

KEN C. PETERSON
DIRECTOR

LINCOLN COUNTY DEPARTMENT OF ENVIRONMENTAL PLANNING

418 MINERAL AVENUE
LIBBY, MONTANA 59923

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Ms. Jeanine Peterson
Director, Federal Insurance and Mitigation Division
Federal Emergency Management Agency, Region VIII
Denver Federal Center Building 710
P.O. Box 25267
Denver, CO 80225-0267

29 June 2006

Ms. Peterson,

Enclosed is the documentation indicating Lincoln County has adopted floodplain management regulations that meet the standards of Paragraph 60.3(d) of the NFIP regulations and Montana state requirements. These regulations are an amendment of previous regulations that now reflect the Flood Plain Management Study for Lincoln County, dated 29 April 2005, Flood Insurance Study Number 300157CV000A.

If you have any questions or need any further information, please contact me at this address or E-mail me at kpeters@libby.org.

Ken C. Peterson
Lincoln County Floodplain Administrator

Cc: Karl Christians, NFIP State Coordinator



RESOLUTION # 736

Intent

This Resolution is passed in order to comply with Paragraph 60.3(d) of the National Flood Insurance Program regulations and the Montana Floodplain and Floodway Management Act (Title 76, Chapter 5 M.C.A.) and to ensure compliance with the requirements for the continued participation by Lincoln County in the National Flood Insurance Program. Land use regulations which are hereby adopted are to be applied to all identified 100 year floodplains within local jurisdiction and are contained in Sections V., VI, & VII of this document.

Statutory Authority

Municipalities have authority to adopt ordinances as provided for in 7-1-4123 MCA, to promote the general public health and welfare.

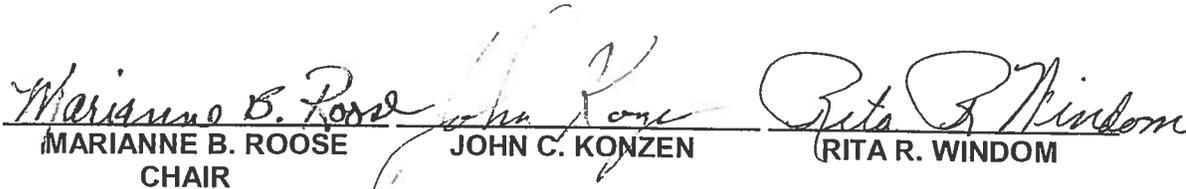
Other authority for municipalities and counties to adopt floodplain management regulations appears in 76-5-101 through 406 MCA.

Adoption

This Resolution adopts the set of comprehensive land use regulations found in Sections V, VI, and VII of this document for identified 100 year floodplains within Lincoln County.

Identification of 100 year floodplains is based on the Flood Plain Management Study for Lincoln County, dated 29 April 2005, Flood Insurance Study Number 300157CV000A. All other Resolutions are hereby repealed to the extent of any inconsistencies.

LINCOLN COUNTY BOARD OF COMMISSIONERS


MARIANNE B. ROOSE JOHN C. KONZEN RITA R. WINDOM
CHAIR



AFFIDAVIT OF PUBLICATION

STATE OF MONTANA
County of Lincoln

I, Elizabeth M. Morrison, solemnly swear that I am the Clerk of **The Western News**, a semiweekly newspaper of general circulation published twice each week at Libby in Lincoln **Notice of Public Hearing** was published in said **The Western News** for one publication(s), the first publication having been made on the **5th Day of May 2006**. And the last on the **5th Day of May 2006**; that said notice was published in the regular and entire issue of every number of the paper during the periods and times of publications, and that the notice was published in the newspaper proper and not in supplement.

Elizabeth M. Morrison
Subscribed and sworn to before me
This 23rd day of May, 2006

Teresa Shaw
Notary Public for the State of Montana
Residing at Libby, Montana
My commission expires April 14, 2009



NOTICE OF PUBLIC HEARING
PROPOSED REVISION OF
LINCOLN COUNTY FLOODPLAIN REGULATIONS

The Lincoln County Department of Environmental Planning hereby gives notice that a public hearing will be held Wednesday, May 24th, 2006, at 1:30 p.m. at the Lincoln County Commissioners Room, Lincoln County Courthouse, 512 California Ave., Libby, Montana in order to inform the public and receive comments on a proposed revision of the Lincoln County Floodplain Regulations that would more accurately reflect new F.E.M.A. floodplain maps and their effect on local floodplain management.

A copy of the proposed regulations can be obtained from the Lincoln County Department of Environmental Planning, 418 Mineral Ave., Libby, Montana 59923.

The public will have the opportunity to offer written or oral comment on the proposed revisions at this meeting.

For further information, contact the Lincoln County Department of Environmental Planning, 418 Mineral Ave., Libby, Montana, 59923; Phone (406) 293-781 ext. 229

Dated this 27th day of April 2006
/s/ Ken C. Peterson
Ken C. Peterson, Director
Lincoln County Planning Department

Published in
The Western News
May 5, 2006

Affidavit of Publication

STATE OF MONTANA, }

County of Lincoln, }

Robin Newman/Steve Newman

being duly sworn, deposes and says that he/she is

Publisher of the Tobacco Valley News, a weekly newspaper of general circulation, printed and published in Eureka, Lincoln County, Montana, and that the sub-joined notice, a copy of which is hereto attached, was published in the

regular and entire issue of said paper for 1

successive weeks, commencing on the 4

day of May, 2006

and published on the following dates thereafter:

_____ 20_____

_____ 20_____

_____ 20_____

_____ 20_____

_____ 20_____

Signed Robin Newman

Subscribed and sworn before me this 2

day of June, 2006

Paula N. Sohn

Notary Public for the State of Montana,

Residing at Eureka, Montana

My commission expires 10-1, 2006

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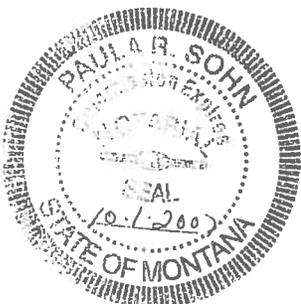
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Dated this 27th day of April 2006
Ken C. Peterson, Director
Lincoln County Planning Department

Published in the Tobacco Valley NEWS, Eureka, Mont. on May 4, 2006.



CHAPTER 1

TITLE AND PURPOSE

1.01 Title

These regulations shall be known and cited as the Lincoln County Floodplain Regulations.

These regulations are in accordance with exercising authority of the laws of the State of Montana.

1.02 Purpose

To promote the public health, safety, and general welfare, to minimize flood losses in areas subject to flood hazards, and to promote wise use of the floodplains of Lincoln County. These regulations have been established with the following purposes intended:

- A. To guide development of the 100-year floodplain within local jurisdiction consistent with the enumerated findings by:
 1. recognizing the right and need of water courses to periodically carry more than the normal flow of water;
 2. participating in coordinated efforts of federal, state, and local management activities for 100-year floodplains; and
 3. ensuring the regulations and minimum standards adopted, insofar as possible, balance the greatest public good with the least private injury.
- B. Specifically it is the purpose of these regulations to:
 1. restrict or prohibit uses that are dangerous to health, safety, and property in times of flood, or that cause increased flood heights and velocities;
 2. require that uses vulnerable to floods, including public facilities, be provided with flood protection at the time of initial construction
 3. identify lands unsuitable for certain development purposes because of flood hazards;
 4. minimize the need for rescue and relief efforts associated with flooding undertaken at the expense of the general public;
 5. ensure potential purchasers are notified that property is within a 100-year floodplain and subject to the provisions of these regulations; and

6. ensure that those who occupy 100-year floodplains assume responsibility for their actions.

CHAPTER II

DEFINITIONS

2.01 Definitions

In addition to the definition of terms contained in section 76-5-103, MCA, and unless the context requires otherwise, as used in the Act and in this chapter:

- (1) "**Act**" means Title 76, chapter 5, MCA, as amended.

- (2) "**Alteration**" means any change or addition to an artificial obstruction that either increases the size of the artificial obstruction or increases its potential flood hazard. Maintenance of an artificial obstruction is not an alteration.

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

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

- (5) "**Base flood elevation**" means the elevation above sea level of the base flood in relation to national geodetic vertical datum of 1929, unless otherwise specified.

- (6) "**Board**" means the board of natural resources and conservation.

- (7) "**Channelization project**" means the excavation and construction of an artificial channel for the purpose of diverting the entire flow of a watercourse or drainway from its established course.

- (8) "**Department**" means the department of natural resources and conservation.

- (9) "**Establish**" means to construct, place, insert, or excavate.

- (10) "**Flood fringe**" means that portion of a designated floodplain outside the limits of a designated floodway.

(11) "**Floodplain,**" means the area adjoining the watercourse or drainway which would be covered by the floodwater of a base flood except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered zone b areas by the federal emergency management agency. The floodplain consists of the floodway and flood fringe.

(12) "**Flood boundary**" the designated floodplain boundary is based on base flood elevations. The mapped floodplain boundary may be used as a guide for determining whether property is within the designated floodplain, but the exact boundary shall be determined according to the base flood elevation.

(13) "**Floodway,**" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

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

(15) "**Manufactured home**" means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. For floodplain management purposes it also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

(16) "**Permit issuing authority**" means the responsible political subdivision, if any, or the department if there is no responsible political subdivision.

(17) "**Responsible political subdivision**" means a political subdivision that has received board approval of its adopted land use regulations and administrative and enforcement procedures in accordance with section 76-5-302, MCA, and ARM 36.15.201 through 36.15.204.

(18) "**Riprap**" means stone, rock, concrete block, or analogous material that is placed along the banks or bed of a watercourse or drainway for the purpose of alleviating erosion.

(19) "**Sheetflooding**" means areas subject to 100-year flooding with depths less than one (1) foot. Sheetflood areas are generally removed from the main stream channel and have been identified as zone b by FEMA or as a sheetflood zone by the soil conservation service.

(20) "**Start of construction**" for purposes of these rules means the commencement of clearing, grading, filling or excavation for the purposes of preparing a site for construction.

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

- (a) before the improvement or repair is started, or
- (b) if the structure has been damaged, and is being restored, before the

damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first construction to any wall, ceiling, floor, or other structural part of the building commences. The term does not include:

- (i) 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
- (ii) any alteration of a structure listed on the national register of historic places or state inventory of historic places.

(22) **"Suitable fill"** means fill material which is stable, compacted, well graded, 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.

(23) **"Variance"** means a grant or relief from the requirements of these rules which would permit construction in a manner that would otherwise be prohibited by these rules.

(24) **"100 year frequency flood"** - See "base flood". (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-208 and Sec. 76-5-404, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

CHAPTER III

GENERAL PROVISIONS

3.01 Jurisdictional Area

These regulations shall apply to all lands within the jurisdiction of Lincoln County, State of Montana, shown on the Official Floodplain Maps and Official Map Amendments and Revisions as being located within a 100 year floodplain District.

3.02 Floodplain District Establishment

The floodplain districts established are defined by the base flood elevations and 100-year floodplains as delineated in the "Floodplain Management Study for Lincoln County, Montana", dated February 1980, with accompanying Flood Hazard Area Maps and subsequent Letters of Map Amendments and Map Revisions. These documents are on file in the office of the Floodplain Administrator.

3.03 Floodplain Administrator

The Lincoln County Floodplain Administrator has been designated to be the Lincoln County Planning Director. The responsibilities of this position are outlined in Chapter IV of these regulations.

3.04 Rules for Interpretation of Floodplain District Boundaries

The boundaries of the 100-year floodway shall be determined by scaling distances on the official floodplain maps, using the floodway data table contained in the flood insurance study report, and any official changes or amendments sanctioned by F.E.M.A. This information may be used as a guide for determining the 100 year floodplain boundary, but the exact location of the floodplain boundary shall be determined where the base flood elevation intersects the natural physical ground. The exact location of a floodway shall follow the actual physical location of the stream channel. In unnumbered A Zones and AO Zone floodplains, where there is a question of accuracy between a mapped floodplain boundary and actual field conditions, the Floodplain Administrator may interpret the location of the 100 year floodplain boundary based on field conditions, more detailed engineered studies, or available historical flood information.

3.05 Compliance

No structure or land use shall be located, extended, converted, or structurally altered without full compliance with the provisions of these regulations and other applicable regulations. These regulations meet the minimum floodplain development requirements as set forth by the Montana Board of Natural Resources and Conservation and the National Flood Insurance Program.

3.06 Abrogation and Greater Responsibility

It is not intended by these regulations to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or underlying zoning. However, where

these regulations impose greater restrictions, the provisions of these regulations shall prevail.

3.07 Regulation Interpretation

The interpretation and application of the provisions of these regulations shall be considered minimum requirements and liberally construed in favor of the governing body and not deemed a limitation or repeal of any other powers granted by State statute.

3.08 Warning and Disclaimer of Liability

These regulations do not imply that areas outside the delineated floodplain boundaries or permitted land uses will always be totally free from flooding or flood damages. These regulations shall not create a liability or cause of action against Lincoln County, or any officer or employee thereof for flood damages that may result from reliance upon these regulations.

3.09 Severability

If any section, clause, provision, or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

3.10 Disclosure Provision

All owners of property in an identified 100 year floodplain as indicated on the Official Floodplain Maps must notify potential purchasers or their agents that such property is subject to the provisions of these regulations unless it has been subsequently removed by official action.

CHAPTER IV ADMINISTRATION

4.01 Administration

- A. As provided in Section 3.03 of these regulations, the Floodplain Administrator has been designated by the Lincoln County Board of Commissioners, and has the responsibility of such position as outlined in these regulations.

- B. The Floodplain Administrator is hereby appointed with the authority to review floodplain development permit applications, proposed uses and construction to determine compliance with these regulations. The Floodplain Administrator may require the developer to produce documentation that all necessary permits have been received from those governmental agencies from which approval is required by federal and state law and local codes, including but not limited to Section 404 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. 1334, and under the provisions of the Natural Streambed and Land Preservation Act.
 - 1. Additional Factors – Artificial obstructions or nonconforming uses in a designated floodplain or designated floodway enforced under 76-5-301(1) and (2) MCA, and not exempt or permitted as legitimate allowable uses as defined in 76-5-401 through 76-5-403 MCA, is a public nuisance unless a variance has been granted for the obstruction or nonconforming use. Applications for a variance shall be granted or denied by the Floodplain Administrator on the basis of whether the proposed establishment, alteration, or substantial improvement of an artificial obstruction meets the requirements of these regulations. Additional factors that shall be considered for every permit application are:
 - a. the danger to life and property due to increased flood heights, increased flood water velocities, or alterations in the pattern of flood flow caused by encroachments;
 - b. the danger that materials may be swept onto other lands or downstream to the injury of others;
 - c. the proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions;
 - d. the susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
 - e. the importance of the services provided by the facility to the community;

- f. the requirement of the facility to be located within a floodplain;
 - g. the availability of alternative locations not subject to flooding for the proposed use;
 - h. the compatibility of the proposed use with existing development and anticipated development in the foreseeable future;
 - i. the relationship of the proposed use to any growth policies or floodplain management programs for the area;
 - j. the safety of access to the property in times of flooding for ordinary and emergency services, and
 - k. such other factors as are in harmony with the purposes of these regulations, the Montana Floodplain and Floodway Management Act, and the National Flood Insurance Program.
- C. An application for a variance or a floodplain development permit application is considered to have been automatically granted 60 days after the date of receipt of the application by the Floodplain Administrator unless the applicant has been notified that the permit is denied, conditionally approved, or additional information pertinent to the permit review process is required.
- D. The Floodplain Administrator shall adopt such administrative procedures as may be necessary to efficiently administer the provisions of these regulations.
- E. The Floodplain Administrator shall maintain such files and records as may be necessary to document nonconforming uses, base flood elevations, flood-proofing and elevation certificates, fee receipts, the issuance of permits, agenda, minutes, records of public meetings, and other matters related to floodplain management in Lincoln County. Such files and records shall be open for public inspection. In matters of litigation, the Lincoln County Attorney may restrict access to specific records.
- F. The Floodplain Administrator may require whatever additional information is necessary to determine whether the proposed activity meets the requirements of these regulations. Additional information may include hydraulic calculations assessing the impact on base flood elevations or velocities; level survey; or certification by a registered land surveyor, professional engineer, or licensed architect that the requirements of these regulations are satisfied.
- G. Upon receipt of an application for a variance, the Floodplain Administrator shall prepare a notice containing the facts pertinent to the application and shall publish the notice at least once in a newspaper of general circulation in the area. Notice shall also be served by first class mail upon adjacent property owners and the DNRC Floodplain Management Section. The notice

shall provide a reasonable period of time, not less than 15 days, for interested parties to submit comments on the proposed activity.

- H. Copies of all variances granted must be sent to the Department of Natural Resources and Conservation in Helena, Montana.
- I. In riverine situations, notifications by the Floodplain Administrator must be made to adjacent communities, the Floodplain Management Section (DNRC), and FEMA prior to any alteration or relocation of a stream. The flood-carrying capacity within the altered or relocated portion of any stream must be maintained. Erosion control measures shall be incorporated to ensure stability of altered channels and stream banks.

4.02 Permit Applications

- A. Activities or uses that require the issuance of a permit, include the expansion or alteration of such uses, shall not be initiated, established, or undertaken until a permit has been issued by the Floodplain Administrator.
- B. Permit applicants shall be required to furnish the information listed in Appendix A of this document as deemed necessary by the Floodplain Administrator for determining the suitability of the particular site for the proposed use.
- C. To determine that the permit specifications and conditions have been completed, applicants who have received permits are required to furnish the following at the time of completion of the project.
 - 1. Certification by a registered professional engineer or licensed land surveyor of the actual mean sea level elevation of the lowest floor (including basement) of all new, altered, or substantially improved buildings.
 - 2. If flood-proofing techniques were used for buildings, the mean sea level elevation to which the flood-proofing was accomplished must be certified by a structural engineer or licensed architect in the same manner.
 - 3. Certification shall also be required, for artificial obstructions other than buildings, that the activity was accomplished in accordance with these regulations and the design plans submitted with the application for the permit activity. This certification may be waived by the Floodplain Administrator if it can be clearly ascertained by a site inspection that the activity was accomplished in accordance with these regulations.
 - 4. Certification of flood-proofing and/or elevation shall be provided on a standard form available from the Floodplain Administrator.

4.03 Emergency Waiver

- A. Emergency repair and replacement of severely damaged public transportation facilities, public water and sewer facilities, and flood control works may be authorized. Floodplain development permit requirements may be waived if;
1. Upon notification and prior to emergency repair and/or replacement, the Floodplain Administrator determines that an emergency condition exists warranting immediate action; and
 2. The Floodplain Administrator agrees upon the nature and type of proposed emergency repair and/or replacement.
- B. Authorization to undertake emergency repair and replacement work may be given verbally if the Floodplain Administrator feels that such a written authorization would unduly delay the emergency works. Such verbal authorization must be followed by a written authorization describing the emergency condition, and the type of emergency work agreed upon, and stating that a verbal authorization had been previously given.

4.04 Variances

The permit issuing authority may grant a variance for the new construction, substantial improvement or alteration of an artificial obstruction that is not in compliance with the minimum standards contained in these rules only if:

- (a) the proposed use would not increase flood hazard either upstream or downstream in the area of insurable buildings;
- (b) refusal of a variance would because of exceptional circumstances cause a unique or undue hardship on the applicant or community involved;
- (b) the proposed use is adequately floodproofed;
- (d) reasonable alternative locations outside the designated floodplain are not available. (History: Sec. 76-5-405 and 76-5-406, MCA; IMP, Sec. 76-5-405 and 76-5-406, MCA; NEW, 1989 MAR p. 1665, Eff. 10/27/89.)

Permits for obstructions or uses to be established in the designated floodplain or designated floodway or watercourses must be specifically approved or denied within a reasonable time. Variances for obstructions or nonconforming uses in the designated floodplains or designated floodways are conclusively considered to have been granted 60 days after the receipt of the application or after that time that the responsible political subdivision specifies, unless the Floodplain Administrator notifies the applicant that the permit is denied. The approval of the Montana Department of Natural Resources and Conservation must be obtained prior to the approval by the political subdivision pursuant to ARM 36.15.216(3) of any permit application that is in variance with the adopted regulations and these rules. The Floodplain Administrator shall send to the Montana Department of Natural Resources and Conservation a copy of each permit granted.

4.05 Fees

A processing fee of \$25.00 shall be submitted with each application for a permit involving permissible uses and a fee of \$100.00 shall be submitted with each application for a request for a variance involving an artificial obstruction or non conforming use.

4.06 Violation Notice

The Floodplain Administrator shall bring any violation of these regulations to the attention of the local governing body; it's legal council; and the Montana Department of Natural Resources and Conservation.

4.07 Compliance

Any use, arrangement, or construction not in compliance as authorized by permit, shall be deemed a violation of these regulations and punishable as provided in Section 4.08. An applicant is required to submit certification by a registered professional engineer, architect, land surveyor, or other qualified person designated by the Floodplain Administrator that finished fill and lowest building floor elevations, flood proofing, hydraulic design, or other flood protection measures were accomplished in compliance with these regulations.

4.08 Penalties

Violation of the provisions of these regulations or failure to comply with any of the requirements, including permit approval prior to development of flood prone lands and conditions and safeguards established shall be considered to constitute a public nuisance and is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment not to exceed six months, or by both fine and imprisonment. Each day's continuance of a violation shall be deemed a separate and distinct offense.

CHAPTER V

SPECIFIC STANDARDS

5.01 DESIGNATED FLOODWAY MINIMUM STANDARDS

A. USES ALLOWED WITHOUT PERMITS

(1) The following open space uses shall be allowed without a permit anywhere within the designated floodway provided that they are not prohibited by any other ordinance or statute and provided that they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

(a) agricultural uses;

(b) industrial-commercial uses such as loading areas, parking areas, and emergency landing strips;

(b) private and public recreational uses such as golf courses, driving ranges, archery ranges, picnic grounds, boat-launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails;

(d) forestry, including processing of forest products with portable equipment; and

(e) residential uses such as lawns, gardens, parking areas, and play areas.

(2) In addition to the uses specified in the preceding subsection, the following uses and their accessories do not in the judgment of the board endanger health or safety or cause increased flood heights and shall thus be allowed without a permit in the designated floodway:

(a) irrigation and livestock supply wells provided that they are located at least 500 feet from domestic water supply wells; and

(b) fences, except permanent fences crossing channels. (History: Sec. 76-5-208 and 76-5-406, MCA; IMP, Sec. 76-5-401, Sec. 76-

5-405, and 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

B. USES REQUIRING PERMITS

In addition to the uses allowed under ARM 36.15.601 and Section 5.01 A., the following artificial obstructions may be permitted within the designated floodway subject to the issuance of a permit by the permit issuing authority under the conditions set forth in this rule and ARM 36.15.603 and 36.15.604:

- (1) Excavation of material from pits or pools provided that:
 - (a) a buffer strip of undisturbed land of sufficient width to prevent flood flows from channeling into the excavation is left between the edge of the channel and the edge of the excavation;
 - (b) the excavation meets all applicable laws and regulations of other local and state agencies; and
 - (c) excavated material is stockpiled outside the designated floodway;
- (2) Railroad, highway, and street stream crossings provided that the crossings are designated to offer minimal obstruction to flood flow;
- (3) Limited filling for highway, street, and railroad embankments not associated with stream crossings provided that:
 - (a) reasonable alternative transportation routes outside the designated floodway are not available; and
 - (b) such floodway encroachment is located as far from the stream channel as possible;
- (4) Buried or suspended utility transmission lines provided that:
 - (a) suspended utility transmission lines are designed such that the lowest point of the suspended line is at least 6 feet higher than the elevation of the base flood;
 - (b) towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows; and
 - (c) utility transmission lines carrying toxic or flammable materials are buried to a depth at least twice the calculated maximum depth of scour for the base flood. The maximum depth of scour may be determined from any of the accepted hydraulic engineering methods, but the final calculated figure shall be subject to approval by the permit issuing authority;

(5) Storage of materials and equipment provided that:

(a) the material or equipment is not subject to major damage by flooding and is properly anchored to prevent flotation or downstream movement; or,

(b) the material or equipment is readily removable within the limited time available after flood warning. Storage of flammable, toxic, or explosive materials shall not be permitted;

(6) Domestic water supply wells provided that:

(a) they are driven or drilled wells located on ground higher than surrounding ground to assure positive drainage from the well;

(b) well casings are watertight to a distance of at least 25 feet below the ground surface;

(c) water supply and electrical lines have a watertight seal where the lines enter the casing;

(d) all pumps and electrical lines and equipment are either of the submersible type or are adequately floodproofed; and

(e) check valves are installed on main water lines at wells and at all building entry locations;

(7) Buried and sealed vaults for sewage disposal in recreational areas provided that they meet applicable laws and standards administered by the department of health and environmental sciences;

(8) Public or private campgrounds provided that:

(a) access roads require only limited fill and do not obstruct or divert flood waters; and,

(b) no dwellings or permanent mobile homes are allowed;

(8) Structures accessory to the uses permitted in this subsection such as boat docks, marinas, sheds, permanent fences crossing channels, picnic shelters and tables, and toilets provided that:

(a) the structures are not intended for human habitation;

(b) the structures will have a low flood damage potential;

(c) the structures will insofar as possible be located on ground higher than the surrounding ground and as far from the channel as possible

(d) the structures will be constructed and placed so as to offer a minimal obstruction to flood flows;

(e) the structures will be firmly anchored to prevent flotation; and,

(f) service facilities within these structures such as electrical, heating, and plumbing facilities are floodproofed in accordance with ARM 36.15.901 through 36.15.903;

(10) All other artificial obstructions not specifically listed in this subsection or in ARM 36.15.606, not allowed under ARM 36.15.601, and not prohibited under ARM 36.15.605. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

C. STREAM DIVERSIONS

(1) As provided in the Montana Water Use Act of 1973, sections 85-2-302 and 85-2-402, MCA, all new surface water diversions and changes in place of diversion after July 1, 1973, require permits or approval, respectively, from the department. Within designated floodways, the department shall review each proposed diversion and change in place of diversion to determine if flood flows may be affected.

(2) If it appears that a proposed diversion or change in place of diversion may significantly affect flood flows, the department may require the applicant to provide additional information and to apply for a permit with the permit issuing authority under Title 76, chapter 5, MCA, as amended.

(a) the proposed diversion will increase the upstream elevation of the base flood a significant amount (0.5 of a foot or as otherwise determined by the permit issuing authority);

(b) the proposed diversion is not designed and constructed to minimize potential erosion from a base flood; and,

(c) any permanent diversion structure crossing the full width of the stream channel is not designed and constructed to safely withstand up to a base flood. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

C. MINIMUM CRITERIA FOR PERMITS

(1) In addition to the requirements of ARM 36.15.602 and 36.15.603, a permit shall not be approved for new construction, substantial improvement, or alteration of an artificial obstruction under this rule if it will increase the upstream elevation of the base flood 0.5 of a foot or as otherwise determined by the permit issuing authority or significantly

increase flood velocities. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

E. PROHIBITED USES

(1) The following artificial obstructions are prohibited within the designated floodway except as allowed by permit under ARM 36.15.602 through 36.15.604 and ARM 36.15.606:

(a) a building for living purposes or place of assembly or permanent use by human beings;

(b) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;

(c) the construction or permanent storage of any object subject to floatation or movement during flood level periods.

(2) The following artificial obstructions are also prohibited within the designated floodway:

(a) mobile homes and manufactured homes;

(b) commercial buildings;

(c) solid and hazardous waste disposal and individual or multiple family sewage disposal systems;

(d) storage of toxic, flammable, hazardous, or explosive materials. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-403 and 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

F. PERMITS FOR FLOOD CONTROL WORKS

(1) Since structural flood control works often significantly obstruct and affect floodway flow capacity, the following flood control measures shall be allowed within designated floodways subject to the issuance of a permit by the permit issuing authority and certification by a registered professional engineer of compliance with the conditions set forth in this rule:

(a) Flood control levees and floodwalls if:

(i) the proposed levees and floodwalls are designed and constructed to safely convey the base flood;

(ii) the cumulative effect of the levees and floodwalls combined with allowable flood fringe encroachments does not increase the unobstructed elevation of the base flood more than 0.5 of a foot at any point;

(b) riprap, except that which is hand placed, if:

- (i) the riprap is designed to withstand the base flood;
- (ii) the riprap does not increase the elevation of the base flood;
- (iii) the riprap will not increase erosion upstream, downstream, or across stream from the riprap site;

(c) channelization projects if they do not significantly increase the magnitude, velocity, or elevation of the flood

(d) dams provided that:

- (i) they are designed and constructed in accordance with approved safety standards, and the Montana Dam Safety Act;
- (ii) they will not increase flood hazards downstream either through operational procedures or improper hydrologic design.

(3) The permit issuing authority may establish either a lower or higher permissible increase in the elevation of the base flood than that established in subsection (1)(a)(ii) for individual levee projects based on consideration of the following criteria:

(a) the proposed levees and floodwalls, except those to protect agricultural land only, are constructed at least 3 feet higher than the elevation of the base flood;

(b) the estimated cumulative effect of other reasonably anticipated future permissible uses:

(c) the type and amount of existing flood prone development in the affected area

(d) no detrimental impact occurs to existing or foreseeable development. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

5.02 FLOOD FRINGE MINIMUM STANDARDS

A. ALLOWED USES

(1) All uses allowed in the designated floodway without a permit under ARM 36.15.601 and Section 5.01 A, shall also be allowed without a permit in the flood fringe.

- (a) In addition, individual or multiple family subsurface sewage disposal systems are allowed only when they are reviewed and approved under laws and regulations administered by the department of health and environmental sciences or the local health board.

(2) All uses allowed in the designated floodway subject to the issuance of a permit under ARM 36.15.602 through 36.15.604, ARM 36.15.606 and Section 5.01 B, shall also be allowed in the flood fringe subject to the issuance of a permit.

(3) In addition, structures including, but not limited to residential, commercial, and industrial structures, and suitable fill shall be allowed by permit from the permit issuing authority within the flood fringe subject to the following conditions and the requirements of ARM 36.15.702 and 36.15.901 through 36.15.903:

(a) Such structures or fill must not be prohibited by any other statute, regulation, ordinance, or resolution;

(b) Such structures or fill must be compatible with local growth policies, if any;

(c) Roads, streets, highways, and rail lines shall be designed to minimize increases in flood heights. Where failure or interruption of transportation facilities would result in danger to the public health or safety, the facilities shall be located 2 feet above the elevation of the base flood;

(d) Public or private structures and facilities for liquid or solid waste treatment and disposal must be floodproofed to insure that no pollutants enter flood waters. These facilities must be allowed and approved under laws and standards administered by the department of health and environmental sciences prior to any approval given by the permit issuing authority; and

(e) Agricultural structures that have a low flood damage potential such as sheds, barns, shelters, and hay and grain storage structures must meet the requirements of ARM 36.15.602 (9). (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-402, 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

B. FLOOD PROOFING FOR RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL STRUCTURES

(1) The new construction, substantial improvement, and alteration of residential structures shall meet the following conditions:

(a) Residential structures shall be constructed on suitable fill with a permanent foundation such that the lowest floor (including basement) level is 2 or more feet above the base flood elevation. The suitable fill shall be at a level no lower than the base flood elevation extending 15 feet at that elevation beyond the structure in all directions. Where existing streets, utilities, lot dimensions, or additions onto existing structures, make strict compliance with this provision impossible, the permit issuing authority may authorize a

lesser amount of fill or alternative flood proofing measures. Alternative flood proofing measures must, at a minimum, meet the conditions of ARM 36.15.702 and ARM 36.15.901 through 36.15.903.

- (i) The new placement of manufactured and mobile homes must be elevated on fill with a permanent foundation as prescribed for residential structures.
- (ii) Replacement manufactured and mobile homes in an existing mobile home park or subdivision may, instead of using suitable fill, be elevated on a concrete or mortared block foundation, or other suitable permanent foundation, and anchored to prevent flotation or downstream movement.

(2) The new construction, substantial improvement, and alteration of commercial and industrial structures shall be elevated on fill as prescribed for residential structures in ARM 36.15.702(1) or flood proofed to a level no lower than 2 feet above the base flood elevation. Flood proofing shall be accomplished in accordance with ARM 36.15.901 through 36.15.903 and shall further include the following:

(a) If the structure is designed to allow internal flooding of the lowest floor, use of the floor shall be limited to such uses as parking, loading areas, and storage of equipment or materials not appreciably affected by flood water. Further, the floors and walls shall be designed and constructed of materials resistant to flooding up to an elevation of 2 or more feet above the elevation of the base flood. Structures designed to allow internal flooding shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the exit and entry of flood waters.

(b) Structures whose lowest floors are used for purposes other than parking, loading or storage of materials resistant to flooding shall be flood proofed up to an elevation no lower than 2 feet above the elevation of the base flood. Flood proofing shall include impermeable membranes or materials for floors and walls and watertight enclosures for all windows, doors, and other openings. These structures shall be designed to withstand the hydrostatic pressures and hydrodynamic forces resulting from the base flood.

(c) The new construction, substantial improvement and alteration of commercial or industrial structures floodproofed according to these requirements must be designed and flood proofing measures certified as adequate by a registered professional engineer or architect. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

C. PROHIBITED USES

The following artificial obstructions and nonconforming uses are prohibited within the flood fringe:

(1) solid and hazardous waste disposal; and

(2) storage of toxic, flammable, hazardous, or explosive materials. Storage of petroleum products may be allowed by permit if stored on compacted fill at least 2 feet above the elevation of the base flood and anchored to a permanent foundation that is properly anchored to the ground. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

5.03 DESIGNATED FLOODPLAIN ONLY MINIMUM STANDARDS

A. ALLOWED USES WHERE FLOODWAY NOT DESIGNATED OR NO FLOOD ELEVATIONS

For those watercourses or drainways in which there is a designated floodplain but not a designated floodway or where no flood elevations are available, all uses allowed in a designated floodway under ARM 36.15.601 and Section 5.01 A, without a permit shall also be allowed without a permit in such designated floodplain.

All other uses within the designated floodplain shall require permits from the permit issuing authority. The following conditions insofar as each is applicable shall be attached to each permit approval:

(a) If the elevation of the base flood is available, residential structures must be built on compacted fill as specified in ARM 36.15.702(1). If such elevation is not available, the highest known historical flood elevation may be used to establish fill heights or an elevation 2 feet above the highest adjacent grade, whichever is higher;

(b) If the elevation of the base flood is available, commercial and industrial structures must meet the flood proofing requirements set forth in ARM 36.15.702 (2). If such elevation is not available, the highest known historical flood elevation may be used to establish flood proofing heights or an elevation 2 feet above the highest adjacent grade, whichever is higher;

(c) Proposed structures must be anchored to prevent flotation or collapse and must be located as far from stream channels as is practicable; and

(d) Sanitary sewage systems must be allowed and approved under laws and standards administered by the department of health and environmental sciences or the local health board.

- (3) Where a proposed development within such designated floodplain may significantly increase flood velocities or depths, the permit issuing authority may require a permit applicant to furnish additional hydraulic and survey information before acting upon the permit application. This information may include, but is not limited to, any of the following:
- (a) valley cross sections of the watercourse and adjoining floodplain;
 - (b) certification by a qualified professional engineer that floodproofing measures are reasonably adequate to protect against major flood damages; or
 - (b) a hydrologic study documenting probable effect on upstream or downstream property owners.
- (4) Permits for such proposed developments may be modified or denied if the additional information shows that proposals would increase flood damages to other properties or would cause a threat to the health or safety of its occupants. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-402, 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

5.04 SHALLOW FLOODING (AO ZONES)

Shallow flooding areas are delineated as AO Zone floodplains on the Flood Insurance Rate Maps. The provisions of Section 5.02 Floodway Fringe areas, of these regulations shall apply to AO Zone floodplains. The depth of the 100 year flood is indicated as the depth number on the Flood Insurance Rate Maps. The 100 year flood depth shall be referenced to the highest adjacent grade or stream flow line in determining which fill or flood proofing heights to use in applying the provisions of Section 5.02 A and Section 5.02 B of these regulations. In the absence of depth or elevation information, a minimum 2 foot depth shall be used.

Floodplain Boundary Interpretation. The Floodplain Administrator shall make interpretations where needed as to the exact location of an AO Zone floodplain boundary when there is a question as to the accuracy of the mapped boundary with respect to actual field conditions.

5.05 FLOOD PROOFING REQUIREMENTS

A. FLOOD PROOFING REQUIREMENTS FOR ELECTRICAL SYSTEMS

All electrical service materials, equipment, and installation for uses permitted with or without a permit in a designated floodplain or floodway shall conform to the following conditions:

- (a) 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 2 feet above the elevation of the base flood;

(b) Portable or movable electrical equipment may be placed below the elevation of the base flood provided that the equipment can be disconnected by a single plug-and-socket assembly of the submersible type;

(c) The main power service line shall have automatically operated electrical disconnect equipment or manually operated electrical disconnect equipment located at an accessible remote location outside the designated floodplain and above the elevation of the base flood; and

(d) All electrical wiring systems installed below the elevation of the base flood shall be suitable for continuous submergence and may not contain fibrous components. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-401 through 76-5-402, and Sec. 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

B. FLOODPROOFING REQUIREMENTS FOR HEATING SYSTEMS

Heating systems for allowed and permitted floodplain and floodway uses shall conform to the following conditions:

(a) Float operated automatic control valves must be installed in supply lines to gas furnaces so that the fuel supply is automatically shut off when flood waters reach the floor level where the furnaces are located;

(b) Manually operated gate valves that can be operated from a location above the elevation of the base flood shall also be provided in gas supply lines; and

(c) Electric heating systems must be installed in accordance with ARM 36.15.901. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-401 through 76-5-402, and Sec. 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

C. FLOOD PROOFING REQUIREMENTS FOR PLUMBING SYSTEMS

Plumbing systems for allowed and permitted floodplain and floodway uses shall conform to the following conditions:

(a) Sewer lines, except those to buried and sealed vaults, must have check valves installed to prevent sewage backup into permitted structures; and

(b) All toilet stools, sinks, urinals, and drains must be located such that the lowest point of possible water entry is at least 2 feet above the elevation of the base flood. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-401 through 76-5-402, and Sec. 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)