FOR INFORMATIONAL PURPOSES ONLY

There is a large list of definitions of terms and nomenclature normally used in floodplain hazard management guidelines and explanations. Be aware the same word may mean something different when applied to flood insurance, minimum standards, or a regulatory requirement.

The definitions in 76-5-103, MCA and ARM 36.15.101 where applicable may be considered however several of those definitions are specifically for describing the role and responsibility of the DNRC in regard to development and adoption of flood hazard studies and map and other responsibilities.

FEMA definitions 44 CFR 59.1 may be considered. Definitions are used to describe the FEMA minimum standards for floodplain management if communities want to join the National Flood Insurance Program so individuals and businesses are eligible for flood insurance in that community. However, some definitions are specifically for insurance purposes under the National Flood Insurance Program.

Another source of information including definitions is the FEMA National Flood Insurance Manual.

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 the most reasonable application. For the purpose of these regulations, the following definitions are adopted:

100-year Flood – One percent (1%) annual chance flood. See Base Flood

Alteration – Any change or addition to an artificial obstruction that either increases its external dimensions or increases its potential flood hazard. (ARM 36.15.101(2))

Appurtenant Structure – A structure in which the use is incidental or accessory to the use of a principal structure. (44 CFR 59.1)

Artificial Obstruction – Any obstruction which is not natural and includes any development, dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, road, bridge, conduit, culvert, building, refuse, automobile body, fill or other analogous structure or matter in, along, across, or projecting into any Regulated Flood Hazard Area that may impede, retard, or change the direction of the 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 the water would carry the same downstream to the damage or detriment of either life or property. See also Development. (ARM 36.15.101(3) & MCA 76-5-103(1))

Base Flood (Flood of 100 Year Frequency) – A flood having a one percent (1%) chance of being equaled or exceeded in any given year (ARM 36.15.101(4) & (44 CFR 59.1)

Base Flood Elevation (BFE) – The elevation above sea level of the Base Flood in relation to the National Geodic Vertical Datum of 1929 or the North American Vertical Datum of 1988 or unless otherwise specified. (ARM 36.15.101(5))

Basement – Any area of a building, except a crawl space, as having its Lowest floor below ground level on all sides. (44 CFR 59.1) (NFIP Insurance Manual, Rev. May 2013)

Building – A walled and roofed structure, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. (44 CFR 59.1)

Channel – The geographical area within either the natural or artificial banks of a watercourse or drain way. (MCA 76-5-103(2))

Crawl Space – An enclosure that has its interior floor area no more than 5 feet below the top of the next highest floor. See Enclosure and Sub grade Crawlspace. (NFIP Insurance Manual, Rev. May 2013)

DNRC – Montana Department of Natural Resources and Conservation

Development –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. (44 CFR59.1)

Elevated Building – A building that has no Basement and that has it lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns. A building on a crawlspace is considered an elevated building. (NFIP Insurance Manual, Rev. May 2013)

Enclosure – That portion below the lowest elevated floor of an elevated building that is either partially or fully shut in by rigid walls including a crawlspace, sub grade crawlspace, stairwell, elevator or a garage below or attached.

Encroachment – Activities or construction within the Regulated Flood Hazard Area including fill, new construction, substantial improvements, and 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.

Establish – To construct, place, insert, or excavate. (MCA 76-5-103(7) (ARM 36.15.101(9))

Existing Artificial Obstruction or Nonconforming Use – An artificial obstruction or nonconforming use that was established before land use regulations were adopted pursuant to Section 76-5-301(1), MCA. (MCA 76-5-404(3))

FEMA – Federal Emergency Management Agency

Flood Fringe – The identified portion of the Floodplain of the Regulated Flood Hazard Area outside the limits of the Floodway. (ARM 36.15.101(10))

Flood of 100 Year Frequency (Base Flood) – A flood magnitude expected to recur on the average of once every 100-years or a flood magnitude that has a 1% chance of occurring in any given year. (MCA 76-5-103(9)) (44 CFR 59.1)

Floodplain – The area of the Regulated Flood Hazard Area including and adjoining the watercourse or drainway that would be covered by the floodwater of a Base Flood. The area is partitioned into a Flood Fringe and Floodway where specifically designated. See Regulated Flood Hazard Area.

Floodway – The identified portion of the Floodplain of the Regulated Flood Hazard Area that is the channel and the area adjoining the channel that is reasonably required to carry the discharge of the Base Flood without cumulatively increasing the water surface by more than one half foot. (MCA 76-5-103(11)) (MCA 76-5-103(5))

Floodplain Administrator – Community official or representative appointed to administer and implement the provisions of this ordinance.

Flood Proofing – 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, electrical, plumbing, HVAC systems, structures and their contents. The term includes wet flood proofing, dry flood proofing and elevation of structures. ((44 CFR 59.1)

Letter of Map Change (LOMC) – 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 letter of determination from FEMA issued in response to a request that a property or structure is not subject to the mandatory flood insurance requirement because it was inadvertently located in the effective FEMA Special Flood Hazard Area. The material submitted and response from FEMA may be considered by the Floodplain Administrator for

determining if a property or structure is within the Regulated Flood Hazard area and subject to these regulations.

Letter of Map Revision Based on Fill (LOMR-F) – A letter of approval from FEMA removing the mandatory requirement for flood insurance on property based on placement of fill or an addition. Placement of fill or an addition must be preceded by a permit pursuant to these regulations. Placement of fill does not remove the development from the Regulated Flood Hazard Area or these regulations.

Letter of Map Revision (LOMR) – An official FEMA amendment to the currently effective FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map based on a physical change to the floodplain of the Special Flood Hazard Area. It is issued by FEMA and changes flood zones, delineations, and elevations on the FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map and may amend the FEMA Flood Insurance Study. It must be preceded by an approved alteration of the designated floodplain from DNRC and subsequently an amendment to the Regulated Flood Hazard Area.

Conditional Letter of Map Revision (CLOMR) – A FEMA letter of approval for a proposed physical change that when completed would propose to change the flood zones, delineation or elevations on the FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map and may amend the FEMA Flood Insurance Study through a subsequent LOMR,. The CLOMR may be considered in an evaluation by DNRC and the Floodplain Administrator during consideration of a proposed alteration to the Regulated Flood Hazard Area.

Lowest Floor – Any floor of a building including a basement used for living purposes, storage, or recreation. This includes any floor that could be converted to such a use. ((ARM 36.15.101(14)) (44 CFR 59.1))

Manufactured Home Park or Subdivision – 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. (44 CFR 59.1)

Manufactured or Mobile Home – A building that may be residential or non-residential, 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 similar vehicles placed on a site for greater than 180 consecutive days. (ARM 36.15.101(15))

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. (ARM 36.15.101(20)) (44 CFR 59.1)

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 floodplain management regulations adopted by a community. (44 CFR 59.1)

Non-Residential– Buildings including manufactured homes that are not residential including commercial, agricultural, industrial buildings and accessory buildings. See Residential.

Owner – Any person who has dominion over, control of, or title to an artificial obstruction. (MCA 76-5-103(13))

Person – Includes any individual, or group of individuals, corporation, partnership, association or any other entity, including State and local governments and agencies. (44 CFR 59.1)

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. (44 CFR 59.1)

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. (MCA 76-5-103(4)), (MCA 76-5-103(10), (ARM 36-15-101(11))

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 non-residential use. All other buildings are **non-residential**.

Riprap – Stone, rocks, concrete blocks, or analogous materials that are placed along the bed or banks of a watercourse or drainway for the purpose of preventing or alleviating erosion. (ARM 36.15.101(18))

Scour Depth – The maximum depth of streambed scour caused by erosive forces of the Base Flood.

Special Flood Hazard Area – Land area which has been specifically identified by the Federal Emergency Management Agency as the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. It is useful for the purposes of identifying flood hazards by local subdivisions of government for regulatory purposes as well as use by the National Flood Insurance Program for establishing risk zones and flood insurance premium rates. The FEMA flood hazard area zone

designation or flood risk potential is as illustrated on FEMA's Flood Hazard Boundary Map or Flood Insurance Rate Map.

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. (NFIP Insurance Manual, Rev. May 2013)

Substantial Damage – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would exceed 50 percent of the market value of the structure before the damage occurred. (44 CFR 59.1)

Substantial Improvement – Any repair, reconstruction or improvement of a structure where the cost equals or exceeds fifty percent (50) of the market value of the structure either before the improvement or repair is started or if the structure has been damaged, and is being restored, before the damage occurred;

1. Substantial improvement is considered to occur when the first construction of any wall, ceiling, floor or other structural part of the building commences;

2. 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. (ARM 36.15.101(21)) (44 CFR 59.1))

Suitable Fill – Fill material which 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. (ARM 36.15.101(22))

Variance – Means a grant or relief from the development requirements of these regulations which would permit construction in a manner that would be otherwise prohibited by these regulations by an approval pursuant Section 12. (ARM 36.15.101(23))

Violation – A finding and order pursuant to the regulations against the owner or responsible party of the failure of a structure or other development to be fully compliant with these regulations. (44 CFR 59.1)

SECTION 3. FORMS AND FEES

3.1 Forms The following forms may be required by the Floodplain Administrator:

1. **Floodplain Permit Application Form** –The "Joint Application for Proposed Work in Montana's Steams, 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.

2. **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 an elevation and or flood proofing certificate may be required where specified for the purpose of documenting compliance with the requirements of the permit.

3. **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 Section 12 .

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

5. **Floodplain Emergency Notification Form**– A written notification form required pursuant to Section 11 of these regulations.

6. **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.

3.2 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. (ARM 36.15.204(3)(b))

SECTION 4. REGULATED FLOOD HAZARD AREA

4.1 REGULATED FLOOD HAZARD AREAS

1. The Regulated Flood Hazard Areas are the 100-year floodplains illustrated and referenced in the following specific studies and reports described as follows:

1. Specific title and Order date of specific flood study including maps and areas of the 100-year floodplain, and
    1. A list of subsequent amendments to the Regulated Flood Hazard Area; and
2. Other specific studies or and Orders.

EXAMPLE FOR INFORMATIONAL PURPOSES ONLY

1. August 16, 2014 FEMA Flood Insurance Study (FIS) and Flood Insurance Rate Maps (FIRMs) for Missoula County, Montana, and
    1. As amended in conformance with DNRC Approval dated July 15, 2015 and FEMA Conditional Letter of Map Revision (CLOMR) dated August 16, 2015; and
2. Floodplain Management Study for Swan River adopted by DNRC on July 10, 2016.

2. 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 76-5-201et.seq., MCA.

3. Use allowances, design and construction requirements specifically in Sections 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.

4.2 INTERPRETATION OF REGULATED FLOOD HAZARD AREA BOUNDARIES

1. The mapped boundaries of the Floodplain illustrated in the referenced studies and maps 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 referenced in this Section. Supporting study material for Base Flood Elevations takes precedence over any map illustrations if it exists.

3. 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 drainway. (ARM 36.15.501(6))

4. 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 Section 13.

5. 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. (ARM 36.15.501(6))

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 Section 13.

6. 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.

FOR INFORMATIONAL PURPOSES ONLY

When property located within the Regulated Flood Hazard area is naturally above the Base Flood Elevation as proven by a certified elevation survey provided by an engineer or land surveyor, the property owner may submit a Letter of Map Amendment (LOMA) to FEMA in order to affect the flood risk designation for insurance purposes. Information on the process and requirements are available through FEMA.

4.3 ALTERATION OF REGULATED FLOOD HAZARD AREA

1. Revisions or updates to the specific maps and data that alter the established Floodplains or Floodway 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 4.1.2. A DNRC approved alteration consists of revisions or updates to the specific maps and data of the referenced studies in this Section and forms the basis for an amendment to the Regulated Flood Hazard Area in these regulations; (ARM 36.15.505)

2. 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 Section 4.1.1;

3. 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; (ARM 36.15.505(1)(a)) (44 CFR 65.3)

4. Any Floodplain permit application for a proposed development or artificial obstruction 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.

5. 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; (44 CFR 65.12(a)(5)

2. Evidence of notice to all property and land owners of the proposed impacts to their properties explaining the proposed impact on their property; (44 CFR 65.12(a)(3))

3. Information that demonstrates that alternatives are not feasible; (44 CFR 65.12(2))

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.

((ARM 36.15.505) (44 CFR 60.3(c)(10)) (44 CFR 60.3(d)(3)) (44 CFR 65.7(3)) (44 CFR 65.12))

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;

FOR INFORMATIONAL PURPOSES ONLY

Once DNRC approves an Alteration and the community amends the Regulated Flood Hazard Area, the community is then required per agreement between the community and FEMA to obtain approval by CLOMR from FEMA before there is any physical change to the Special Flood Hazard Area. (44 CFR 59.21, 44 CFR 65.12)

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; and

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. (ARM 36.15.505(2))

9. A floodplain permit implementing the physical change cannot be approved until a CLOMR has been issued by FEMA.

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

5.1 - GENERAL Existing artificial obstructions or nonconforming uses established before land use regulations pursuant to Section 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. (MCA 76-5-404(3)

5.2 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: ((ARM 36.15.601) (ARM 36.15.701)(1) (MCA 76-5-401) (MCA 76-5-404(3))

1. Agricultural uses, not including related structures, such as tilling, farming, irrigation, ranching, harvesting, grazing, etc; ((ARM 36.15.601(1)(a)) (MCA 76-5-401(1)))

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)) (MCA 76-5-401(2),))

3. Forestry, including processing of forest products with portable equipment; ((ARM 36.15.601(1)(d)) (MCA 76-5-401(4)))

4. 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; (44 CFR 60.3(c)(14))

5. Residential uses such as lawns, gardens, parking areas, and play areas; ((ARM 36.15.601(1)(e)) (MCA 76-5-401(5)))

6. Maintenance of the existing state of an 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; (MCA 76-5-404(3)(b))

7. 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; (ARM 36.15.601(a)(c)) (MCA 76-5-401,))

8. 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 a chain link or privacy fence requires a floodplain permit and meet the requirements of Section 9.11; (ARM 36.15.601(2)(b)) (MCA 76-5-401))

9. Addition of highway guard rail, signing and utility poles that have a low impact to the flow of water 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)) (MCA 76-5-401) (ARM 36.21.647))

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

6.1 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 Section 76-5-301, MCA have been adopted: (MCA 76-5-404(3))

1. A building for residential or non-residential purposes; (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. Notwithstanding these requirements, excavation or fill may be allowed when it is a component to a permitted use allowed in these regulations; (MCA 76-5-403(2)).

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. 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; ((ARM 36-15-605(2c)) (44 CFR 60.3(a)(3)))

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

6. Cemeteries, mausoleums, or any other burial grounds. (Higher Standard)

6.2 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: (MCA 76-5-404(3))

1. 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; ((ARM 36-15-703(1)) (44 CFR 60.3(a)(3)))

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

3. The construction or storage of an artificial obstruction subject to flotation or movement during flood level periods; (Higher Standard)

4. Cemeteries, mausoleums, or any other burial grounds; and (Higher Standard)

5. 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. (Higher Standard) (44CFR 60.22(a)(2))

SECTION 7. FLOODPLAIN PERMIT APPLICATION REQUIREMENTS

7.1 GENERAL

1. 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; ((44 CFR 60.1) (MCA 76-5-404) (ARM 36.15.204(2)(a)))

2. A Floodplain permit is required for artificial obstructions, developments and uses not specifically listed in Sections 9 and 10, except as allowed without a Floodplain permit in Section 5, or as prohibited as specified in Section 6, within the Regulated Flood Hazard Area;

3. Artificial obstructions and nonconforming uses in a Regulated Flood Hazard Area not exempt under Section 5 are public nuisances unless a Floodplain permit has been obtained; (MCA 76-5-404(1))

4. 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 Section 5; ((MCA 76-5-404(3)(b)) (ARM 36.15.204(2)(a)))

5. A Floodplain permit is required to reconstruct or repair an existing artificial obstruction that has experienced substantial damage and will undergo substantial improvement; and

6. Maintenance of an existing artificial obstruction or use that is a substantial improvement or an alteration requires a Floodplain permit. (MCA 76-5-404(3)(b))

7.2 REQUIRED FLOODPLAIN PERMIT APPLICATION INFORMATION

1. 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; ((MCA 76-5-405) (ARM 36.15.216))

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, Section 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 (44 CFR 60.3(a)(2))

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 Sections 9 and 10. ((MCA 76-5-405) (ARM 36.15.216))

SECTION 8. FLOODPLAIN PERMIT APPLICATION EVALUATION

8. 1 FLOODPLAIN PERMIT APPLICATION REVIEW

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

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

8.2. NOTICE REQUIREMENTS FOR FLOODPLAIN PERMIT APPLICATIONS:

1. 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; (ARM 36.15.204(2)(c))

2. Serve notice by first-class mail upon adjacent property owners; (ARM 36.15.204(2)(c))

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. (44 CFR 60.3 (b)(6))

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

8. 3 FLOODPLAIN PERMIT CRITERIA

1. 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 Sections 9 and 10 and other requirements of these regulations. ((MCA 76-5-406) (44 CFR 60.3))

2. 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 4.3 has been approved, the Regulated Flood Hazard Area is amended and a FEMA CLOMR where required is issued.

3. 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 section 404 of the Federal Water Pollution Control Act Amendment of 1972, 36 U.S.C. 1334.(44 CFR 60.3(a)(2)

8.4 DECISION

1. 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 or time specified) 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. ((MCA 76-5-405(2)) (ARM 36.15.204(2)(e))

2. 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. (MCA 76-5-108)

8.5 FLOODPLAIN PERMIT CONDITIONS AND REQUIREMENTS

1. 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;(44 CFR 60.3(a)(2)

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; (ARM 36.15.204(2)(g))

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 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; or

9. The applicant shall submit evidence of a submittal of a FEMA Letter of Map Revision (LOMR) to FEMA and applicable fees within 6 months of project completion and proceed with due diligence for acceptance of the document and necessary supporting materials by FEMA. (44 CFR 65.3)

SECTION 9. DEVELOPMENT REQUIREMENTS IN THE FLOODWAY

9.1 USES REQUIRING PERMITS Artificial obstructions including alterations and substantial improvements specifically listed in Sections 9.3 to 9.15 may be allowed by permit within the Floodway, provided the General Requirements in Section 9.2 and the applicable requirements in Sections 9.3 to 9.15 are met.

9.2 GENERAL REQUIREMENTS An application for a permit shall meet the following requirements:

1. 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;

2. 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 4.3 and an approved FEMA Conditional Letter of Map Revision occurs before permit issuance; and

((ARM 36.15.604) (ARM 36.15.505) (ARM 36.15.605(b)) (44 CFR 60.3(a)(3 and 4)) (44CFR 65.12(a))

3. 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; ((MCA 76-5-406(1)) (ARM 36.15.216(2)(a)))

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

3. The availability of alternative locations; ((MCA 76-5-406(3)) (ARM 36.15.216(2)(c))

4. Construct or alter the obstruction or use in such manner as to lessen the flooding danger; ((MCA 76-5-406(4)) (ARM 36.15.216(2)(d)))

5. The permanence of the obstruction or use and is reasonably safe from flooding; ((MCA 76-5-406(5) (ARM 36.15.216(2e)))

6. The anticipated development in the foreseeable future of the area which may be affected by the obstruction or use; ((MCA 76-5-406(6)) (ARM 36.15.216(2f)))

7. Relevant and related permits for the project have been obtained; (44 CFR 60.3(a)(2))

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 ((MCA 76-5-406(7)) (ARM 36.15.216(2)(g)))

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

9.3 MINING OF MATERIAL REQUIRING EXCAVATION FROM PITS OR POOLS provided, in addition to the requirements of Section 9.2, 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; (ARM 36.15.602(1)(a))

2. The excavation meets all applicable laws and regulations of other local and state agencies; and (ARM 36.15.602(1)(b))

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

9.4 RAILROAD, HIGHWAY AND STREET STREAM CROSSINGS, including other transportation related crossings provided, in addition to the requirements of Section 9.2, 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 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.

9.5 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 9.2, that:

1. The fill is suitable fill;

2. Reasonable alternate transportation routes outside the floodway are not available; and (ARM 36.15.602(3))

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

9.6 BURIED OR SUSPENDED UTILITY TRANSMISSION LINES provided, in addition to the requirements of Section 9.2, 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; (ARM 36.15.602(4))

2. Towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows; (ARM 36.15.602(4))

3. Alternatives such as alternative routes, directional drilling, and aerial crossings are considered when technically feasible; 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))

9.7 STORAGE OF MATERIALS AND EQUIPMENT provided, in addition to the requirements of Section 9.2, that:

1. The material or equipment is not subject to major damage by flooding and is properly anchored to prevent flotation or downstream movement; or (ARM 36.15.602(5)(a))

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)(b))

9.8 DOMESTIC WATER SUPPLY WELLS provided, in addition to the requirements of Section 9.2, that:

1. They are driven or drilled wells located on ground higher than surrounding ground to assure positive drainage from the well; (ARM 36.15.602(6))

2. They require no other structures (e.g. a well house); (ARM 36.15.602(6))

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 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; ((ARM 36.15.602(6)))

4. Water supply lines have a watertight seal where the lines enter the casing; (ARM 36.15.602(6))

5. All pumps and electrical lines and equipment are either of the submersible type or are adequately flood proofed; and (ARM 36.15.602(6))

6. Check valves are installed on main water lines at wells and at all building entry locations. ((44 CFR 60.3 (a)(5)) (ARM 36.15.602(6)))

9.9 BURIED AND SEALED VAULTS FOR SEWAGE DISPOSAL IN CAMPGROUNDS AND RECREATIONAL AREAS provided, in addition to the requirements of Section 9.2, demonstrate approval by Montana Department of Environmental Quality and local health and sanitation permits or approvals. ((44 CFR 60.3(a)(6)) (ARM 36.15.602(7)))

9.10 PUBLIC AND PRIVATE CAMPGROUNDS provided, in addition to the requirements of Section 9.2, that:

1. Access roads require only limited fill and do not obstruct or divert flood waters; (ARM 36.15.602(8))

2. The project meets the accessory structures requirements in this Section;

3. No dwellings or permanent mobile homes are allowed; (ARM 36.15.602(8))

4. 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; and (44 CFR 60.3(c)(14))

5. There is no large-scale clearing of riparian vegetation within 50 feet of the mean annual high water mark. (Higher Standard)

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 9.2, that:

1. The structures are not intended for human habitation or supportive of human habitation; (ARM 36.15.602(9))

2. The structures will have low flood damage potential; (ARM 36.15.602(9))

3. The structures will, insofar as possible, be located on ground higher than the surrounding ground and as far from the channel as possible; (ARM 36.15.602(9))

4. The structures will be constructed and placed so as to offer a minimal obstruction to flood flows; (ARM 36.15.602(9))

5. Only those wastewater disposal systems that are approved under health and sanitation regulations are allowed;

6. Service facilities within these structures such as electrical, heating and plumbing are flood proofed according to the requirements in Section 10; (ARM 36.15.602(9))

7. The structures are firmly anchored to prevent flotation; (ARM 36.15.602(9))

8. The structures do not require fill and/or substantial excavation;

9. The structures or use cannot be changed or altered without permit approval; and

10. There is no clearing of riparian vegetation within 50 feet of the mean annual high water mark. (Higher Standard)

9.12 CONSTRUCTION OF OR MODIFICATIONS TO SURFACE WATER DIVERSIONS provided, in addition to the requirements of Section 9.2, that the design is reviewed and approved by an engineer and includes:

1. Measures to minimize potential erosion from a Base Flood; and (ARM 36.15.603(3)(b))

2. Designs and plans that demonstrate any permanent structure in the stream is designed to safely withstand up to the Base Flood considering the forces associated with hydrodynamic and hydrostatic pressures including flood depths, velocities, impact, ice buoyancy, and uplift forces associated with the Base Flood. ((ARM 36.15.603(3)(c) ((CFR 60.3(a)(3) (CFR 60.3(d)(3)))

9.13 FLOOD CONTROL AND STREAM BANK STABILIZATION MEASURES provided, in addition to the requirements of Section 9.2, 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: ((CFR 60.3(a)(3) (CFR 60.3(d)(3)) (ARM 36.15.606))

1. LEVEE AND FLOODWALL construction or alteration:

1. Must be designed and constructed with suitable fill and be designed to safely convey a Base Flood; (ARM 36.15.606(1)(a))

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; (ARM 36.15.606(2)(a))

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
(ARM 36.15.505(1)(c)(ii)and (iii))

4. For any increase in the elevation of the Base Flood, an alteration of the Regulated Flood Hazard Area requires approvals pursuant to Section 4.3.

2. 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 (ARM 36.15.606(1)(b))

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.

3. CHANNELIZATION PROJECTS where the excavation and/or construction of an 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 9.13.2.
(ARM 36.15.101(7)) (ARM 36.15.606(1)(c))

4. DAMS:

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

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

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 Section 9.2, that:

1. The project will not increase velocity or erosion upstream, downstream, across from or adjacent to the site; (ARM 36.15.606(1)(b))

2. 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;

3. Erosion, sedimentation, and transport of the materials are not more than the amount and rate of existing natural stream banks during the Base Flood; and

4. 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 9.2 and the applicable requirements in Section 10 for residential or non-residential buildings. (MCA76-5-404(3)(b))

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

10.1 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 Section 9, with the exception of the encroachment limit of Section 9.2.2. Instead, such uses are subject to the encroachment limits of this Section 10.2.9.

Except for prohibited artificial obstructions in Section 6.2, 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 Section and General Requirements of Section 9.2, with the exception of the encroachment limit of Section 9.2.2.
(ARM 36.15.701(2))

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

1. **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 and 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 in the adopted flood hazard study referenced in Section 4, a Base Flood Elevation must be determined or obtained from a reliable source, utilizing appropriate engineering methods and analyses;

2. **Flood Damage** Structures must be constructed by methods and practices that minimize flood damage and structures must be reasonably safe from flooding; ((44 CFR 60.3(a)) (44 CFR 60.3(a)(3)(iii)))

3. **Surface Drainage** Adequate surface drainage must be provided around structures;

4. **Materials** Structures must be constructed with materials resistant to flood damage; ((44 CFR 60.3(a)) (44 CFR 60.3(a)(3)(ii))

5. **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; (ARM 36.15.701(3)(a)) ((ARM 36.15.701(3)(b))

6. **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;(44CFR 60.3(a)(3)

7. **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; ((ARM 36.15.606(1) (ARM 36.15.702(2)(c)) (ARM 36.15.801(3)(b)) (44 CFR 60.3(c)(3 &4)) (44 CFR 60.3 (d)(3)))

8. **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; (Higher Standard)

9. **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 following paragraph 4, Section 10.2.9.4, prepared by an engineer to demonstrate the effect of the structure on flood flows, velocities and the Base Flood Elevation; ((ARM 36.15.604) (44 CFR 60.3(a)(3))

   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 Section 4 and an approved FEMA Conditional Letter of Map Revision occurs before permit issuance; ((ARM 36.15.604) (ARM 36.15.505) (44 CFR 60.3(c)(13)))

   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.

10. <u>Electrical Systems Flood Proofing</u> 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; (ARM 36.15.901(1)(a))

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; (ARM 36.15.901(1)(b))

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 Regulated Flood Hazard Area or two feet above the Base Flood Elevation; and (ARM 36.15.901(1)(c))

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(1)(d))

11. <u>Heating and Cooling Systems Flood Proofing</u> 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; (ARM36.15.902(1)(a))

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; (ARM36.15.902(1)(b))

3. Electrical Systems flood proofing must be met; and (ARM36.15.902(1)(c))

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.

12. <u>Plumbing Systems Flood Proofing</u> 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 (ARM 36.15.903(1)(a))

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. (ARM 36.15.903(1)(b))

13. <u>Structural Fill Flood Proofing</u> 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 filled area must be at or 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. (ARM 36.15.101(22))

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 a 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; and

6. 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. (Higher Standard—replace sentence number 1. above)

14. <u>Wet Flood Proofing</u> Building designs with an enclosure below the lowest floor must be certified to meet the following:

1. Materials used for walls and floors are resistant to flooding to an elevation two (2) feet or more above the Base Flood Elevation; (ARM 36.15.702(2)(a))

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:

    1. Automatically allow entry and exit of floodwaters through screens, louvers, valves, and other coverings or devices;

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 below the Lowest Floor, except if the enclosure is partially subgrade, a minimum of 2 openings may be provided on a single wall; and

3. 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.

(44 CFR 60.3(c)(5)) (NFIP Insurance Manual, Rev. May 2013)

15. **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.

((ARM 36.15.702(2)(b)) (44 CFR 60.3(c)(3))

16. **Elevation of the Lowest Floor** Elevating the lowest floor may be by either suitable fill, foundation wall enclosure, stem walls, pilings, posts, piers, columns or other acceptable means; ((MCA 76-5-402(2)(b)) (44 CFR 60.3(b)(8)) (44 CFR 60.3(c)(6)))

17. **Crawl Spaces** Crawl space foundation enclosures including sub grade crawlspace enclosures below the lowest floor must meet the wet flood proofing requirements and be designed so that the crawl space floor is at or above the Base Flood Elevation. Crawl space foundations must have an inside dimension of not more than five (5) feet from the ground to the top of the living floor level and a sub grade crawlspace must also have the interior ground surface no more than two (2) feet below the exterior lowest adjacent ground surface on all sides. A sub grade foundation exceeding either dimension is a basement;

18. **Manufactured Home Anchors** For new placement, substantial improvement or replacement of manufactured homes for residential or nonresidential use including additions, the chassis 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 and 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; and
((CFR 60.3(b)(8)) CFR 60.3(c)(6)))

19. Access Access for emergency vehicles is provided. For manufactured homes, access for a manufactured home hauler is also provided. (Higher Standard)

10.3 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:

1. 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; (ARM 36.15.701(3))

2. 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 and the enclosure floor must be at or above the Base Flood Elevation. An attached garage floor must be two (2) or more feet above the Base Flood Elevation; and

3. 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.

10.4 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:

1. 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 Section. 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; ((ARM 36.15.702(2) (44 CFR 60.3(c)(3)(ii) (44 CFR 60.3(c)(3) & (4)))

2. 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 this Section;

3. **Manufactured homes** Manufactured homes proposed for use as non-residential buildings cannot be dry flood proofed; and

4. **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, dry or wet flood proofing, 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. Where electrical, heating and plumbing systems are installed, meet the flood proofing requirements in Sections 10.2.10, 10.2.11, and 10.2.12; and

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

    ((ARM 36.15.602(9) (ARM 36.15.701(3)(e)) (ARM 36.15.702(2))

SECTION 11. EMERGENCIES

11.1 General

1. 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.(ARM 36.15.217)

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

11.2 Emergency Notification and Application Requirements

1. 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.

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 these regulations.

3. 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 12. VARIANCES

12.1 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. ((44 CFR 59.1) (ARM 36.15.218))

12.2 VARIANCE APPLICATION REQUIREMENTS:

1. 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.

2. Additionally, supporting materials in a Variance application specific to the variance request including facts and information addressing the criteria in this Section must be submitted.

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.

12.3 NOTICE REQUIREMENTS FOR FLOODPLAIN VARIANCE APPLICATION

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

12.4 EVALUATION OF VARIANCE APPLICATION

1. 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; (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. 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 10.2.14, Wet Flood Proofing 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; (44 CFR 60.6 (a)(3) & (ARM 36.15.218(a))

6. The proposed use is adequately flood proofed; (ARM 36.15.218(c))

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

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

9. An encroachment does not cause an increase to the Base Flood Elevation that is beyond that allowed in these regulations; and (44 CFR 60.6(a)(1))

10. All other criteria for a Floodplain permit besides the specific development standard requested by variance are met.

2. 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 acres or less that is contiguous to and surrounded by lots with existing structures constructed below the Base Flood Elevation; or (44 CFR 60.6(a).

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 a 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 U.S. Secretary of Interior or an approved state or local government historic preservation program. (44 CFR 60.6(a))

12.5 DECISION

1. The {Board of Adjustment, County Commission, or other panel} shall:

1. Evaluate the Floodplain permit application and Variance application using

the criteria in Section 12.4, and the application requirements and minimum development standards in Section 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 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. (44CFR 60.6(a))

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.(44 CFR 60.6(a)(6) & MCA 76-5-405)

12.6 JUDICIAL REVIEW

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

SECTION 13. ADMINISTRATIVE APPEALS

13.1 GENERAL An administrative appeal may be brought before the {Board of Adjustment, County Commission, or other panel} 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.

13.2 APPEALS REQUIREMENTS The following provisions apply to administrative appeals:

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 may be submitted by an applicant and/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 by the review panel.

13.3 NOTICE AND HEARING

1. Notice of the pending appeal and hearing shall be provided pursuant to Section 8.2. The Floodplain Administrator may notify DNRC and FEMA of pending appeals.

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

13.4 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.

13.5 JUDICIAL REVIEW

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

SECTION 14. ENFORCEMENT

14.1 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 or on the written request of three titleholders of land which may be affected by the activity. The names and addresses of the persons requesting the investigation shall be released if requested. (MCA 76-5-105)(2)

14.2 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 these regulations. (MCA 76-5-105(1))

1. 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.

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.

3. If the owners do not respond, cannot be located or refuse entry to the Floodplain Administrator, the Floodplain Administrator may initiate a Search Warrant. (Higher Standard)

14.3 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 within a reasonable time or to respond by requesting an administrative review by the Floodplain Administrator.

14.4 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.

14.5 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 pursuant to Section 13.

14.6 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.

14.7 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 these regulations by injunction or other appropriate remedy.

SECTION 15. PENALTIES

15.1 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. (MCA 76-5-110)

15.2 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. (44 CFR 73.3)

The Floodplain Administrator shall provide the Federal Insurance Administrator the following:

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.