



NOTICE OF PUBLIC MEETING

The Lewis and Clark County Commissioners Public Meeting will be held on Thursday, October 24, 2024, at 9:00 AM in Commission Chambers, Rm 330.

It is the policy of the Board of County Commissioners to render a decision at a later date after they have had ample time to consider all oral and written public testimony. The BoCC may render a final decision on the same date if substantial new information is not received. Public comment must be limited to matters under the jurisdiction of the Commission.

1. **Pledge of Allegiance**

2. **Consent Action Items**

- a. Vendor Claims Report for Week Ending October 25, 2024. (Marni Bentley)
- b. Public Meeting Minutes for October 10, 15, 2024. (Brandi Spangler)
- c. Resolution 2024-112 Declaring County Property Surplus Property. (Audra Zacherl)
- d. Resolution 2024-113 Declaring County Property Surplus Property. (Audra Zacherl)

3. **Contract Between Lewis and Clark County and Tyler Technologies, Inc. (Amy Reeves)**

The Commissioners will consider the contract with Tyler Technologies, Inc. for processing credit card payments. The contract begins upon approval by both parties through September 14, 2026. With this contract, credit card fees are paid by the credit card user and no cost to the county.

4. **Request for Unobligated American Rescue Plan Act Funds. (Ann McCauley and Jenny Chambers)**

The Commissioners will consider the request from the County Public Works Department for the County's remaining unobligated American Rescue Plan Act (ARPA) funds.

5. **Request for Change of Scope for Helena Housing Authority's American Rescue Plan Act Award. (Ann McCauley)**

The Commissioners will consider a change of scope request from the Helena Housing Authority for their previously approved American Rescue Plan Act (ARPA) Local Fiscal Recovery fund award in the amount of \$25,000.

6. **Grant Award to Lewis and Clark County from the Montana Secretary of State's Office. (Connor Fitzpatrick)**

The Commissioners will consider accepting the grant award from the Montana Secretary of State's Office for the Help America Vote Act (HAVA) Grant Award in the amount of \$40,912.

7. **Resolution No. 2024-111 to Adopt Amendments to the Floodplain Ordinance and Establish an Effective Date. (Worby McNamee)**

The Commissioners will consider the resolution.

8. **Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.**

9. **Adjourn**

ADA NOTICE

Lewis and Clark County is committed to providing access to persons with disabilities for its meetings, in compliance with Title II of the Americans with Disabilities Act and the Montana Human Rights Act. The County will not exclude persons with disabilities from participation at its meetings or otherwise deny them County's services, programs, or activities. Persons with disabilities requiring accommodations to participate in the County's meetings, services, programs, or activities should contact Keni Grose, as soon as possible to allow sufficient time to arrange for the requested accommodation, at any of the following:

- (406)-447-8316
- kgrose@cccountymt.gov
- TTY Relay Service 1-800-253-4091 or 711
- 316 N Park, Room 303





ATTACHMENTS:

| Description | Type |
|----------------------------|------------|
| □ 10-10-24 Meeting Minutes | Attachment |
| □ 10-15-24 Meeting Minutes | Attachment |



PUBLIC MEETING

October 10, 2024
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, October 10, 2024, at 9:00 AM in Commission Chambers, Rm 330.

Roll Call

Chair Andy Hunthausen called the meeting to order at 9 a.m.

Commissioner Candace Payne and Commissioner Tom Rolfe were present. Others attending all or a portion of the meeting included Roger Baltz, Nicho Hash, Keegan Shea, Kellie McBride, Drenda Niemann, Frank Cornwell, Marni Bentley, Ali Mandell, Connor Fitzpatrick, Wendy Smith Adamson, Jim Thomas, John Keller, Constance Horder, Joseph Linden, and Brandi Spangler, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Public Meeting Minutes for September 26, October 1, 2024. (Brandi Spangler)

[1:57] Roger Baltz, Chief Administrative Officer, reported on consent action item 2a and recommended approval.

No public comment was received.

A motion to Approve was made by Commissioner Payne and seconded by Commissioner Rolfe. The motion Passed on a 3-0 vote.

Revisions to the Lewis and Clark County Investment Policy. (Frank Cornwell)

[1:55] Frank Cornwell, Chief Financial Officer, presented a revision to the Investment Policy to align with the current market conditions by increasing the option to purchase agency and treasury notes to 30%, as recommended by the Investment Committee. Staff recommends approval of the revision.

No public comment was received.

A motion to Approve was made by Commissioner Rolfe and seconded by Commissioner Payne. The motion Passed on a 3-0 vote.

Contract Between Lewis and Clark County and MadAve Communications, LLC. (Kellie Goodwin McBride)

[9:54] Kellie McBride, Criminal Justice Services Director, presented a contract with MadAve Communications in an amount not to exceed \$6,000 for marketing and communications services. The contract period begins upon approval of both parties through April 30, 2025. Staff recommends approval of the contract.

[14:30] Ali Mandell, MadAve Communications, gave an overview of her professional background and explained this is a unique process with the information desired to share with the public.

No public comment was received.

A motion to Approve was made by Commissioner Payne and seconded by Commissioner Rolfe. The motion Passed on a 3-0 vote.

Grant Application to the Montana Department of Public Health and Human Services. (Drenda Niemann)

[38:53] Drenda Niemann, Public Health Officer, presented a grant application to the Montana Department of Public Health and Human Services for the Opioid Education and Naloxone Distribution Program for a \$100,000 award per year for three years. Staff recommends approval of the grant application.

No public comment was received.

A motion to Approve was made by Commissioner Rolfe and seconded by Commissioner Payne. The motion Passed on a 3-0 vote.

Grant Task Order HHS-ECFS-00000594 to Lewis and Clark County from the Montana Department of Public Health and Human Services. (Drenda Niemann)

[42:42] Drenda Niemann, Public Health Officer, presented a grant task order from the Department of Public Health and Human Services in the amount of \$62,586 to implement the Maternal Child Health Block Grant Program. The effective date is October 1, 2024 through September 30, 2025. Staff recommends approval of the grant task order.

No public comment was received.

A motion to Approve was made by Commissioner Payne and seconded by Commissioner Rolfe. The motion Passed on a 3-0 vote.

Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.

[47:08] Wendy Smith Adamson, Canyon Creek Rural Fire District, is concerned about public safety and would like to submit a request for assistance on filing a redress.

[49:13] Jim Thomas, Trustee of Canyon Creek Rural Fire District, read a resignation letter to the Commissioners from Jonathan Cunningham. He would like direction of articles of redress and would like to leave documents for the Commissioners to review.

[53:24] John Keller, Canyon Creek, stated it is a danger to the community that Jonathan Cunningham and Crystal Cunningham resigned from the Canyon Creek fire department, as their response times and EMS experience were highly valuable. He does not believe everyone on the fire district are qualified to provide services in cases of emergencies.

[1:00:35] Constance Horder, Canyon Creek, agrees the fire district is out of order and feels there is a conflict of interest having a married couple be the majority voters along with the former fire chief. She agrees the interim chief is not qualified to be in that position.

[1:16:27] Nicho Hash, Deputy County Attorney, pointed out a redress is a new statute, and they are looking into it.

Adjourn

There being no further business, the meeting adjourned at 10:17am.

Meeting minutes approved on _____

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS

Andy Hunthausen, Chair

Candace Payne, Vice Chair

Tom Rolfe, Member

ATTEST:

Amy Reeves, Clerk of the Board



PUBLIC MEETING

October 15, 2024
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, October 15, 2024, at 9:00 AM in Commission Chambers, Rm 330.

Roll Call

Chair Andy Hunthausen called the meeting to order at 9 a.m.

Commissioner Candace Payne and Commissioner Tom Rolfe were present. Others attending all or a portion of the meeting included Roger Baltz, Nicho Hash, Jessica Makus, Drenda Niemann, Ann McCauley, Randall Coty, Max Eskildsen, Jeremy Gilliam, Rick Grady, and Brandi Spangler, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

There were no consent action items.

Resolution 2024-110 to Create the Oleo Acres Rural Improvement District No. 2024-8. (Jessica Makus)

[1:21] Jessica Makus, Special Districts Coordinator, presented a resolution to create the Oleo Acres Rural Improvement District. The 30 benefitting properties will be levied a 15-year debt service assessment of \$171 annually with an additional \$150 per year for maintenance. Legal notice was sent to each property owner and published in the Helena Independent Record. As of the closing of the comment period on October 10, 2024, no public protest was received. Staff recommends approval of the resolution.

No public comment was received.

A motion to Approve was made by Commissioner Rolfe and seconded by Commissioner Payne. The motion Passed on a 3-0 vote.

Grant Task Order HHS-ECFS-00000468 Amendment One to Lewis and Clark Public Health from Montana Department of Public Health and Human Services. (Drenda Niemann)

[15:55] Drenda Niemann, Public Health Officer, presented an amendment to the grant task order with the Montana Department of Public Health and Human Services to extend the term to

September 30, 2025 and increase the total amount to \$662,189 for the Women, Infants, and Children (WIC) Supplemental Nutrition Program. Staff recommends approval of the amendment.

No public comment was received.

A motion to Approve was made by Commissioner Payne and seconded by Commissioner Rolfe. The motion Passed on a 3-0 vote.

Amendment No. 2 to Grant Award Agreement Between Lewis and Clark County and the Montana Department of Natural Resources and Conservation. (Ann McCauley)

[24:39] Ann McCauley, Grants and Purchasing Director, presented an amendment to an American Rescue Plan Act (ARPA) Minimum Allocation Grant Award agreement with the Montana Department of Natural Resources and Conservation for water/sewer upgrades for the Ten Mile/Pleasant Valley Water and Sewer District. The amendment will add construction activities to the project scope and expand the project period to March 31, 2025. Staff recommends approval of the amendment.

No public comment was received.

A motion to Approve was made by Commissioner Rolfe and seconded by Commissioner Payne. The motion Passed on a 3-0 vote.

Amendment No.1 to Subrecipient Agreement Between Lewis and Clark County and Ten Mile/Pleasant Valley Water-Sewer District. (Ann McCauley)

[29:01] Ann McCauley, Grants and Purchasing Director, presented an amendment to a subrecipient agreement with Ten Mile/Pleasant Valley Water-Sewer District to execute an American Rescue Plan Act (ARPA) Minimum Allocation Grant for Water and Sewer Infrastructure. The amendment extends the period of performance to March 31, 2025 and adds construction work to the project scope. Staff recommends approval of the amendment.

No public comment was received.

A motion to Approve was made by Commissioner Payne and seconded by Commissioner Rolfe. The motion Passed on a 3-0 vote.

Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.

[32:20] Max Eskildsen, Canyon Creek Fire District, gave an update on Canyon Creek Rural Fire District. There was a security system installed last weekend due to items coming up missing, including medical supplies which will total \$1,400 to replace. He is requesting the fire truck be returned to the station and requests assistance from the Sheriff's Office.

[38:18] Rick Grady, chair of Canyon Creek Fire District, brought an agenda for the next meeting and submitted his certificate of completion of the Montana Fire Trustees Association Annual Conference he recently attended and a letter from 1994 that supports that he is trained for electrical and fire safety.

[44:42] Jeremy Gilliam, Canyon Creek interim fire chief, desires to move forward. Birdseye Fire District does have concerns though they are willing to continue to support Canyon Creek.

He listed his qualifications for his position and stated he is committed to the community. Currently, there are several applicants for the board.

Adjourn

There being no further business, the meeting adjourned at 9:50am.

Meeting minutes approved on _____

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS

Andy Hunthausen, Chair

Candace Payne, Vice Chair

Tom Rolfe, Member

ATTEST:

Amy Reeves, Clerk of the Board



ATTACHMENTS:

Description

▣ Resolution

Type

Resolution

RESOLUTION 2024 - 112

A RESOLUTION DECLARING COUNTY PROPERTY SURPLUS PROPERTY

WHEREAS, Section 7-8-2211, MCA, authorizes the Board of County Commissioners to sell, trade, or exchange any real or personal property, however acquired, belonging to the County that is not necessary to the conduct of county business or the preservation of its property; and

WHEREAS, the County property described on the attached list has been determined by the Board of County Commissioners to be unnecessary to the conduct of county business or the preservation of its property and by such determination has been declared surplus property; and

WHEREAS, the property listed on the attached list reasonably has a value of \$2,500 or more and is indicated therein; and

NOW, THEREFORE, BE IT RESOLVED, by the Lewis and Clark County Commissioners, that said county property is declared surplus property and be taken off the inventory.

DATED this ____ day of _____ 20____.

LEWIS AND CLARK COUNTY
BOARD OF COUNTY COMMISSIONERS

Andy Hunthausen, Chair

ATTEST:

Amy Reeves, Clerk of the Board

EXHIBIT "A"

| <u>Description</u> | <u>Asset #</u> | <u>Serial/VIN #</u> | <u>Mileage</u> | <u>Reason</u> | <u>Value</u> | <u>Department</u> |
|--|----------------|---------------------|----------------|---------------|--------------|-------------------|
| 1. 1977 Caterpillar Wheel Loader (#170) | 2558 | 75J763 | 8,000 Hrs | Auction | \$3,000 | Public Works |



ATTACHMENTS:

Description

▣ Resolution

Type

Resolution

RESOLUTION 2024 - 113

A RESOLUTION DECLARING COUNTY PROPERTY SURPLUS PROPERTY

WHEREAS, Section 7-8-2211, MCA, authorizes the Board of County Commissioners to sell, trade, or exchange any real or personal property, however acquired, belonging to the County that is not necessary to the conduct of county business or the preservation of its property; and

WHEREAS, the County property described on the attached list "Exhibit A" has been determined by the Board of County Commissioners to be unnecessary to the conduct of county business or the preservation of its property and by such determination has been declared surplus property; and

WHEREAS, the property on "Exhibit A" individually have a value less than \$2,500; and

NOW, THEREFORE, BE IT RESOLVED, by the Lewis and Clark County Commissioners, that said county property is declared surplus property and be taken off the inventory.

DATED this ___ day of _____ 20__.

LEWIS AND CLARK COUNTY COMMISSIONERS

Andy Hunthausen, Chair

ATTEST: _____
Amy Reeves, Clerk of the Board

EXHIBIT "A"

| <u>Description</u> | <u>Asset #</u> | <u>Serial/VIN #</u> | <u>Mileage</u> | <u>Reason</u> | <u>Department</u> |
|-------------------------------|----------------|---------------------|----------------|---------------|-------------------|
| 1. Transmission Flush Machine | 11300 | 115118 | N/A | Auction | Public Works |



Contract Between Lewis and Clark County and Tyler Technologies, Inc. (Amy Reeves)

Presented By:

Summary:

The Commissioners will consider the contract with Tyler Technologies, Inc. for processing credit card payments. The contract begins upon approval by both parties through September 14, 2026. With this contract, credit card fees are paid by the credit card user and no cost to the county.

Legal Review Required:

ATTACHMENTS:

| Description | Type |
|--|----------|
| ☐ Tyler Technologies Contract | Contract |
| ☐ Contract Cover Sheet | Contract |
| ☐ Competitive Procurement Exception Request Form | Contract |



PURCHASE ORDER

for Products and Services from
Tyler Technologies, Inc.

NASPO ValuePoint Platform Management and Master Data Management
Contract AR3764

This Purchase Order Number MTLC0828024 (“Purchase Order” or “PO”), dated August 28, 2024 is issued pursuant to Tyler Technologies, Inc.’s NASPO ValuePoint Citizen Engagement Platform Master Agreement (“Master Agreement”) which was awarded from the State of Utah, Division of Purchasing, acting as the lead state (“Lead State”) for the NASPO ValuePoint Cooperative Purchasing Program (“NASPO”), and the State of Montana’s Participating Addendum dated April 19, 2024, (the “Participating Addendum”) (collectively the “Prime Contract”). Pursuant to said Prime Contract, this Purchase Order is made by and between Montana Interactive, LLC, dba Tyler Montana, a wholly owned subsidiary of Tyler Technologies, Inc. (“Contractor”) and the Lewis and Clark County Treasurer/Clerk and Recorder (hereinafter referred to as “Purchasing Entity”). Unless otherwise indicated herein, capitalized terms used in this PO without definition shall have the respective meanings specified in the Prime Contract and all section, schedule and attachment references in this PO shall be to applicable sections, schedules and attachments of the Prime Contract.

- New Purchase Order – this PO is issued subject to the terms and conditions of the Prime Contract.
- Change Order/Amendment/Modification – except as provided herein, all terms and conditions of the original Purchase Order remain unchanged.

| | | |
|---|--|--------------------------------------|
| Name of Purchasing Entity/Department: | Date of Order: | End Date: |
| Lewis and Clark County Treasurer/Clerk and Recorder | August 28, 2024 | 09/14/2026 unless otherwise extended |
| Purchasing Entity POC: | | |
| Name: Amy Reeves | | |
| Email: areeves@lccountymt.gov | | |
| Phone: 406-447-8326 | | |
| Purchasing Entity Mailing Address: | Purchasing Entity Billing Address (if different): | |
| 316 N Park Rm 113 Helena, MT 59623 | 316 N Park Rm 113 Helena, MT 59623 | |

| | | |
|---|--|-------------|
| Contractor: | Address: | EIN: |
| Tyler Technologies, Inc. | 5101 Tennyson Parkway Plano, TX 75024 | 75-2303920 |
| Contractor POC: | | |
| Name: Samantha Mongoven | | |
| Email: Samantha.Mongoven@TylerTech.com | | |
| Phone: 406-461-4473 | | |

1. Services to be Performed.

| Product Name: | Description: | NASPO Price: | Discount applied to NASPO Price: | Order Price: |
|---------------------------------|---|---|---|---------------------|
| Tax-Wise Common Checkout Page | Payments Platform – ACH Processing | \$1.00 Per transaction | \$0.00 | \$1.00 |
| Tax-Wise Common Checkout Page | Payments Platform - Credit & Debit Card Processing | Up to \$1 per transaction + 3% transaction value | \$1.00 | 3% |
| Over the Counter (OTC) Platform | Payments Platform – ACH Processing + Payments Platform – Point-of-Sale | \$1.00 per transaction + \$3.00 per transaction + Payment Processing | \$2.00 | \$1.00 + \$1.00 |
| Over the Counter Platform | Payments Platform - Credit & Debit Card Processing + Payments Platform – Point-Of-Sale | Up to \$1 per transaction + 3% transaction value + \$3.00 per transaction + Payment Processing | \$3.00 | 3% |

- a. Contractor will provide Purchasing Entity with credit card payment processing services for any credit or debit card with the Visa, Discover, MasterCard or American Express logo. Other payment types can be accepted by written mutual consent of both parties i.e., Apple Pay, PayPal, etc.
- b. Contractor will provide Purchasing Entity with ACH payment processing services.

- c. Contractor will provide email and/or telephone support during normal business hours and will also provide a 24x7 monitored outreach mechanism to report Severity 1 Incidents. Contractor will pass customer support issues beyond the scope of this service to the Purchasing Entity. Except as included herein, Purchasing Entity will provide all other customer service to end-user.
- d. Contractor will provide Updates, when available, for the Software.
- e. Contractor will resolve any Error in the Software reported by Purchasing Entity or otherwise known to Contractor in accordance with the following priority level to such Error:
 - i. Severity 1 Incident. In the event the Software is rendered unavailable or if the delivery of expected critical functionality thereof has failed (such as a comprehensive outage or consistent transaction failures), Contractor shall use commercially reasonable efforts to resolve the issue within one hour 80% of the time, measured annually, after receiving Purchasing Entity notification of such an event. Contractor shall provide Purchasing Entity with periodic reports on the status of the error and resolution.
 - ii. Severity 2 Incident. In the event the Software or the delivery of expected critical functionality thereof is available but has substantially degraded in performance (such as intermittent availability or irregular transactions issues), Contractor shall use commercially reasonable efforts to resolve the issue within six hours 80% of the time, measured annually, after receiving Purchasing Entity notification of such an event. Contractor shall provide Purchasing Entity with periodic reports on the status of the error and resolution.
 - iii. Severity 3 Incident. In the event the delivery of expected non-critical Software functionality has degraded in performance without material impact on Purchasing Entity outcomes, Contractor shall use commercially reasonable efforts to resolve the error within five Business Days of receiving Purchasing Entity notification of such error. Contractor shall provide Purchasing Entity with periodic reports on the status of the error and resolution.
- f. A chargeback occurs when an end-user disputes the transaction with their card issuing bank. The card issuing bank will contact Contractor asking for supporting documentation to verify that the transaction was legitimate and processed with the consent of the end-user. Contractor will work with the card issuing bank to resolve chargebacks in a timely manner. Contractor will “net” all Chargeback amounts from future disbursements. However, should Contractor resolve the Chargeback in the Purchasing Entity’s favor, the amount will be recredited to Purchasing Entity. In the event that chargeback is upheld in the End User’s favor, it is the responsibility of the Purchasing Entity (rather than Contractor) to pursue the collection on the Chargeback amount from the End User. Purchasing Entity will provide Contractor with any support and supporting documentation that may be needed to process Chargebacks and Refunds.

- g. Contractor understands that from time to time Purchasing Entity may have to refund end-user the transaction amount. Purchasing Entity will coordinate with Contractor to verify the refund amount and it will be the responsibility of the Purchasing Entity to issue refunds to end-users at Purchasing Entity's discretion. However, due to the potential of large transaction payments, Contractor may ask Purchasing Entity to remit to Contractor the refund amount, before Contractor issues the refund. In cases where Contractor issues a refund without requesting Purchasing Entity to remit payment prior to issuing the refund, Contractor will "net" all refunded amounts from future disbursements.
- h. Contractor will "net" all refunded amounts from future disbursements if sufficient funds are available through future disbursements within the same week. If sufficient funds to reimburse refunded amounts are not available through future disbursements within the same week, Purchasing Entity will promptly reimburse Contractor for such amounts. It is the Purchasing Entity's responsibility (rather than Contractor) to pursue collection on all ACH returns from the end user.
- i. As Contractor is acting as the Merchant of Record, all funds that are processed through TPE will be deposited into an account owned by Contractor. As settlement of credit card varies by brand and ACH returns vary by applicable bank, Contractor will disburse all settled transactions, net of Fees, Refunds, Chargebacks, and ACH returns, to Purchasing Entity 72 hours after the close of a Business Day.
- j. Consistent with the services currently provided to the Purchasing Entity under the prior agreement with the Contractor and continuing such services under the terms herein, as Contractor is acting as the Merchant of Record, all funds that are processed through TPE will be deposited into an account owned by Contractor. As settlement of credit card varies by brand and ACH returns vary by applicable bank, Contractor will disburse all settled transactions, net of Fees, Refunds, Chargebacks, and ACH returns, to Purchasing Entity 72 hours after the close of a Business Day.
- k. Contractor receives funds as an agent of the Purchasing Entity, and the funds become the property of the Purchasing Entity immediately upon receipt by Contractor. The Purchasing Entity shall regard receipt of these funds by Contractor as equivalent for all purposes to receipt of the funds by the Purchasing Entity directly. In the unlikely event that Contractor fails to disburse the funds to the Purchasing Entity, the Purchasing Entity will nevertheless consider itself to have been paid the funds by the user and will not attempt to recover the funds or withhold services from the end user. Nothing in this paragraph prejudices any remedies that the Purchasing Entity might have against Contractor. The Parties understand and agree to comply with PCI DSS and any amendments thereto. The Parties acknowledge that each Party is responsible for the security of cardholder data in its possession.

- I. The Parties agree to maintain a list of which PCI DSS requirements are managed by Purchasing Entity, and which requirements are the responsibility of Contractor to include in Contractor PCI DSS reviews. Upon request, a Party agrees to provide the other Party (in this case, also a requesting party) with written proof of its compliance with the PCI DSS. The Contractor is providing Payment Services Devices, Purchasing Entity shall be responsible for compliance with PCI DSS version 4.0 and any more current versions regarding the Payment Service Devices, including, but not limited to, the maintenance, inspection, and training obligations set forth in PCI DSS Requirement 9.9.

2. Deliverables. The following are the Deliverables to be provided under this PO:

| Deliverables | Type of Deliverable |
|--|--|
| Common Checkout Pages Payment Processing Integration | Contractor will provide Purchasing Entity with Common Checkout Pages (CCP). CCP is a proprietary web-based module that will act as the interface for the end-user to input certain data, including name, address, and credit card information, necessary to process a payment. CCP will be integrated to Tyler Technologies Tax-Wise Software and TPE - TPE® proprietary payment engine which acts as the middleware between CCP and the credit card authorization network to obtain authorization and settlement of funds from the end-user’s card issuing bank. |
| Over the Counter (OTC) Module access for payment processing | Contractor will continue to provide Purchasing Entity with access to process payments through the Over the Counter (OTC) Module as provided in Purchasing Entities prior contract. The OTC payment solution is available to government entities wishing to offer electronic payments. Easy to set up, OTC allows Purchasing Entities to securely accept debit and credit cards, as well as ACH/electronic checks (eCheck). Purchasing Entities can also offer customers a link to allow them to make payments at their convenience - anytime, 24/7. OTC has rich reporting capabilities and offers direct deposit into a private bank account. |

3. Time Schedules and Resources.

- a. Upon signing of the PO by the Purchasing Entity, the payments project sprint will be added to the schedule for implementation of the CCP integration to Tyler Tax-Wise software.
- b. The estimated time schedule for completing the Common Checkout Page payment integration is 10-12 hours.
- c. The estimated time schedule and person hours required to complete the project is dependent upon the timely response and participation of the Purchasing Entity.

4. Payments.

- a. Fees.

- i. In consideration of the Services provided under this PO, the Purchasing Entity has elected to pass on the Payments Platform Point-of-Sale and Payment Platform Order Price to the end user (citizen), as described in Platform Pricing & Fees.
- ii. In addition to the Order Price, which includes the discount applied to the NASPO Price, the Contractor may collect transaction fees from end users as specified in this PO. Prices included in the total Order Price, shall not exceed the discount pricing as set forth in this NASPO PO and such Order Price does not exceed the pricing as set forth in the NASPO Master Agreement Pricing Schedule.
- iii. The Order Price is based on the Services and Deliverables time, and resources as described in this PO. Changes to the Services, Deliverables, time, or resources required may result in additional costs to be approved by both parties in a signed change order.

b. Platform Pricing & Fees.

Contractor will be compensated for the following Services as indicated below:

| Service Name | Description | Payee | Fee |
|----------------------|---|---------|----------------|
| OTC Module | Payments Platform Point of Sale + Payment Processing (ACH Processing) | Citizen | \$1.00 +\$1.00 |
| OTC Module | Payments Platform Point of Sale + Payment Processing (Credit & Debit Card Processing) | Citizen | 3% |
| Common Checkout Page | Payments Platform (ACH Processing) | Citizen | \$1.00 |
| Common Checkout Page | Payments Platform (Credit & Debit Card Processing) | Citizen | 3% |

c. Professional Services.

- i. At the Purchasing Entity's written request, Contractor may provide other services set forth in a separate mutual agreement. Such other services may include, without limitation, professional services to assist the Purchasing Entity with the installation, configuration, and deployment of the Software application(s) covered by this Agreement, or Upgrades to such Software. The parties shall agree to the scope of work, roles and responsibilities; deliverables; and cost of such professional services, which may be amended and restated from time to time upon the mutual agreement of the parties.
- ii. Time and Materials rates. Purchasing entity shall pay Contractor for time and materials for professional services requested in writing at a blended rate of \$125.00 per hour for services provided which are not covered by the Order Price.

d. Device Fees.

- i. Contractor may provide Payment Service Devices pursuant to a subsequent order between the parties and at an additional cost to the Purchasing Entity. "Payment Service Devices" means Dynamag swipe readers, FD40 chip and pin readers or Lane 3000 chip and pin readers. Purchasing Entity will maintain the Payment Service Devices in its possession. Contractor will be compensated by the Purchasing Entity for swipe or chip and pin devices ordered by the Purchasing Entity through Contractor at agreed upon pricing at the time of order.
5. Payment Terms. Payment on any invoice is due 30 days after receipt of an undisputed invoice by Purchasing Entity.
 6. Key Personnel. The Key Personnel are:

For Contractor: Samantha Mongoven, Director of Operations, Tyler Technologies

For Purchasing Entity: Amy Reeves, Treasurer/Clerk and Recorder, Lewis and Clark County

7. Terms and Conditions:

The following documents and in the Order of Precedence listed, are incorporated by reference, into this PO and are legally binding:

- The Participating Addendum ("PA");
- The Master Agreement, including all attachments thereto including the product specific End User License Agreements and SLAs;
- A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
- The Solicitation;
- Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

I agree to be bound by the Terms and Conditions described above. In witness whereof, I execute this Purchase Order as of the date listed below. By signing this Purchase Order below, I represent that I am fully authorized to sign this Purchase Order.

| | |
|---------------------------|---|
| Purchasing Entity: | Lewis and Clark County Treasurer/Clerk and Recorder |
| Signature: | |
| Name: | Andy Hunthausen |
| Title: | Commission Chair |
| Date: | |

| | |
|--------------------|----------------------------|
| Contractor: | Tyler Technologies |
| Signature: | |
| Name: | Bill Van Asselt |
| Title: | Deputy Chief Legal Counsel |
| Date: | |



CONTRACT COVER SHEET

This form is required for all procured contracts and must be completed before the contract is transmitted to the contractor/consultant. This form does not apply to grant awards, grant contracts, sub-awards, or intergovernmental agreements. Include this completed form as a standalone attachment in Novus when submitting the contract for approval.

- Project Name/Novus Title: **Credit Card Services**
- Standard Lewis and Clark County contract template used: YES NO
 - Legal has completed review of agreement: YES NO
- Procurement method: Select From Menu NOT APPLICABLE (Explain in comment box)
 - For methods other than Small Purchase, attach documentation of procurement method used (e.g., limited solicitation summary form or copy of formal solicitation).
- Purchase is an exception from standard procurement procedures, per county policy: YES NO
 - If YES, provide exception request form.

- Budget Authority: YES NO NOT APPLICABLE
- Is this a public works contract subject to prevailing wage requirements? "Public works contract" means a contract for construction services or for non-construction services [as defined in 18-2-401(9)(a-l), MCA] in which the total cost of the contract is in excess of \$25,000? YES NO
 - If YES, is project subject to performance and payment bonds per 18-2-201, MCA? YES NO
- Is project subject to 1% Contractor's Gross Receipts Tax* (CGR)? YES NO
 - *\$80,000 or more, public funds being expended, and work done on publicly-owned property.
 - If YES, submit CGR form to Finance Department.
- Is this contract funded through a grant? YES NO IF YES, COMPLETE NEXT PAGE.

Additional comments:

Signatures:



Elected Official/Department Director

10/15/24

Date



Purchasing Officer or Designee

10/15/24

Date

Finance Officer or Designee

Date

COMPETITIVE PROCUREMENT EXCEPTION REQUEST

The Lewis and Clark County Procurement Policy does not apply to certain transactions. Exceptions must be authorized by the Purchasing Officer and Chief Administrative Officer. The Department Director shall request authorization of such purchases in order to ensure that the purchase qualifies as an exception under the Procurement Policy.

To be completed by the Department:

1. Name of product(s)/service(s):

Common Checkout Page

2. Name of vendor(s):

Tyler Technologies

3. Amount of purchase:

0


4. Date of purchase:

May 2024

5. Justification for exception:

Purchase made under state bid contract

6. Authorization (provide signatures below):


Department Director

5/20/24
Date


Purchasing Officer

5/20/24
Date


Chief Administrative Officer

5-20-24
Date



Request for Unobligated American Rescue Plan Act Funds. (Ann McCauley and Jenny Chambers)

Presented By:

Summary:

The Commissioners will consider the request from the County Public Works Department for the County's remaining unobligated American Rescue Plan Act (ARPA) funds.

Legal Review Required:

ATTACHMENTS:

| Description | Type |
|--------------------------------|--------------|
| 📎 Staff Report and Attachments | Staff Report |



Grants and Purchasing Department

Lewis and Clark County

406 Fuller Ave., Ste. 361 Helena, MT 59601

Phone: 406-447-8383 Fax: 406-447-8398

e-mail: grants@lccountymt.gov

STAFF REPORT

Date: October 17, 2024
To: Board of County Commissioners
From: Ann McCauley, Director, Grants and Purchasing
RE: Request for Unobligated American Rescue Plan Act Funds by the County Public Works Department

County Commission Hearing:

Thursday, October 24, 2024 --- 9:00 a.m.

I. EXECUTIVE SUMMARY:

In April 2023, the Lewis and Clark Board of County Commissioners established an “Inflationary Set-Aside Fund” for County-led American Rescue Plan Act (ARPA) funded projects to account for unexpected costs associated with high inflation experienced in 2022 and 2023. Funded initially at \$250,000, the Inflationary Set-Aside provided additional funding for County-led projects that were going over-budget. The Inflationary Set-Aside fund also accounted for County-led projects that went under-budget. See attached Inflationary Set-Aside Summary as of October 15, 2024.

The County currently has approximately \$72,000 in ARPA funds remaining in the Inflationary Set-Aside that are not obligated or committed to a project. The County needs to obligate these funds by December 31, 2024, to meet the U.S. Department of Treasury’s obligation definition and requirement by this date.

The County Public Works Department is proposing a new project with these unobligated ARPA funds to support the development of an all-weather wash bay at the main Public Works complex; see attached Memo detailing the proposed project.

If approved, an interagency Memorandum of Understanding will be developed between Lewis and Clark County and the Public Works department for this project before December 31st to meet U.S. Department of Treasury’s obligation requirement.

II. REQUEST:

To consider the County Public Works Department’s request for unobligated American Rescue Plan Act to support the development of an all-weather wash bay at the Public Works complex.

IV. ATTACHMENTS:

- Inflationary Set-Aside Summary as of Oct. 15, 2024
- Project Proposal Memo from Jenny Chambers, Public Works Director

INFLATIONARY SET-ASIDE SUMMARY, 10/15/2024

| Line # - From Master List | Department | ARPA Grant # | Project Name | Amount Obligated by BoCC | Overrun Obligated | Underrun Returning | Set-Aside Balance | Date |
|--|----------------------------|--------------|--|--------------------------|-------------------|--------------------|-------------------|---------------|
| | Board of CC | NA | Establish Inflationary Set-Aside | | | | \$ 250,000.00 | Apr. 18, 2023 |
| 18 | Public Works | DA-2220 | Lincoln Fire Protection District - Water Filling Station | | \$ 12,937.00 | | \$ 237,063.00 | May 23, 2023 |
| 41 | Sheriff's Office | DA-2218 | Handgun Transition | | \$ 1,998.10 | | \$ 235,064.90 | June 9, 2023 |
| 32 | Public Works | DA-2214 | Glass and Security (CA Office-Justice Court) | | | \$ 545.00 | \$ 235,609.90 | Aug. 2, 2023 |
| 34 | Admin. | DA-2101 | Motor Vehicle Department Remodel | | | \$ 6,506.14 | \$ 242,116.04 | Aug. 2, 2023 |
| 38 | Public Works | DA-2223 | Two-Way Radios* | | \$ 39,050.00 | | \$ 203,066.04 | Aug. 9, 2023 |
| 4 | Public Health | DA-2215 | FY23 COVID Response | | | \$ 36,595.44 | \$ 239,661.48 | Aug. 30, 2023 |
| 29 | Com. Dev. & Planning | DA-2211 | Growth Policy | | | \$ 146,050.00 | \$ 385,711.48 | Mar. 13, 2024 |
| 38 | Public Works | DA-2223 | Two-Way Radios* | | | \$ 18,998.83 | \$ 404,710.31 | Mar. 13, 2024 |
| 48 | Public Works | DA-2308 | Marysville Surface Preservation | | | \$ 274,322.00 | \$ 679,032.31 | Mar. 13, 2024 |
| 51 | Public Works | DA-24XX | Country Club Avenue ReSurfacing - NEW Project | | \$ 450,000.00 | | \$ 229,032.31 | Mar. 21, 2024 |
| 22 | Helena Housing Authority | DA-24XX | Fair Market Evalution - NEW Project | | \$ 25,000.00 | | \$ 204,032.31 | Mar. 21, 2024 |
| 53 | Grants and Purchasing | DA-2105 | ARPA Program Specialist | | \$ 150,000.00 | | \$ 54,032.31 | Mar. 21, 2024 |
| 2 | Emergency Services | DA-22-03 | COVID Positive Sheltering | | \$ 3,160.00 | | \$ 50,872.31 | Apr. 4, 2024 |
| Cleaning up miscalculations with total amount of funds obligated | | | | | \$ 7,547.20 | | \$ 43,325.11 | April 4, 2024 |
| 39 | Sheriff's Office | DA-22-06 | Command Vehicle | | | \$ 4,897.16 | \$ 48,222.27 | May 29, 2024 |
| 24 | Craig Water/Sewer District | DA-22-07 | Craig Wastewater Treatment Upgrade | | | \$ 3,686.31 | \$ 51,908.58 | June 25, 2024 |
| 50 | Treasurer/Clerk Recorder | DA-23-11 | Historical Records Digitization/Preservation | | \$ 12,037.02 | | \$ 39,871.56 | July 16, 2024 |
| 45 | IT&S | DA-23-06 | Network Access Security | | \$ 13,990.00 | | \$ 25,881.56 | July 16, 2024 |
| 52 | Grants&Purchasing/Admin | DA-24-03 | Post 2024 Administrative Costs | | \$ 24,281.56 | | \$ 1,600.00 | July 24, 2024 |
| 46 | IT&S | DA-23-07 | Door Security Access Integration | | | \$ 3,053.50 | \$ 4,653.50 | Aug. 27, 2024 |
| 44 | CD&P | DA-23-03 | Joint Infrastructure Study | | | \$ 24,161.00 | \$ 28,814.50 | Aug. 28, 2024 |
| 42 | Sheriff's Office | DA-22-19 | Mobile Morgue | | | \$ 6,678.34 | \$ 35,492.84 | ANTICIPATED |
| 51 | Public Works | DA-24-02 | Country Club Road Resurface | | | \$ 36,209.82 | \$ 71,702.66 | ANTICIPATED |
| 21 | CD&P | DA-23-05 | North Star Park/Timber Works | \$ 54,282.00 | | \$ 657.00 | \$ 72,359.66 | Oct. 10, 2024 |

Subtotals: \$ 740,000.88 \$ 562,360.54

CURRENT SET-ASIDE BALANCE: \$ 72,359.66 Oct. 15, 2024

* Two-Way Radios project only needed \$20,051.17 following bid.



LEWIS AND CLARK COUNTY

DATE: October 24, 2024

TO: Board of County Commissioners
Roger Baltz

THROUGH: Ann McCauley, Grants and Purchasing Director

FROM: Jenny Chambers, Public Works Director

RE: ARPA Project Proposal – Public Works Wash Bay

This memo is to outline the project proposal for use of remaining American Rescue Plan Act (ARPA) funds for an on-site all-weather wash bay at the Public Works Facility Complex. A wash bay is a permanent structure used for washing and cleaning heavy equipment and vehicles. The Shop Maintenance Division is responsible for repair and maintenance of over 135 fleet-vehicles.

The Public Works Facility Complex is located at 3402 Cooney Drive. This is the primary location for the County's Road, Bridge, Sign, and Shop Divisions. As well as other public works divisions, including, but not limited to Noxious Weeds and Special Districts/Rural Improvement Districts.

Industrial wash bays are important for the following reasons:

- **Safety:** Wash bays are secure spaces for employees to clean equipment and they can be designed to keep employees separate from other activities. A wash bay in the winter conditions would minimize exposure and address significant employee safety factors.
- **Efficiency:** Wash bays can be designed for many different types and sizes of equipment and can be customized to meet our needs.
- **Environmental protection:** Wash bays collect and safely dispose of wastewater from equipment, preventing contaminants from spreading into the environment.
- **Cost savings:** Anon-site wash bay reduces time and resources and helps preserve the equipment.
- **Durability:** Wash bays can be designed to be long-lasting and provide ongoing service.
- **Storage:** Wash bays provide storage for excess detergents and accessories and can provide another location for needed in-door/covered winter storage.

In February 2023, Public Works completed a facility complex master plan to evaluate whether the current site would allow for future growth, taking into consideration existing facility conditions, needs, risk areas, and preferred design options and costs. One component of the master plan was to identify improvements needed in site operation and safety. The master plan preferred alternative for construction of an all-season wash bay is to design, construct, and incorporate it in with a new maintenance shop. Understanding that full implementation of the master plan vision will take time it is prioritized and phased. Implementation is also contingent upon availability of funding, however a solution is needed now for an all-season onsite wash bay. In the future when the new maintenance shop is built, both the current maintenance shop and the construction of this on-site wash bay will remain utilized and beneficial to the Public Works existing operations.

Planning, Project Evaluation, and Next Steps:

Public Works is in the early stages of project planning and evaluation. The full cost of the project is unknown, however, it will exceed the approximate \$72,000 in ARPA funds available.

The first step will be to hire a professional services engineering/architecture design firm to complete an evaluation of the preferred siting location, projects alternatives, design, bid documents, and estimated project cost. Since it is highly likely that the cost of the project will exceed the available ARPA dollars, Public Works will request budget authority in FY26 from the fleet Capital Improvement Plan. It is also anticipated that we may have some funds that can be re-prioritized from the FY25 CIP allocation of \$239,830 in set aside funds for the magnesium chloride and fuel island project.

Anticipated project schedule:

- Alternative evaluation and design – First six to nine months of 2025
 - Evaluate cost proposals and full budget allocation.
- Procurement and solicitation of materials and construction contractor – Second half of 2025.
- Finalize construction of project plan and start construction to be completed spring/summer of 2026.
 - Project must be completed, and all invoices paid by December 31, 2026.



Request for Change of Scope for Helena Housing Authority's American Rescue Plan Act Award. (Ann McCauley)

Presented By:

Summary:

The Commissioners will consider a change of scope request from the Helena Housing Authority for their previously approved American Rescue Plan Act (ARPA) Local Fiscal Recovery fund award in the amount of \$25,000.

Legal Review Required:

ATTACHMENTS:

| Description | Type |
|-------------------------------|--------------|
| □ Staff Report and Attachment | Staff Report |



Grants and Purchasing Department Lewis and Clark County

406 Fuller Ave., Ste. 361 Helena, MT 59601
Phone: 406-447-8383 Fax: 406-447-8398
e-mail: grants@lccountymt.gov

STAFF REPORT

Date: October 17, 2024
To: Board of County Commissioners
From: Ann McCauley, Director, Grants and Purchasing
RE: Request for Change of Scope for Helena Housing Authority's American Rescue Plan Act award

County Commission Hearing:

Thursday, October 24, 2024 --- 9:00 a.m.

I. EXECUTIVE SUMMARY:

On March 21, 2024, the Lewis and Clark Board of County Commissioners approved \$25,000 in American Rescue Plan Act (ARPA) Local Fiscal Recovery funds to support Helena Housing Authority in conducting a fair market rent (FMR) re-evaluation for the greater Helena area. A subrecipient agreement between the County and Helena Housing Authority was drafted for this project, but not executed.

In summer 2024, the State of Montana committed \$1 million to do a statewide FMR re-evaluation which would include Lewis and Clark County and the greater Helena area. Helena Housing Authority has been engaged in this statewide effort and their selection of a qualified contractor to complete the work. In October 2024, the State of Montana contracted with a firm to complete a FMR study for communities throughout the state. Given this recent statewide effort, Helena Housing Authority is requesting a change of scope for the approved \$25,000; see attached email from Michael O'Neill, HHA Executive Director.

II. REQUEST:

To consider Helena Housing Authority's request for a change of scope for their previously approved American Rescue Plan Act award.

IV. ATTACHMENTS:

- Email from Michael O'Neill, dated October 14, 2024. Subject: Helena Housing Authority Proposal for Lewis and Clark County \$25,000 pending ARPA award

Ann McCauley

From: Michael O'Neil <moneil@hhamt.org>
Sent: Monday, October 14, 2024 2:59 PM
To: Ann McCauley
Cc: Andy Hunthausen; Roger Baltz; Frank Cornwell
Subject: Helena Housing Authority Proposal for Lewis and Clark County \$25,000 pending ARPA award

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ann:

I wanted to update the county commission in regard to the HUD Fair Market Rent Reevaluation project for which the Commission has committed \$25,000, and given recent positive events related to the project; request the Commission to redirect these funds to support the architectural and engineering planning work needed to support the redevelopment of HHA's public housing including supporting the development of additional affordable homes.

As we have discussed, we have been working to get the state of Montana to support a statewide FMR Reevaluation project including all areas of the state including Lewis and Clark County. This past summer, the state committed MT DPHHS Behavioral Health Commission funding to fund the Statewide project. As of this this past Thursday October 10, 2024, the Montana Department of Commerce has contracted with the firm Econometrica to complete the rental surveys and other FMR Reevaluation project work. Econometrica is a leading firm doing these FMR Reevaluation projects around the country so Montana has an experienced firm undertaking this project being paid for through MT DPHHS which is good news for the Montana effort and Lewis and Clark County. Due to the technical challenges, the likelihood of a successful FMR reevaluation study is more likely as part of a statewide effort, and given the state support for the FMR project work in our county, the county, city, MDOC, and HHA funding is no longer needed to complete the FMR reevaluation work here locally. We may still do some additional work here locally if it looks like it will help our area, but overall the state will complete and pay for the work of the FMR study project.

For this reason, I wanted to formally request that Lewis and Clark county redirect its \$25,000 funding committed to the FMR Reevaluation project to instead provide funding to Helena Housing Authority (HHA) to support architectural and engineering work and related due diligence studies needed as part of HHA's efforts to redevelop HHA's existing public housing properties including adding additional affordable homes to HHA's existing public housing property and adjacent property.

HHA has begun the public housing repositioning application process at its Stewart Homes campus, and HHA anticipates submitting additional repositioning applications at its other public housing properties. HHA will then seek affordable housing funding through the Low-Income Housing Tax Credit program and other appropriate sources to fund the redevelopment of its existing 366 low income public housing residences here in Helena. In addition with the transition from the HUD low-income public housing program, HHA will be able to develop additional affordable homes on these current public housing sites.

This effort at this point requires architectural and engineering and environmental and historic studies to complete the next steps in the process. HHA is working to be well prepared in the competitive funding applications with detailed housing plans that are clearly focused on the specific needs of our properties and our local area. We anticipate not only updating and refreshing our aging housing stock including infrastructure but also improving physical accessibility and energy and resource conservation of our residences . We are planning for additional affordable homes to be built on the Stewart Homes campus, at Livingston property, and at our ME Anderson and Cutler Street properties. The \$25,000 in Lewis and Clark funding redirected to this purpose will be very timely in moving our redevelopment forward.

We appreciate the consideration of the Commission in regards to redirecting the county FMR study \$25,000 funding to support HHA's architectural and engineering redevelopment needs. Please let us know if you have any questions or concerns .

Thank you for your time and efforts on this matter.

Michael

Michael M. O'Neil
Executive Director
Helena Housing Authority
406-794-3251



Grant Award to Lewis and Clark County from the Montana Secretary of State's Office. (Connor Fitzpatrick)

Presented By:

Summary:

The Commissioners will consider accepting the grant award from the Montana Secretary of State's Office for the Help America Vote Act (HAVA) Grant Award in the amount of \$40,912.

Legal Review Required:

**LEWIS AND CLARK COUNTY
GRANTS APPROVAL FORM**

Grant name: Help America Vote Act (HAVA) Grant - Poll Worker/Election Judge Supplemental 2024 General Election

Grant/Contract number:

Funding source:

Federal Agency: U.S. Election Assistance Commission

State Agency: Montana Secretary of State

ARRA funding? No

Award amount: 40,912

Hard Match required: 0

Soft Match required: 0

Indirect Cost Rate amount:

Grant/Contract Period: **Start:** 10/1/2024 **End:** 12/1/2024

Catalog of Federal Domestic Assistance number: 90.401

Separate fund needed for accounting purposes? No

Is this project in the current fiscal budget? Yes
If no, fill out and attach supplemental budget amendment form.

Are non federal assets (>\$15,000) going to be purchased? No

Are federal assets (>\$5,000) going to be purchased? No

Does Grant/Contract require interest to be earned? No

Grant/Contract based on: a reimbursement

Contact Person/Phone number: Connor Fitzpatrick 4064478338

County Department: Treasurer/ Clerk/ Rec.

County Assigned Project number:

Salaries to be paid by grant? No

ATTACHMENTS:

| Description | Type |
|---|------------|
| <input type="checkbox"/> 2024 HAVA Grant Notice of Award | Attachment |
| <input type="checkbox"/> 2024 HAVA Grant Request Form & Documentation | Attachment |

Connor Fitzpatrick

From: Ritter, Andy <Andrew.Ritter@mt.gov>
Sent: Thursday, October 3, 2024 3:57 PM
To: Connor Fitzpatrick
Cc: Amy Reeves
Subject: RE: HAVA Grant Application - Election Judges

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Connor,

Thank you for confirming this and providing the signed version. After reviewing the information you provided, we have determined that your request (\$40,912) meets the requirements under HAVA and the EAC guidelines and is approved.

I will soon send out additional information regarding details on how to receive reimbursement for this request.

Thanks!
Andy



Andy Ritter | Operations Manager
Montana Secretary of State, Christi Jacobsen
State Capitol Building
Helena, MT 59601
PHONE 406.444.7911

[website](#) | [email](#) | [map](#)

From: Connor Fitzpatrick <cfitzpatrick@lccountymt.gov>
Sent: Thursday, October 3, 2024 2:27 PM
To: Ritter, Andy <Andrew.Ritter@mt.gov>
Cc: Amy Reeves <areeves@lccountymt.gov>
Subject: [EXTERNAL] RE: HAVA Grant Application - Election Judges

Hey Andy,

That is correct, it does not include their normal shift/pay.

Also, here is the signed version.

Thanks,

Hey Andy,

Here is our paperwork. It isn't 100% yet due to the need to get the County Commissioners to sign it. That will occur Thursday. Please consider this a preliminary application.

Thanks,

Connor Fitzpatrick
Elections Division Supervisor
Lewis and Clark County
316 North Park Ave. – Room 168
Helena, MT 59623
(406) 447-8338
cfitzpatrick@lccountymt.gov



**MONTANA SECRETARY
OF STATE'S OFFICE**

HAVA Grant
Subrecipient HAVA Funds Request Form
Poll Worker/Election Judge Supplemental
2024 General Election

Directions: Fill out this form in its entirety and return to Montana Secretary of State's Office

County Name: Lewis and Clark County

Point of Contact Name(s): Connor Fitzpatrick, Amy Reeves

Point of Contact Email Address(es): cfitzpatrick@lccountymt.gov, areeves@lccountymt.gov

Point of Contact Phone Number: 406-447-8338, 406-447-8326

Justification: (please provide a general description/justification for how HAVA funds will be used to **supplement** (not replace) your poll worker/election judge personal services budget)

Please see attached document for a detailed response with the funding request description/justification.

Estimated Requested Funds: \$ 40,912

Please Note: Requests for reimbursement will be submitted at the conclusion of the 2024 General Election. If funds are needed in advance, SOS will consider on a case-by-case basis.

Andy Hinthausen

Authorized Signer Name

[Signature]

Authorized Signature

10-3-24

Date



Elections Department

316 N Park Ave, Rm 168, Helena, MT 59623

<https://www.lccountymt.gov/Home>

406-447-8339 | elections@lccountymt.gov

2024 HAVA Grant
Subrecipient HAVA Funds Request Form
Poll Worker/Election Judge Supplemental
2024 General Election

County Name: Lewis and Clark County

Point of Contact Names: Amy Reeves, Elections Administrator – Connor Fitzpatrick, Elections Division Supervisor

Point of Contact Email Addresses: areeves@lccountymt.gov - cfitzpatrick@lccountymt.gov

Point of Contact Phone Numbers: 406-447-8326 – 406-447-8338

Justification:

Lewis and Clark County seeks to use the funds from the Poll Worker/Election Judge Supplemental to pay for Lewis and Clark County and City of Helena employees to assist with the election. Currently, Lewis and Clark County Elections has 24 Election Worker employees and three full-time election staff scheduled for Election Day. With a change in statute from the 2023 Montana Legislative Session, 13-15-207 MCA now requires counties to “continue counting until all the votes case for all candidates and issues are counted”, requiring our office to staff our processes at all times. With several processes running concurrently, the Lewis and Clark County Elections Office will need 42 additional positions filled to keep our processes moving effectively and continue to meet the requirement to count continuously.

The first portion of the process are the people who scan and verify absentee ballots and their signatures. In past elections, we have utilized six to eight people for this. Those past elections have had turnout between 30% and 40%. At the 2024 Primary Election, we utilized eight people for the entire election; each person put in almost a 24-hour shift for a 46% turnout¹. We are expecting a 60% to 80% turnout for the Presidential Election. This kind of work is untenable for eight people on their own. We are seeking to not only bring in more staff to assist this process, but also to build shifts so we don’t have staff burning out on 24-hour-plus shifts. We are seeking to fill 14 scanner and verifier positions for the entire day and into the early hours of November 6. With this process filled, we turn to the next step: ballot reconciliation.

Every absentee ballot goes through ballot reconciliation before being counted. This process ensures that everyone in the batch of absentee ballots is accepted, that our numbers are matching what was scanned in, and that we know exactly how many ballots are in a batch before separating the secrecy envelope out of the affirmation envelope. Numerous batches will be combined into mail trays for election judges to check the count again before separating the ballot from the secrecy envelope and checking the count one last time before the ballots are added to the final count. We have had a bottleneck at this point in the past and have had a hard time finding people who are good at this process; the amount of counting and number of forms needed to complete tends to cause people to turn away from helping with this critical process. This is before the 24-hour shifts were required! We have typically sought to have a 2:1 ratio of our reconciliation teams to our scanning and verifying teams. This would leave us with 28 shifts to fill for Election Day. We have few veterans at this process who are ready, willing, and able to assist, but need to stagger their experience to assist the few new additions we have to this process. By staggering, we also keep our veteran staff from burning out and encourage their experience to return for future elections. With a need to fill 42 shifts on Election Day, has Lewis and Clark County done any outreach to fill these shifts?

¹ <https://electionresults.mt.gov/ResultsSW.aspx?type=CTYALL&cty=25&map=CTY&eid=450002570>

The answer is yes, we have. Balancing the need for people willing to put in extra time and effort with people who are likely to stay non-partisan and leave politics at the door (see potential for insider threats below), we have sought to recruit among people we know. A few Election Judges have been promoted to this process, while we have also asked our current Election Workers to reach out to people they know and trust to assist as well. We have filled only about a handful of the shifts through this method. With time running short before Election Day, we are now turning to employees of Lewis and Clark County and the City of Helena in an effort to supplement our numbers. Should we need to, we will also continue to recruit outside this pool. Utilizing County and City employees will be where we look first though as these people have an added benefit of preventing insider attacks.

Beyond the need for additional people, and the recruitment efforts we have conducted, we are also cognizant of the possibility of insider threats. In May 2021, a County Clerk in Colorado abused her position by compromising electronic election equipment to provide confidential information to outside groups.² With a high-tension Presidential Election approaching again, using City and County employees allows us to protect against insider threats by using people who may have gone through background checks and are certified to access information more confidential than what a typical elections worker utilizes. This will give us confidence in our staff as we progress through the election process and allow us to focus on moving all our processes forward. The grant award will allow Lewis and Clark County to pay any City and/or County employees interested in assisting us for their hard work.

This grant award will allow us to let each employee choose either comp time or paid overtime if they assist us on Election Day. We are seeking a total of \$35,280 to cover all shifts. This breaks down to \$35 per hour for 24 hours for 42 shifts. \$35 per hour is the average overtime cost for the Election Worker positions in Lewis and Clark County. As this is an average, it is likely the full amount will not be used for a few reasons. The first reason is that we have already filled some shifts with Election Workers who typically help our office or are starting new this election. The second reason is that many employees of Lewis and Clark County would make less than the \$35 per hour for overtime. The \$35,280 will cover our maximum costs for this portion.

We are also seeking to add one more Election Judge to each of our Precincts for this election to give our Chief Judge more ability to deal with any issues that may arise at the polling places due to the high-tension Presidential Election. We have trained enough Election Judges to meet the need, but we will need \$5,632 to cover a full shift for one additional Election Judge at each precinct. With 32 precincts and a full day shift consisting of 16 hours, and each Election Judge paid at the rate of \$11 per hour, this adds up to \$5,632 and will bring additional opportunities for Election Judges new and old to assist the county with this Presidential Election.

The 2024 Presidential Election will be the culmination of a year of effort for our staff. In a year where we have seen three major petitions, two overnight elections at longer than 24 hours, and one unmet need for more help, this grant will give us the ability to clear the last hurdle and make sure the election meets our high standards for accuracy and transparency, while also making sure we aren't burning out our veteran staff. By granting Lewis and Clark County Elections \$35,280 to assist with paying for shifts and \$5,632 for additional Election Judges at the polling places, for a grand total of \$40,912, we will be able to help prevent burnout, have our experienced part-time workers return for future elections, and bring in new people to start learning the election processes. We look forward to your response.

Thank you,

Amy Reeves, Election Administrator

Connor Fitzpatrick, Election Division Supervisor



Resolution No. 2024-111 to Adopt Amendments to the Floodplain Ordinance and Establish an Effective Date.
(Worby McNamee)

Presented By:

Summary:

The Commissioners will consider the resolution.

Legal Review Required:

ATTACHMENTS:

| Description | Type |
|--|------------|
| ☐ Commission Packet Re: Amendments to Floodplain Ordinance | Resolution |



Community Development and Planning Lewis and Clark County

316 N. Park Ave. Room 230 Helena, MT 59623
Phone: 406-447-8374 Fax: 406-447-8398
E-mail: planning@lccountymt.gov



STAFF REPORT

Date: October 7, 2024
To: Board of County Commissioners
From: Worby McNamee, CFM, Floodplain Administrator
RE: **Resolution 2024-111 Adopting Amendments to County Floodplain Ordinance**

Board of County Commissioners' Public Hearing:

October 24, 2024

I. EXECUTIVE SUMMARY:

Lewis and Clark County adopted the current Floodplain Ordinance (Resolution No. 2012-115) and Flood Insurance Rate Maps on September 19, 2012. The County Community Development and Planning Department (CD&P) assumed responsibilities of the Floodplain Administrator's duties from County Disaster and Emergency Services (Resolution No. 2017-163) on December 28, 2017. Updating the current Ordinance will allow the County to remain in good standing with the Federal Emergency Management Agency (FEMA) and be eligible for flood insurance and disaster assistance through the National Flood Insurance Program (NFIP). The Montana Department of Natural Resources and Conservation (DNRC) has worked with FEMA to update the State Model Ordinance, which has facilitated the requested adoption of the County's amended Floodplain Ordinance.

II. REQUEST

The Board of County Commissioners will consider adoption of the amended Floodplain Ordinance after its first reading on October 24, 2024. Final adoption by the Board of County Commissioners will occur at a public hearing on November 7, 2024, which is more than 12 days after the first reading and decision by the Board of County Commissioners. The amended Floodplain Ordinance will become effective 30 days after the second reading and adoption of Resolution 2024-111.

III. RECOMMENDATION:

Staff recommends APPROVAL of the attached Resolution 2024-111, Adopting Amendments to the Floodplain Ordinance (See Attachment: B).

IV. EFFECTIVE FLOODPLAIN PROGRAM COMPONENTS:

The current and effective components of the Lewis and Clark County Floodplain Program consist of: a Flood Insurance Study, effective September 19, 2012; Flood Insurance Rate Maps, effective September 19, 2012; and a Floodplain Ordinance, effective September 19, 2012 and last updated in 2022 with an effective date of November 11, 2022.

V. BACKGROUND/STAFF ANALYSIS:

The DNRC Floodplain Program and FEMA first developed the State Model Ordinance in 2014 to provide communities in Montana with a template to update existing floodplain ordinances. The Model Ordinance was last revised by DNRC in early 2024. As a participating community in the NFIP, Lewis and Clark County must adopt, administer, and enforce a Floodplain Ordinance. The County also participates in the Community Rating System (CRS), which provides residents with a flood insurance policy and a ten (10%) percent discount on the premium, in exchange for utilizing higher standards in floodplain management. To be in good standing with both voluntary programs, the County must periodically examine and update the Floodplain Ordinance to incorporate mapping changes and expand technical definitions.

The proposed amendments to the Floodplain Ordinance have been reviewed by the County Attorney's Office, posted on the County's website, and notices of a public comment period were published in the *Independent Record* on August 31, 2024 and September 7, 2024. The deadline for public comment was October 7, 2024, and during this period one comment was received from a property owner off Mill Road asking the County to consider revising the effective floodplain maps in that area. The proposed amended Ordinance will be posted again on the County's website after first adoption and reading by the Board of County Commissioners on October 24, 2024. Copies will also be made available to the public at the County Clerk and Recorder's Office, as well as at the CD&P.

VI: AMENDED FLOODPLAIN ORDINANCE SECTIONS AND HIGHLIGHTS:

All proposed additions to the Floodplain Ordinance are shown by underline and proposed deletions to the Ordinance are shown with a ~~strike-through~~ (See attached Exhibit A). Presented below is a list of each section in the Floodplain Ordinance, along with an overview of any proposed amendments to these sections.

Section 1. Title, Purpose, Authority and General Provisions:

Section 1.7. Floodplain Administrator. Moves the responsibility to the CD&P instead of assigning it to a specific person/role within the Department. Allows for further flexibility and will not require updating the Ordinance to address future staff turnover.

Section 2. Definitions:

Additions include incorporating definitions for "historical structure", "conditional letter of map revision based on fill", and "nonconforming use", and expanding the definition for "Special Flood Hazard Area" to include FEMA zones.

Section 3: Forms and Fees: No changes proposed.

Section 4: Regulated Flood Hazard Area

Section 4.1. Regulated Flood Hazard Area. Inclusion of technical information being supplied by the Federal Insurance and Mitigation Administration.

Section 4.2. Interpretation of Regulated Flood Hazard Area Boundaries. Provides the community with clarification and reduces the confusion by property owners and/or applicants as to what information to provide and where existing information can be found.

Section 4.3. Alteration of Regulated Flood Hazard Area. Clarifies the steps an applicant must take if there is a change to the base flood elevation in the floodway or floodplain with no floodway. (i.e. Conditional Letter of Map Revision steps).

Section 5: Uses Allowed Without a Permit within the Regulated Flood Hazard Area

Section 5.2 Open Space Uses. Removes the allowance for floodway maintenance without a permit in the most restrictive area (i.e. prevents the alteration of slope, grade, and roughness, which are all taken into consideration when looking at base flood elevation impacts).

Section 6: Prohibited Uses, Activities, and Structures Within the Regulated Flood Hazard Area. No changes proposed.

Section 7: Permit Application Requirements: No changes proposed.

Section 8: Floodplain Permit Application Evaluation. Only grammatical changes proposed.

Section 9: Development Requirements in the Floodway. No changes proposed.

Section 10: Development Regulations in the Flood Fringe or Regulated Flood Hazard Area with No Floodway

Section 10.4.5 Accessory Structures. Provides a definition for “accessory structure”, as well as guidance on how the community can provide less stringent permitting requirements based on FEMA technical guidance and qualifying property factors.

Section 11. Emergencies. No changes proposed.

Section 12: Variances. No changes proposed.

Section 13. Administrative Appeals. No changes proposed.

Section 14. Enforcement. No changes proposed.

Section 15: Penalties. No changes proposed.

Appendix A - Effective FIRM Panels, Map Revisions and Updates. No changes proposed.

VII. EXHIBITS:

Exhibit A: Amended Floodplain Ordinance with strikethroughs and additions shown

Exhibit B: Resolution 2024-111, Adopting Amendments to the Floodplain Ordinance

Exhibit "A"

Lewis and Clark County Floodplain Ordinance

Updated: TBD

Effective Date: TBD

Resolution No. 2024-111

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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 AND REGULATORY AUTHORITY

1. Floodplain and Floodway Management is codified in Montana Code Annotated (MCA) Title 76, Chapter 5 which describes the authority, procedures, and minimum standards for local regulations. Regulation for Floodplain Management established by the Montana Department of Natural Resources and Conservation (DNRC) are ~~located~~ *codified* in Administrative Rules of Montana (ARM), Chapter 36.15.
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 DNRC pursuant to 76-5-201, MCA et.seq.
2. These regulations have been reviewed by DNRC and the Federal Emergency Management Agency (FEMA). The DNRC 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 the ~~Director of Community Development and Planning and/or his or her designee~~responsibility of the Lewis and Clark County Community Development and Planning Department. 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 statute or regulation. (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 regarding 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 floodproofing 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

The requirements of the Lewis and Clark County Subdivision Regulations, in addition to those established in these regulations, apply to subdivisions within the Regulated Flood Hazard Area, including but not limited to new or expansion of existing manufactured home parks, recreational vehicle parks, and campgrounds must be designed to meet the following criteria:76-3-103(16), MCA

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))

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 FEMA, Montana Disaster Emergency Services, DNRC, and other state, local and private emergency service organizations.

Upon completion of cursory street view structure condition survey of the Regulated Flood Hazard Area, the Floodplain Administrator shall notify property owners that a permit may be necessary for an alteration or substantial improvement before repair or reconstruction commences on damaged structures. These permitting requirements apply even when structures are damaged by natural or man-made disasters such as floods, earthquakes, 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))

1.18 PERMISSION TO ENTER

Submission of a Floodplain Permit application establishes a grant of permission by the property owner for the Floodplain Administrator to enter the subject property for the purpose of evaluating the site of the proposed project and verify information contained in the application materials.

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 regarding 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. (MCA 76-5-103(1)) ARM 36.15.101(3)

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 Geodetic 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~~ 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 CFR 59.1)

Elevated Building – A building that has no Basement and that has ~~its~~ its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns. A building on a ~~crawlspace is~~ may be ~~may be~~ may be 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)

Flood Insurance Rate Map (FIRM) - Official map of a community on which FEMA has delineated the Special Flood Hazard Areas (SFHAs), the Base Flood Elevations (BFEs), and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) - A compilation and presentation of flood risk data for specific watercourses, lakes, and coastal flood hazard areas within a community. When a flood study is completed for the NFIP, the information and maps are assembled into an FIS. The FIS report contains detailed flood elevation data in flood profiles and data tables.

Floodplain – The area of the Regulated Flood Hazard Area including and adjoining the watercourse or ~~drainway~~drain way 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.

Floodplain Permit – The permit issued by the Floodplain Administrator that confirms a proposed Development, New Construction, Alteration or Substantial Improvement in the Regulated Flood Hazard Area is designed to comply with the requirements of these Regulations.

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)

Historic Structure- means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of Interior to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of Interior or
 - b. Directly by the Secretary of Interior in states without approved programs.

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 ~~Amendment~~Revision Floodway (LOMR-FW) – A letter of determination from FEMA issued in response to a request that a property or Structure mapped as being within the Floodway is not subject to the mandatory flood insurance requirement because it was inadvertently located in the effective FEMA Special Flood Hazard Area.

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.

Conditional Letter of Map Revision – Based on Fill (CLOMR-F) – 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.

Conditional Letter of Map Amendment (CLOMA) – 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 unfinished or finished floor of a building which may include including a basement or crawlspace. 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))

Maintenance - Any routine or regularly scheduled activity undertaken to repair or prevent the deterioration, impairment, or failure of any feature, component, or material referenced in these regulations, so long as the work substantially conforms to the most recent approved design or regulatory hydraulic model, whichever is newer. Maintenance does not include expansion, enlargement, replacement, reconstruction, Substantial Modification, or Substantial Improvement of a building, Artificial Obstruction, or structure, including hydraulic structures. Maintenance does not include changing the use of a property or Artificial Obstruction. Customary and historical cleaning and removal of silt, branches, trees, sticks and other debris as well as minor repair or restoration of an Existing Structure or Artificial Obstruction to the size, shape, position, and height it had immediately prior to its deterioration or destruction. Maintenance does not include changing the use of a property or Artificial Obstruction.

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)

Nonconforming Use – Development, use, or improvements that were lawful prior to the adoption, revision, or amendment to these Regulations, but that fails by reason of such adoption, revision or amendment to conform to the present requirements of these Regulations.

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 drainwaydrain way 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 is used in helping establish 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 -No Base Flood Elevations determined.
ions determined.

Zone AE -Base Flood Elevations determined.

Zone AH -Flood depths of 1 to 3 feet (example areas of ponding); BFE
determined

Zone AO -Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain);
average depths determined. For areas of alluvial fan flooding, velocities also
determined.

Zone A99 -Area to be protected from 1% annual chance flood by a Federal flood
protection system under construction. No BEFs determined.

Zone C -See Zone X

Shaded Zone X - Areas of 0.2% annual chance flood; areas of 1% annual
chance flood with average depts of less than 1 foot or with drainage areas less
than 1 square mile; and areas protected by levees from 1% annual chance flood.

Zone X -Areas determined to be outside the 0.2% annual chance floodplain.

Zone D -Areas in which flood hazards are undetermined, but possible.

Start of Construction- For purposes of these regulations means the start if any
substantial improvements, replacement of existing structure, or new construction, or the
commencement of clearing, grading, filling, or excavation for the purposes of preparing
a site for construction.

Structure – Any Artificial Obstruction.

Sub grade Crawlspace – A cCrawlspace foundation enclosure that has the lowest~~its~~ interior floor elevation no more than 5 feet below the top of the next higher floor and no more than 2 feet below the lowest adjacent grade, certified flood openings, and constructed with flood resistant materials. ~~on all sides.~~ A foundation exceeding either dimension or lacking certified/proper flood openings and not constructed with flood resistant materials could be considered 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 equal or exceed 50 percent of the market value of the structure before the damage occurred. (44 CFR 59.1)

Substantial Improvement – Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50) of the market value of the structure either before the start of construction of the improvement, including substantial damage structures regardless of the actual repair work performed.

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. For the purpose of Substantial Improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimension of the building.

3. The term does not include:

a. 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

b. Any alteration of a structure listed on the national register of historic places or state inventory of historic places provided that the property owner(s) submits evidence to the floodplain administrator, for review and approval, that they have done as much as they can to mitigate the flood risk and bring the structure into compliance to the maximum extent possible while maintaining the historic nature and determination of the structure.

~~(ARM 36.15.101(21)) (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:~~

~~a. 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~~

~~b. 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. (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, Floodplains, 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

An 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)). Fees shall be paid at the rates approved by the Lewis and Clark County Board of County Commissioners.

SECTION 4. REGULATED FLOOD HAZARD AREA

4.1 REGULATED FLOOD HAZARD AREAS

1. The Regulated Flood Hazard Areas are the floodplains of the 100-year floodplains illustrated and referenced in the following specific studies and reports described as follows:
 1. Flood Insurance Study (FIS) and Flood Insurance Rate Maps (FIRMs) for Lewis and Clark County, Montana effective September 19, 2012, as amended by Letter of Map Revision (LOMRs) as listed in Appendix A. Updates to Appendix A will occur as needed when LOMR's are adopted.
 2. Other specific studies.
2. The Regulated Flood Hazard Areas specifically described above have been delineated, designated and established pursuant to 76-5-201 et.seq., MCA.
3. The Floodplain Administrator may obtain, review, and reasonably use any Base Flood Elevation or Floodway data available from a Federal, State, or other reliable source to administer and enforce these Regulations.
 - ~~3-1. When Special Flood Hazard Area designations and water surface elevations have been furnished by the Federal Insurance Administrator, the more restrictive shall apply. when such data is not available from the Federal Emergency Management Agency, as may be the case with areas designated as Zone A on the FIRMs. Applicants are encouraged to consult with the Floodplain Administrator before proceeding with use of such data.~~
4. Sections 5, 6, 9, and 10 of these regulations establish allowable uses and requirements for projects depending on the specific location within the Regulated Flood Hazard Area. (e.g., Floodway, Flood Fringe, etc.)

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. Base Flood Elevations and other supporting documentation in the flood study, if such documentation exists, take precedence over any map illustrations. Requirements for determining the exact boundaries of the Regulated Flood Hazard Area and Floodway are provided below.
2. ~~A determination of the outer limits and boundaries of T~~the Regulated Flood Hazard Area boundary is delineated by the Base Flood Elevation. The physical 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 drain way. (ARM 36.15.501(6)). or the Flood Fringe and Floodway within the Regulated Flood Hazard Area includes an evaluation of the maps as well as the study data referenced in this Section. Supporting study material for Base Flood Elevations takes precedence over any map illustrations if it exists.~~

~~3. The Floodway boundary where identified within the Floodplain, is, as illustrated on the referenced maps and studies. The location of the Floodway 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.~~

~~4. The Floodplain Administrator may require an applicant to provide additional information described below to determine whether or not the proposed development, use, or artificial obstruction is within the Regulated Flood Hazard Area:~~

~~1. Where Base Flood Elevations exist, the property owner and/or applicant 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 and/or applicant 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.~~

~~5. Any owner or lessee of property who believes his or her 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 FEMA in the form of an application for a Letter of Map Change. Scientific and/or technical information submitted to FEMA for insurance purposes may be considered by the Floodplain Administrator, although a determination by the Floodplain Administrator whether a property is located within the Regulated Flood Hazard Area and subject to these regulations is independent of any determination made by FEMA.~~

~~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 require an applicant to provide additional information described below to determine whether or not the proposed Artificial Obstruction or Development is within the Regulated Flood Hazard Area:~~

~~A. Where Base Flood Elevations exist, the property owner and/or applicant 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))~~

~~B. Where Base Flood Elevations do not exist, the property owner and/or applicant 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.~~

~~C. 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.~~

4.3 ALTERATION OF REGULATED FLOOD HAZARD AREA

- ~~1. The Regulated Flood Hazard Area may be altered pursuant to Section 76-5-201 et. Seq. MCA and the requirements of these regulations. Alterations to FEMA studies and maps can only be approved by FEMA through the Letter of Map Change (LOMC) process.~~
- ~~2. Any change to the Regulated Flood Hazard Area shall only become effective upon amendment to Section 4.1.1 of these regulations. 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 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 that will result in 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, shall not be approved by the Floodplain Administrator until a Conditional Letter of Map Revision (CLOMR) is approved by FEMA.
 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 landowners of the proposed impacts to their properties explaining the proposed impact to their property; (44 CFR 65.12(a)(3))
 3. Information that demonstrates that alternatives are not feasible; (44 CFR 65.12(2))
 4. 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;
 5. Any other supporting information and data as needed for approvals.

~~5. ((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. Any Floodplain permit application for a proposed development or artificial obstruction that will result in an increase of 0.5 feet or more to the Base Flood Elevation of the Regulated Flood Hazard Area without a Floodway, or an increase of more than 0.00 feet to the Base Flood Elevation of a Floodway, shall not be approved by the Floodplain Administrator until a Conditional Letter of Map Revision (CLOMR) is approved by FEMA.~~

~~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 landowners 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.~~

~~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;~~

~~— 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))~~

- 7.5.** The Regulated Flood Hazard Area is not officially altered until a Letter of Map Revision (LOMR) has been approved by FEMA.
- 8.6.** For the Regulated Flood Hazard Areas not designated by FEMA, alterations of the Regulated Flood Hazard Area shall meet ARM 36.15.505.
- 9.7.** A determination by the Floodplain Administrator that land areas located within the Regulated Flood Hazard Area are naturally above the Base Flood Elevation as proven by a certified elevation survey does not constitute or require an alteration of the Regulated Flood Hazard Area and may be maintained as a public record that more explicitly defines the Regulated Flood Hazard Area boundary. (ARM 36.15.505(2))
- 10.8.** 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.
- 11.9.** 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.

~~12. 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.~~

~~13. 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 landowners 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))~~

~~14. 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;~~

- ~~15. 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~~
- ~~16. 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))~~
- ~~17. 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

Within the Regulated Flood Hazard Area established by these **R**egulations, there are Existing Artificial Obstructions and uses that were lawful prior to the adoption or amendment of these **R**egulations, but no longer conform to the present requirements of these regulations. It is the intent of these regulations to allow such Artificial Obstructions and nonconforming uses to remain in the state and location to which they existed at the time of adoption or amendment of these regulations without need for a permit. However, **a**Alteration or Substantial Improvement of an Existing Artificial Obstruction or Nonconforming Use requires a Floodplain Permit.

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, do not require a no-rise in the floodway, 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. **Routine or regularly scheduled M**aintenance of the existing state of an existing open space uses including preventive maintenance activities such as bridge deck

rehabilitation and roadway pavement preservation activities if not in the Floodway. 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 if not located within the Floodway.
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 lawfully 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. An artificial obstruction (e.g., structure, fill, etc.), 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 subject to floodplain permit approval when it is a component to a permitted use allowed in these regulations and complies with all applicable requirements of 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.

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 lawfully 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;
4. Cemeteries, mausoleums, or any other burial grounds; and
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. (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 180 days 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 correct and complete 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 Floodplain 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 180 days of receipt of a correct and complete Floodplain permit application unless otherwise specified. A copy of the approved Floodplain permit must be provided to DNRC. ((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 timeline 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))

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 watertight 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.

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 large-scale clearing of riparian vegetation within 50 feet of the mean annual high water mark

9.12 CONSTRUCTION OF OR MODIFICATIONS TO SURFACE WATER DIVERSIONS provided, in addition to the requirements of Section 9.2, 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 publicly 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 By an engineer, 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;

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 is certified by an engineer to not exceed the allowable encroachment.

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

1. All incoming power service equipment including all metering equipment, control centers, transformers, distribution and lighting panels and all other stationary equipment must be located at least two feet above the Base Flood Elevation; (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. Heating and Cooling Systems Flood Proofing Heating and cooling systems for uses in a Regulated Flood Hazard Area must be certified to meet the following requirements:

1. Float operated automatic control valves must be installed so that fuel supply is automatically shut off when flood waters reach the floor level where the heating and cooling systems are located; (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. Plumbing Systems Flood Proofing Plumbing systems for uses in the Regulated Flood Hazard Area must be certified to meet the following requirements:

1. Sewer lines, except those to a buried and sealed vault, must have check valves installed to prevent sewage backup into permitted structures; and (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. Structural Fill Flood Proofing Fill used to elevate structures, including but not limited to residential and non-residential buildings must be certified to meet the following requirements:

1. 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))
2. The fill must be compacted to minimize settlement and compacted to 95 percent of the maximum density. Compaction of earthen fill must be certified by an engineer.
3. No portion of the fill is allowed within the floodway;
4. The fill slope must not be steeper than 1 ½ horizontal to 1 vertical unless substantiating data justifying a steeper slope is provided and adequate erosion protection is provided for fill slopes exposed to floodwaters; and
5. 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.

14. Wet Flood Proofing 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 watertight 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 For emergency vehicles is provided. For manufactured homes, access for a manufactured home hauler is also provided.

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~~the Lowest Floor of the building must be elevated two (2) feet above the Base Flood Elevation or adequately dry flood proofed ~~according to~~according to this Section ~~10.2.15. 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 according to Section 10.2.14 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 The following additional requirements and exceptions from the requirements of Section 10.4 apply to 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 animal confinement facilities, and not intended for human habitation:

1. Such structures may be exempted by the Floodplain Administrator from the Lowest Flood Elevation requirements established in Section 10.4.1 provided the Lowest Floor of the structures is elevated to at least the Base Flood Elevation or adequately dry floodproofed in conformance with the requirements of Section 10.2.15; and

2. Such Structures shall comply with the requirements of Section 9.11. ((ARM 36.15.602(9) (ARM 36.15.701(3)(e))

5. Additional Accessory Structures including Detached Garages Accessory structures that are on the same parcel of property as a principal structure, the use of which is incidental to the use of the principal structure. Accessory structures must be used for parking or storage, be small and represent a minimal investment by owners, and have low damage potential. Small structures referenced in FEMA Technical Bulletin P-2140 means not larger than a one-story two-car garage.

1. Such structures may be exempted by the Floodplain Administrator from the Lowest Floor Elevation requirements established in Section 10.4.1 provided the Lowest Floor of the structure is elevated to at least the Base Flood Elevation and adequately wet floodproofed in conformance with requirements of parts 1 and 2 of Section 10.2.14 or adequately dry floodproofed in conformance with the requirements of Section 10.2.15; and

4-2. Such Structures shall comply with the requirements of Section 9.11.
Agricultural Structures The following additional requirements and exceptions from the requirements of Section 10.4 apply to 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 animal confinement facilities, and not intended for human habitation:~~

- ~~1. Such structures may be exempted by the Floodplain Administrator from the Lowest Flood Elevation requirements established in Section 10.4.1 provided the Lowest Floor of the structures is elevated to at least the Base Flood Elevation or adequately dry floodproofed in conformance with the requirements of Section 10.2.16; and~~
- ~~2. Such Structures shall comply with the requirements of Section 9.11. ((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 Lewis and Clark County Board of County Commissioners 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 180 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 Administrative appeal may be brought before the Lewis and Clark County Board of County Commissioners 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 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)). Unless written consent is obtained,

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

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) 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) 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.

Appendix A

Effective FIRM Panels, Map Revisions, and Updates

Effective FIRM Panels:

30049CIND1A Effective Date: 09/19/2012
30049CIND2A Effective Date: 09/19/2012
30049C0419E Effective Date: 09/19/2012
30049C0438E Effective Date: 09/19/2012
30049C0439E Effective Date: 09/19/2012
30049C0631E Effective Date: 09/19/2012
30049C0632E Effective Date: 09/19/2012
30049C0635E Effective Date: 09/19/2012
30049C0651E Effective Date: 09/19/2012
30049C1200E Effective Date: 09/19/2012
30049C1400E Effective Date: 09/19/2012
30049C1425E Effective Date: 09/19/2012
30049C1477E Effective Date: 09/19/2012
30049C1478E Effective Date: 09/19/2012
30049C1479E Effective Date: 09/19/2012
30049C1481E Effective Date: 09/19/2012
30049C1483E Effective Date: 09/19/2012
30049C1484E Effective Date: 09/19/2012
30049C1486E Effective Date: 09/19/2012
30049C1487E Effective Date: 09/19/2012
30049C1491E Effective Date: 09/19/2012
30049C1503E Effective Date: 09/19/2012
30049C1504E Effective Date: 09/19/2012
30049C1505E Effective Date: 09/19/2012
30049C1510E Effective Date: 09/19/2012
30049C2110E Effective Date: 09/19/2012
30049C2130E Effective Date: 09/19/2012
30049C2133E Effective Date: 09/19/2012
30049C2138E Effective Date: 09/19/2012
30049C2139E Effective Date: 09/19/2012
30049C2141E Effective Date: 09/19/2012
30049C2142E Effective Date: 09/19/2012
30049C2143E Effective Date: 09/19/2012
30049C2144E Effective Date: 09/19/2012
30049C2153E Effective Date: 09/19/2012
30049C2154E Effective Date: 09/19/2012
30049C2161E Effective Date: 09/19/2012
30049C2162E Effective Date: 09/19/2012
30049C2163E Effective Date: 09/19/2012
30049C2164E Effective Date: 09/19/2012
30049C2168E Effective Date: 09/19/2012

30049C2169E Effective Date: 09/19/2012
30049C2185E Effective Date: 09/19/2012
30049C2195E Effective Date: 09/19/2012
30049C2205E Effective Date: 09/19/2012
30049C2210E Effective Date: 09/19/2012
30049C2284E Effective Date: 09/19/2012
30049C2300E Effective Date: 09/19/2012
30049C2301E Effective Date: 09/19/2012
30049C2302E Effective Date: 09/19/2012
30049C2303E Effective Date: 09/19/2012
30049C2306E Effective Date: 09/19/2012
30049C2307E Effective Date: 09/19/2012
30049C2308E Effective Date: 09/19/2012
30049C2326E Effective Date: 09/19/2012
30049C2327E Effective Date: 09/19/2012
30049C2331E Effective Date: 09/19/2012
30049C2332E Effective Date: 09/19/2012
30049C2333E Effective Date: 09/19/2012
30049C2355E Effective Date: 09/19/2012
30049C2360E Effective Date: 09/19/2012
30049C2425E Effective Date: 09/19/2012
30049C2450E Effective Date: 09/19/2012

Map Revisions:

15-08-1239P-300038 Effective Date: 05/18/2016 Panel # 30049C2163E
17-08-0367P-300038 Effective Date: 01/26/2018 Panel # 30049C2161E
21-08-0279P-300038 Effective Date: 12/20/2021 Panel # 30049C2332E
22-08-0043P-300038 Effective Date: 11/25/2022 Panel # 30049C2138E
23-08-0467P-300038 Effective Date: 04/08/2024 Panel # 30049C2331E

RESOLUTION 2024 - 111

A RESOLUTION TO ADOPT AMENDMENTS TO THE FLOODPLAIN ORDINANCE AND ESTABLISH AN EFFECTIVE DATE

WHEREAS, the Board of County Commissioners (Board) adopted a revised Floodplain Ordinance, a Flood Insurance Study (FIS), and Digital Flood Insurance Rate Maps (DFIRMs) on August 23, 2012, with an effective date of September 19, 2012 (Resolution 2012-115); and

WHEREAS, the County is currently enrolled in the National Flood Insurance Program (NFIP); and

WHEREAS, continued enrollment in the NFIP provides flood insurance and assistance to the County and public following a Presidential Declaration for flooding; and

WHEREAS, the Board adopted the revised Floodplain Ordinance, FIS, and DFIRMs to allow the County to remain enrolled in the NFIP to protect life and property in the Special Flood Hazard Area (SFHA); and

WHEREAS, the Board amended the revised Floodplain Ordinance on December 28, 2017 (Resolution 2017-163) to transfer the responsibility of Floodplain Administrator to the Community Development and Planning Department; and

WHEREAS, the Board amended the revised Floodplain Ordinance on November 11, 2022 (Resolution 2022-96) to incorporate expanded definitions and updated engineering practices; and

WHEREAS, amendments to the Floodplain Ordinance are proposed to meet Federal Emergency Management Agency (FEMA) standards and for continued enrollment in the NFIP; and

WHEREAS, the Department of Natural Resources and Conservation (DNRC) approves of the revised Floodplain Ordinance; and

WHEREAS, FEMA approves of the revised Floodplain Ordinance; and

WHEREAS, a Notice of Public Comment Period to amend the Floodplain Ordinance was published in the Helena *Independent Record* on August 31, 2024 and September 7, 2024; and

WHEREAS, the Notice of Public Comment Period described to the public how to access and view the proposed amendments to the Floodplain Ordinance and provided for a comment period of thirty (30) days, which ended on October 7, 2024; and

WHEREAS, one (1) public comment was received during the Public Comment Period; and

WHEREAS, a first reading and adoption by a majority vote of Board members present during the October 24, 2024 meeting occurred; and

WHEREAS, a second reading and adoption by a majority vote of Board members present during the November 7, 2024 meeting occurred; and

WHEREAS, after the first reading and adoption, a copy of the amendments to the Floodplain Ordinance was posted on the Lewis and Clark County website and made available to the public at both the Lewis and Clark County Clerk and Recorder’s Office and the Community Development and Planning Department; and

WHEREAS, the Board considered the Staff recommendations, public comment, and information provided as a part of the process.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners:

1. That the proposed amended Floodplain Ordinance, as shown on the attached Exhibit “A”, is adopted and will become effective on December 9, 2024.

READ and adopted at first reading on this 24th Day of October 2024 by the Lewis and Clark County Board of Commissioner, State of Montana.

LEWIS AND CLARK COUNTY
BOARD OF COUNTY COMMISSIONERS

Andy Hunthausen, Chair

Attest:

Amy Reeves, Clerk to the Board

READ and adopted at second reading on this 7th Day of November 2024 by the Lewis and Clark County Board of Commissioner, State of Montana.

LEWIS AND CLARK COUNTY
BOARD OF COUNTY COMMISSIONERS

Andy Hunthausen, Chair

Attest:

Amy Reeves, Clerk to the Board

Attachments: Exhibit – A (Amended Floodplain Ordinance)

Exhibit A

Lewis and Clark County Floodplain Ordinance

Updated: November 7, 2024

Effective Date: December 7, 2024

Resolution No. 2024-111

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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 AND REGULATORY AUTHORITY

1. Floodplain and Floodway Management is codified in Montana Code Annotated (MCA) Title 76, Chapter 5 which describes the authority, procedures, and minimum standards for local regulations. Regulation for Floodplain Management established by the Montana Department of Natural Resources and Conservation (DNRC) are located in Administrative Rules of Montana (ARM), Chapter 36.15.
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 DNRC pursuant to 76-5-201, MCA et.seq.
2. These regulations have been reviewed by DNRC and the Federal Emergency Management Agency (FEMA). The DNRC 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 the responsibility of the Lewis and Clark County Community Development and Planning Department. 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 statute or regulation. (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 regarding 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 floodproofing 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

The requirements of the Lewis and Clark County Subdivision Regulations, in addition to those established in these regulations, apply to subdivisions within the Regulated Flood Hazard Area, including but not limited to new or expansion of existing manufactured home parks, recreational vehicle parks, and campgrounds must be designed to meet the following criteria:76-3-103(16), MCA

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))

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 FEMA, Montana Disaster Emergency Services, DNRC, and other state, local and private emergency service organizations.

Upon completion of cursory street view structure condition survey of the Regulated Flood Hazard Area, the Floodplain Administrator shall notify property owners that a permit may be necessary for an alteration or substantial improvement before repair or reconstruction commences on damaged structures. These permitting requirements apply even when structures are damaged by natural or man-made disasters such as floods, earthquakes, 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))

1.18 PERMISSION TO ENTER

Submission of a Floodplain Permit application establishes a grant of permission by the property owner for the Floodplain Administrator to enter the subject property for the purpose of evaluating the site of the proposed project and verify information contained in the application materials.

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 regarding 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. (MCA 76-5-103(1)) ARM 36.15.101(3)

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 Geodetic 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 CFR 59.1)

Elevated Building – A building that has no Basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns. A building on a crawlspace may be 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)

Flood Insurance Rate Map (FIRM) - Official map of a community on which FEMA has delineated the Special Flood Hazard Areas (SFHAs), the Base Flood Elevations (BFEs), and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) - A compilation and presentation of flood risk data for specific watercourses, lakes, and coastal flood hazard areas within a community. When a flood study is completed for the NFIP, the information and maps are assembled into an FIS. The FIS report contains detailed flood elevation data in flood profiles and data tables.

Floodplain – The area of the Regulated Flood Hazard Area including and adjoining the watercourse or drain way 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.

Floodplain Permit – The permit issued by the Floodplain Administrator that confirms a proposed Development, New Construction, Alteration or Substantial Improvement in the Regulated Flood Hazard Area is designed to comply with the requirements of these Regulations.

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)

Historic Structure- means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of Interior to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of Interior
or
 - b. Directly by the Secretary of Interior in states without approved programs.

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 Amendment Floodway (LOMR-FW) – A letter of determination from FEMA issued in response to a request that a property or Structure mapped as being within the Floodway is not subject to the mandatory flood insurance requirement because it was inadvertently located in the effective FEMA Special Flood Hazard Area.

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.

Conditional Letter of Map Revision – Based on Fill (CLOMR-F) – 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.

Conditional Letter of Map Amendment (CLOMA) – 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 unfinished or finished floor of a building which may include a basement or crawlspace. ((ARM 36.15.101(14)) (44 CFR 59.1))

Maintenance - Any routine or regularly scheduled activity undertaken to repair or prevent the deterioration, impairment, or failure of any feature, component, or material referenced in these regulations, so long as the work substantially conforms to the most recent approved design or regulatory hydraulic model, whichever is newer. Maintenance does not include expansion, enlargement, replacement, reconstruction, Substantial Modification, or Substantial Improvement of a building, Artificial Obstruction, or structure, including hydraulic structures. Maintenance does not include changing the use of a property or Artificial Obstruction.

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)

Nonconforming Use – Development, use, or improvements that were lawful prior to the adoption, revision, or amendment to these Regulations, but that fails by reason of such adoption, revision or amendment to conform to the present requirements of these Regulations.

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 drain way 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 is used in helping establish 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 - No Base Flood Elevations determined.

Zone AE - Base Flood Elevations determined.

Zone AH - Flood depths of 1 to 3 feet (example areas of ponding); BFE determined

Zone AO - Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.

Zone A99 - Area to be protected from 1% annual chance flood by a Federal flood protection system under construction. No BEFs determined.

Zone C - See Zone X.

Shaded Zone X - Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

Zone X - Areas determined to be outside the 0.2% annual chance floodplain.

Zone D - Areas in which flood hazards are undetermined, but possible.

Start of Construction- For purposes of these regulations means the start if any substantial improvements, replacement of existing structure, or new construction, or the commencement of clearing, grading, filling, or excavation for the purposes of preparing a site for construction.

Structure – Any Artificial Obstruction.

Sub grade Crawlspace – A crawlspace foundation enclosure that has the lowest interior floor elevation no more than 5 feet below the top of the next higher floor and no more than 2 feet below the lowest adjacent grade, certified flood openings, and constructed with flood resistant materials. A foundation exceeding either dimension or lacking certified/proper flood openings and not constructed with flood resistant materials could be considered a basement.

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

Substantial Improvement – Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50) of the market value of the structure either before the start of construction of the improvement, including substantial damage structures regardless of the actual repair work performed.

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. For the purpose of Substantial Improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimension of the building.
3. The term does not include:
 - a. 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
 - b. Any alteration of a structure listed on the national register of historic places or state inventory of historic places provided that the property owner(s) submits evidence to the floodplain administrator, for review and approval, that they have done as much as they can to mitigate the flood risk and bring the structure into compliance to the maximum extent possible while maintaining the historic nature and determination of the structure. (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. (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, Floodplains, 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

An 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)). Fees shall be paid at the rates approved by the Lewis and Clark County Board of County Commissioners.

SECTION 4. REGULATED FLOOD HAZARD AREA

4.1 REGULATED FLOOD HAZARD AREAS

1. The Regulated Flood Hazard Areas are the floodplains of the 100-year floodplains illustrated and referenced in the following specific studies and reports described as follows:
 1. Flood Insurance Study (FIS) and Flood Insurance Rate Maps (FIRMs) for Lewis and Clark County, Montana effective September 19, 2012, as amended by Letter of Map Revision (LOMRs) as listed in Appendix A. Updates to Appendix A will occur as needed when LOMR's are adopted.
 2. Other specific studies.
2. The Regulated Flood Hazard Areas specifically described above have been delineated, designated and established pursuant to 76-5-201 et.seq., MCA.
3. The Floodplain Administrator may obtain, review, and reasonably use any Base Flood Elevation or Floodway data available from a Federal, State, or other reliable source to administer and enforce these Regulations.
4. When Special Flood Hazard Area designations and water surface elevations have been furnished by the Federal Insurance Administrator, the more restrictive shall apply. Sections 5, 6, 9, and 10 of these regulations establish allowable uses and requirements for projects depending on the specific location within the Regulated Flood Hazard Area. (e.g., Floodway, Flood Fringe, etc.)

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. Base Flood Elevations and other supporting documentation in the flood study, if such documentation exists, take precedence over any map illustrations. Requirements for determining the exact boundaries of the Regulated Flood Hazard Area and Floodway are provided below.
2. The Regulated Flood Hazard Area boundary is delineated by the Base Flood Elevation. The physical 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 drain way. (ARM 36.15.501(6)).
3. The Floodway boundary where identified within the Floodplain, as illustrated on the referenced maps and studies. The location of the Floodway 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.

4. The Floodplain Administrator may require an applicant to provide additional information described below to determine whether or not the proposed development, use, or artificial obstruction is within the Regulated Flood Hazard Area:
 1. Where Base Flood Elevations exist, the property owner and/or applicant 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 and/or applicant 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.
5. Any owner or lessee of property who believes his or her 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 FEMA in the form of an application for a Letter of Map Change. Scientific and/or technical information submitted to FEMA for insurance purposes may be considered by the Floodplain Administrator, although a determination by the Floodplain Administrator whether a property is located within the Regulated Flood Hazard Area and subject to these regulations is independent of any determination made by FEMA.

4.3 ALTERATION OF REGULATED FLOOD HAZARD AREA

1. The Regulated Flood Hazard Area may be altered pursuant to Section 76-5-201 et. Seq. MCA and the requirements of these regulations. Alterations to FEMA studies and maps can only be approved by FEMA through the Letter of Map Change (LOMC) process.
2. Any change to the Regulated Flood Hazard Area shall only become effective upon amendment to Section 4.1.1 of these regulations.
3. Substantial 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 that will result in 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, shall not be approved by the Floodplain Administrator until a Conditional Letter of Map Revision (CLOMR) is approved by FEMA.

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 landowners of the proposed impacts to their properties explaining the proposed impact to their property; (44 CFR 65.12(a)(3))
 3. Information that demonstrates that alternatives are not feasible; (44 CFR 65.12(2))
 4. 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;
 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))
5. The Regulated Flood Hazard Area is not officially altered until a Letter of Map Revision (LOMR) has been approved by FEMA.
 6. For the Regulated Flood Hazard Areas not designated by FEMA, alterations of the Regulated Flood Hazard Area shall meet ARM 36.15.505.
 7. A determination by the Floodplain Administrator that land areas located within the Regulated Flood Hazard Area are naturally above the Base Flood Elevation as proven by a certified elevation survey does not constitute or require an alteration of the Regulated Flood Hazard Area and may be maintained as a public record that more explicitly defines the Regulated Flood Hazard Area boundary. (ARM 36.15.505(2))
 8. 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.
 9. 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.

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

5.1 GENERAL

Within the Regulated Flood Hazard Area established by these Regulations, there are Existing Artificial Obstructions and uses that were lawful prior to the adoption or amendment of these Regulations, but no longer conform to the present requirements of these regulations. It is the intent of these regulations to allow such Artificial Obstructions and nonconforming uses to remain in the state and location to which they existed at the time of adoption or amendment of these regulations without need for a permit. However, alteration or Substantial Improvement of an Existing Artificial Obstruction or Nonconforming Use requires a Floodplain Permit.

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, do not require a no-rise in the floodway, 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. Routine or regularly scheduled 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 if not in the Floodway. 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 if not located within the Floodway.
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 lawfully 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. An artificial obstruction (e.g., structure, fill, etc.), 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 subject to floodplain permit approval when it is a component to a permitted use allowed in these regulations and complies with all applicable requirements of 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.

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 lawfully 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;
4. Cemeteries, mausoleums, or any other burial grounds; and
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. (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 180 days 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 correct and complete 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 Floodplain 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 180 days of receipt of a correct and complete Floodplain permit application unless otherwise specified. A copy of the approved Floodplain permit must be provided to DNRC. ((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 timeline 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))

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 watertight 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.

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 large-scale clearing of riparian vegetation within 50 feet of the mean annual high water mark

9.12 CONSTRUCTION OF OR MODIFICATIONS TO SURFACE WATER DIVERSIONS provided, in addition to the requirements of Section 9.2, 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 publicly 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 By an engineer, 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;

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 is certified by an engineer to not exceed the allowable encroachment.

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

1. All incoming power service equipment including all metering equipment, control centers, transformers, distribution and lighting panels and all other stationary equipment must be located at least two feet above the Base Flood Elevation; (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. Heating and Cooling Systems Flood Proofing Heating and cooling systems for uses in a Regulated Flood Hazard Area must be certified to meet the following requirements:

1. Float operated automatic control valves must be installed so that fuel supply is automatically shut off when flood waters reach the floor level where the heating and cooling systems are located; (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. Plumbing Systems Flood Proofing Plumbing systems for uses in the Regulated Flood Hazard Area must be certified to meet the following requirements:

1. Sewer lines, except those to a buried and sealed vault, must have check valves installed to prevent sewage backup into permitted structures; and (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. Structural Fill Flood Proofing Fill used to elevate structures, including but not limited to residential and non-residential buildings must be certified to meet the following requirements:

1. 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))
2. The fill must be compacted to minimize settlement and compacted to 95 percent of the maximum density. Compaction of earthen fill must be certified by an engineer.
3. No portion of the fill is allowed within the floodway;
4. The fill slope must not be steeper than 1 ½ horizontal to 1 vertical unless substantiating data justifying a steeper slope is provided and adequate erosion protection is provided for fill slopes exposed to floodwaters; and
5. 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.

14. Wet Flood Proofing 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))

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 watertight 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** For emergency vehicles is provided. For manufactured homes, access for a manufactured home hauler is also provided.

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 Section 10.2.15. ((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 according to Section 10.2.14 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 The following additional requirements and exceptions from the requirements of Section 10.4 apply to 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 animal confinement facilities, and not intended for human habitation:

1. Such structures may be exempted by the Floodplain Administrator from the Lowest Flood Elevation requirements established in Section 10.4.1 provided the Lowest Floor of the structures is elevated to at least the Base Flood Elevation or adequately dry floodproofed in conformance with the requirements of Section 10.2.15; and
2. Such Structures shall comply with the requirements of Section 9.11. ((ARM 36.15.602(9) (ARM 36.15.701(3)(e))

5. Additional Accessory Structures including Detached Garages Accessory structures that are on the same parcel of property as a principal structure, the use of which is incidental to the use of the principal structure. Accessory structures must be used for parking or storage, be small and represent a minimal investment by owners, and have low damage potential. Small structures referenced in FEMA Technical Bulletin P-2140 means not larger than a one-story two-car garage.

1. Such structures may be exempted by the Floodplain Administrator from the Lowest Floor Elevation requirements established in Section 10.4.1 provided the Lowest Floor of the structure is elevated to at least the Base Flood Elevation and adequately wet floodproofed in conformance with requirements of parts 1 and 2 of Section 10.2.14 or adequately dry floodproofed in conformance with the requirements of Section 10.2.15; and
2. Such Structures shall comply with the requirements of Section 9.11.

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 Lewis and Clark County Board of County Commissioners 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 180 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 Administrative appeal may be brought before the Lewis and Clark County Board of County Commissioners 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 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)). Unless written consent is obtained,

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

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) 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) 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.

Appendix A

Effective FIRM Panels, Map Revisions, and Updates

Effective FIRM Panels:

30049CIND1A Effective Date: 09/19/2012
30049CIND2A Effective Date: 09/19/2012
30049C0419E Effective Date: 09/19/2012
30049C0438E Effective Date: 09/19/2012
30049C0439E Effective Date: 09/19/2012
30049C0631E Effective Date: 09/19/2012
30049C0632E Effective Date: 09/19/2012
30049C0635E Effective Date: 09/19/2012
30049C0651E Effective Date: 09/19/2012
30049C1200E Effective Date: 09/19/2012
30049C1400E Effective Date: 09/19/2012
30049C1425E Effective Date: 09/19/2012
30049C1477E Effective Date: 09/19/2012
30049C1478E Effective Date: 09/19/2012
30049C1479E Effective Date: 09/19/2012
30049C1481E Effective Date: 09/19/2012
30049C1483E Effective Date: 09/19/2012
30049C1484E Effective Date: 09/19/2012
30049C1486E Effective Date: 09/19/2012
30049C1487E Effective Date: 09/19/2012
30049C1491E Effective Date: 09/19/2012
30049C1503E Effective Date: 09/19/2012
30049C1504E Effective Date: 09/19/2012
30049C1505E Effective Date: 09/19/2012
30049C1510E Effective Date: 09/19/2012
30049C2110E Effective Date: 09/19/2012
30049C2130E Effective Date: 09/19/2012
30049C2133E Effective Date: 09/19/2012
30049C2138E Effective Date: 09/19/2012
30049C2139E Effective Date: 09/19/2012
30049C2141E Effective Date: 09/19/2012
30049C2142E Effective Date: 09/19/2012
30049C2143E Effective Date: 09/19/2012
30049C2144E Effective Date: 09/19/2012
30049C2153E Effective Date: 09/19/2012
30049C2154E Effective Date: 09/19/2012
30049C2161E Effective Date: 09/19/2012
30049C2162E Effective Date: 09/19/2012
30049C2163E Effective Date: 09/19/2012
30049C2164E Effective Date: 09/19/2012
30049C2168E Effective Date: 09/19/2012

30049C2169E Effective Date: 09/19/2012
30049C2185E Effective Date: 09/19/2012
30049C2195E Effective Date: 09/19/2012
30049C2205E Effective Date: 09/19/2012
30049C2210E Effective Date: 09/19/2012
30049C2284E Effective Date: 09/19/2012
30049C2300E Effective Date: 09/19/2012
30049C2301E Effective Date: 09/19/2012
30049C2302E Effective Date: 09/19/2012
30049C2303E Effective Date: 09/19/2012
30049C2306E Effective Date: 09/19/2012
30049C2307E Effective Date: 09/19/2012
30049C2308E Effective Date: 09/19/2012
30049C2326E Effective Date: 09/19/2012
30049C2327E Effective Date: 09/19/2012
30049C2331E Effective Date: 09/19/2012
30049C2332E Effective Date: 09/19/2012
30049C2333E Effective Date: 09/19/2012
30049C2355E Effective Date: 09/19/2012
30049C2360E Effective Date: 09/19/2012
30049C2425E Effective Date: 09/19/2012
30049C2450E Effective Date: 09/19/2012

Map Revisions:

15-08-1239P-300038 Effective Date: 05/18/2016 Panel # 30049C2163E
17-08-0367P-300038 Effective Date: 01/26/2018 Panel # 30049C2161E
21-08-0279P-300038 Effective Date: 12/20/2021 Panel # 30049C2332E
22-08-0043P-300038 Effective Date: 11/25/2022 Panel # 30049C2138E
23-08-0467P-300038 Effective Date: 04/08/2024 Panel # 30049C2331E