

PARK COUNTY
***FLOOD HAZARD MITIGATION
REGULATIONS***

Effective November 15, 2011



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SECTION 1. GENERAL PROVISIONS

1.1. Title

These Regulations are known and may be cited as the “*Park County Floodplain Hazard Mitigation* Regulations;” hereinafter referred to as “these Regulations.”

1.2. Statutory Authority

- A. Authorization for these Regulations is contained in the Flood Plain and Floodway Management Act, Title 76, Chapter 5, Montana Code Annotated, (2009).
- B. The authority to regulate development in specifically identified flood hazard areas to promote the general public health, safety, and welfare is granted to communities by Sections 76-5-101; 76-5-301 MCA, and municipalities have authority to adopt Regulations as provided for in Section 7-1-4123, MCA.
- C. Flood hazard areas specifically adopted herein as Regulated Flood Hazard Areas have been delineated and designated by the Department of Natural Resources and Conservation (DNRC) and or the Federal Emergency Management Agency (FEMA) pursuant to Section 76-5-201, MCA.
- D. Other authority for municipalities and counties to adopt floodplain hazard mitigation regulations is granted pursuant to Sections 76-5-101 through 76-5-406, MCA.

1.3. Purpose

The purpose of these Regulations is to promote the public health, safety and general welfare of the residents of Park County and to minimize public and private losses due to flood conditions in Regulated Flood Hazard Areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business and public service interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, and streets and bridges located in Regulated Flood Hazard Areas;

- F. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas;
- G. Ensure compliance with the minimum standards for the continued participation by Park County in the National Flood Insurance Program for the benefit of Park County residents; and
- H. These Regulations shall use the following methods to ensure flood losses are reduced:
 1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood 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 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 that portion of the regulated flood hazard area not contained in the designated floodway.
 7. Apply more restricted land use Regulations within the designated 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. (*See* Mont. Code Ann. § 76-5-102(f)).

1.4. Jurisdictional Area

Flood hazard areas specifically adopted herein as Regulated Flood Hazard Areas have been delineated and designed by the DNRC or FEMA.

- A. These Regulations apply to all Regulated Flood Hazard Areas within the jurisdiction of Park County, State of Montana.
- B. Park County’s Regulated Flood Hazard Areas are identified in Section 4 of these Regulations.

1.5. Abrogation and Greater Responsibility

It is not intended by these Regulations to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or underlying zoning. However, where these Regulations impose greater restrictions, the provision of these Regulations shall govern. (44 CFR 60.1(b)).

1.6. Regulation Interpretation

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

1.7. 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 Park County or any official or employee thereof for any flood damages that result from reliance on these Regulations or any administrative decision lawfully made hereunder.

1.8. 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 must in no way affect the validity of the remaining portions of these Regulations.

1.9. Disclosure Provisions

All property owners or their agents in the Regulated Flood Hazard Areas shall notify potential buyers or their agents that such property is located within the Regulated Flood Hazard Areas and is subject to these Regulations. (ARMs 36.15.204(2)(g)). Information regarding Regulated Flood Hazard Areas or the repository for floodplain maps are available in the Park County Planning Department or the Park County Environmental Health Office, and can be viewed on the Park County website.

1.10. Amendment of Regulations

The County will hold a public hearing on any amendments to these Regulations and shall give public notice of its intent to amend these Regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

1.11. Public Records

Records maintained by the Floodplain Administrator are public records and may be inspected and copied upon reasonable request.

Park County may impose a reasonable copying cost for copying documents for members of the public and require payments of the costs before providing copies.

1.12. Subdivision Review

Within Regulated Flood Hazard Areas, applicants shall submit subdivision applications, condominiums, planned unit developments, manufactured home parks and other applicable development proposals to the Park County Planning Department. All subdivision proposals shall be reviewed under the current Park County subdivision regulations, the Montana Subdivision and Platting Act, and the Montana Sanitation in Subdivisions Act.

Within Regulated Flood Hazard Areas, Applicants shall submit subdivision, manufactured home parks and other development proposals to the Park County Floodplain Administrator ensuring such proposals, including utilities, will be reasonably safe from flooding. (44 CFR 60.3 (a)(4)).

- A. All subdivision proposals, manufactured home parks and other development proposals reviewed under the Montana Sanitation in Subdivision Act and the rules adopted by the Department of Environmental Quality (DEQ) under this act shall be reviewed for the following:
 1. adequate drainage provided to reduce exposure to flood hazards. (44 CFR 60.3 (a)(4)(iii)); and
 2. that public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage. (44 CFR 60.3 (a)(4)(ii)).
- B. Within Zone A floodplains, Applicants shall generate base flood elevation data for subdivision proposals, manufactured home parks and other development proposals greater than 50 lots or 5 acres. (44 CFR 60.3 (b)(3)).

SECTION 2. DEFINITIONS

2.1. Definitions:

Definitions

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

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

Alterations - Any change or addition to a structure that either increases its external dimensions or increases its potential flood hazard.

Appeal - A request for a review of the interpretation of the Floodplain Administrator of any provision of these Regulations or a request for a variance.

Applicant - The property owner, or their authorized agent, as listed on the Application form.

Application – Park County uses the “Joint Application for Proposed Work in Montana’s Steams, Wetlands, Floodplains, and Other Water Bodies”. The form may be obtained from the Park County Planning or Environmental Health Departments.

Area of Special Flood Hazard - The land in the Floodplain within the community subject to inundation by a one percent (1%) or greater chance of flood in any given year, i.e. the 100-year Floodplain.

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

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

Base Flood Elevation (BFE) - The elevation above sea level of the Base Flood in relation to National Geodetic Vertical Datum of 1988 unless otherwise specified in the flood hazard study.

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

Establish - To construct, place, insert or excavate.

Existing Manufactured Home Park or Subdivision – Existing Manufactured Home Parks or Subdivision are parcels where the construction of facilities for servicing the parcels were completed before the effective date of these Regulations. This includes, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

FEMA -- The Federal Emergency Management Agency.

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

Floodplain - The areas within the Regulated Flood Hazard Area subject to these Regulations, generally adjoining a stream, which would be covered by floodwater of a Base Flood except for designated shallow flooding.

Floodplain Administrator: An employee or agent designated by the Park County Commission to administer and enforce these Regulations.

Floodway - The channel of a stream and the adjacent overbank areas that must be reserved in order to discharge a Base Flood without cumulatively increasing the water surface elevation more than one-half (1/2) foot.

Floodway Fringe - That portion of the Floodplain outside the limits of the Floodway where a Floodway has been identified in the Regulated Flood Hazard Area.

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

Flood Insurance Study - The report in which the FEMA has provided flood profiles, as well as the flood boundary and Floodway map and the water surface profiles.

Levee - A man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water to provide protection from temporary flooding.

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

Lowest Floor (Elevation) - Any floor used for living purposes, storage or recreation. This includes any floor that could be converted to such a use. Lowest Floor excludes levels used for parking or building access if located in an area other than a basement.

Manufactured Home - A structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. This does not include "recreational vehicles."

Manufactured Home Parks or Subdivision - A parcel or contiguous parcels of land divided into two or more lots for rent or sale.

Mean Sea Level - The National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which Base Flood Elevations are referenced.

New Construction - Structures for which the start of construction, substantial improvement or alteration commences on or after the effective date of these Regulations.

Permit Issuing Authority - Park County.

Recreational Vehicle Park or Campground - A parcel or contiguous parcels of land divided into two or more spaces for rent or lease.

Regulated Flood Hazard Area – Include areas of shallow flooding, areas of special flood hazard, Base Flood, Base Flood Elevation, designated Floodplain, designated Floodway, flood of 100 year frequency, Floodplain or flood-prone area, Flood Fringe, One Hundred (100) -Year Flood, regulatory floodway, and special flood hazard area.

Riprap - Stone, rocks, concrete blocks or analogous material that is placed along the banks or bed of a stream for the purpose of alleviating erosion.

Start of Construction - Commencement of clearing, grading, filling, or excavating to prepare a site for construction.

Structure - A walled and roofed building, Manufactured Home, (or) a gas or liquid storage tank, bridge, culvert, dam, diversion, wall, revetment, dike, or other projection that may impede, retard, or alter the pattern of flow of water.

Substantial Damage - Damage sustained by a structure where the cost of restoring the structure to its condition before damage would equal 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - Any repair, reconstruction, or improvement of a structure in which the cost would equal or exceed fifty percent (50%) of the market value of the structure either:

- (1) before the improvement or repair is started, or

- (2) if the structure has been damaged, and is being restored, before the damage occurred.

For the purposes of this definition, Substantial Improvement is considered to occur when the first construction to any wall, ceiling, floor or other structural part of the building commences. A Substantial Improvement differs from the alteration of a structure in that it is not defined to including decreasing or affecting the external dimensions of the structure. This term also does not include either:

- (1) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or
- (2) any alteration of a structure listed on the National Register of Historic Places or State Inventory of Historic Places.

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

Variance - A grant or relief from the requirements of these Regulations which would permit Construction in a manner that would otherwise be prohibited by these Regulations.

Violation - The failure of a structure or other development to be fully compliant with these Regulations.

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

SECTION 3. FORMS AND FEES

3.1. Forms

- A. **Application** – An Application is to be submitted by the Applicant to the Park County Floodplain Administrator for review of the proposed project prior to the initiation of the project. Electronic Applications are preferred.
- B. **Permit Compliance Form** – A Permit Compliance Form is to be submitted by the Applicant to the Park County Floodplain Administrator once the permitted Floodplain project is completed and within the designated time stipulated on the floodplain permit.
- C. **Application for Variance Form** – An Application for Variance Form, if applicable, is to be submitted by the Applicant to the Park County Floodplain Administrator for review of the proposed project prior to the initiation of the project.
- D. **Appeal Form** – An Appeal Form is to be submitted by the Applicant to the Park County Floodplain Administrator for review of the proposed project prior to the initiation of the project.
- E. **Emergency Notification Form** – An Emergency Notification Form is to be used by persons to notify the Park County Floodplain Administrator of projects undertaken during an emergency to safeguard life or structures. This is not a permit Application and the person must take additional steps, outlined in Section 8. Emergencies.
- F. **Official Complaint Form** – An Official Complaint Form may be used by any person to notify the Floodplain Administrator of an activity taking place without an official signed floodplain permit. Persons may make complaints without use of this form.

3.2. Fee Schedule

Floodplain Permit without sanitation - \$100.00

Floodplain Permit with sanitation - \$400.00

Floodplain Permit Variance - \$300.00

After the fact Floodplain permits are double the original fee.

SECTION 4. JURISDICITONAL AREA

4.1. Regulated Flood Hazard Areas

- A. Regulated Flood Hazard Areas includes the current effective Flood Insurance Study (FIS) and accompanying Flood Insurance Rate Maps (FIRMs) for Park County, Map number 30067INDOA, Effective Date, October 18, 2011— Available in the Park County Planning Department, Park County Environmental Health Department and Department of Natural Resources and Conservation (DNRC).
- B. Regulated Flood Hazard Areas also include those areas identified by Park County in its Floodplain Management Shields River Floodplain Management Study, dated March, 1993; and any accompanying data adopted by reference and declared to be part of these Regulations.

4.2. Jurisdictional Area

These Regulations apply to all Regulated Flood Hazard Areas within the jurisdiction of Park County, State of Montana. (excluding the City of Livingston).

4.3. Interpretation of Floodplain Boundaries

- A. The following process will be used to determine Floodplain boundaries for Floodways and Floodway Fringes with known Base Flood Elevations (BFE's) and Floodplain areas without Base Flood Elevations and no delineated Floodway.
 - 1. The designated floodplain boundary is determined by the BFE's. The mapped Floodplain boundary may be used as a guide for determining whether property is within the Regulated Flood Hazard Areas, but the exact boundary shall be determined according to the BFE. (ARM 36.15.501(6)).
 - 2. If the local Floodplain Administrator determines it is unclear whether property is in or out of the Floodplain, the Floodplain Administrator shall require the Applicant to provide additional information which may include elevations obtained through a level survey performed by a professional engineer or register land surveyor. (ARM 36.15.501(6)).

SECTION 5. USES - PERMITTING

The following sections identify permitted and prohibited uses within the Regulated Flood Hazard Area.

Please Note: All New Construction, Substantial Improvement, construction as a result of Substantial Damage, and Alteration of any Structure located within a Regulated Flood Hazard Area shall meet the following criteria, along with any applicable provisions identified in 44 CFR 60.3 (Appendix B) and Montana Code Annotated Title 76 Chapter 5 Floodplain and Floodway Management. Applicants are encouraged to meet with the local Floodplain Administrator prior to any New Construction, Substantial Improvement and Alterations in order to determine what flood proofing / constructions standards apply to their specific proposal.

FLOODWAY

- 5.1. Uses Allowed Without a Permit in the Designated Floodway:** Please refer to ARM 36.15.601 (Appendix A) for a complete list of uses allowed without a permit in the designated Floodway.
- 5.2. Uses Requiring Permits in the Designated Floodway:** Please refer to ARM 36.15.602 (Appendix A) for a complete list of all uses requiring permits in the designated Floodway.
- 5.3. Permits for Water Diversions in the Designated Floodway:** Please refer to ARM 36.15.603 (Appendix A) for information regarding permits for water diversions in the designated Floodway.
- 5.4. Minimum Criteria for Permits in the Designated Floodway:** Please refer to ARM 36.15.604 (Appendix A) for information regarding the minimum criteria for permits in the designated Floodway.
- 5.5. Prohibited Uses in the Designated Floodway:** Please refer to ARM 36.15.605 (Appendix A) for a complete list of all prohibited uses in the designated Floodway.
- 5.6. Permits for Flood Control Works:** Please refer to ARM 36.15.606 (Appendix A) for information regarding permits for flood control works in the designated Floodway.

FLOOD FRINGE

5.7. Allowed Uses in the Designated Flood Fringe: Please refer to ARM 36.15.701 (Appendix A) for a complete list of allowed uses in the designated Flood Fringe.

5.8. Prohibited Uses in the Designated Flood Fringe: Please refer to ARM 36.15.703 (Appendix A) for a complete list of all prohibited uses in the designated Flood Fringe.

FLOODPLAIN

5.9. Allowed Uses Where Floodway Not Designated or No Base Flood Elevations: Please refer to ARM 36.15.801 (Appendix A) for a complete list of allowed uses where the Floodway is not designated or no Base Flood Elevations exist.

SECTION 6. PERMIT APPLICATION REQUIREMENTS AND REVIEW PROCEDURES

6.1. General - *No person shall* engage in New Construction, Substantial Improvements, or Alterations of any Structure within the Regulated Flood Hazard Area without full compliance with the provisions of these Regulations including a permit when applicable. (44 CFR 60.1 and ARM 36.15.204).

6.2. Required Information

Prior to Application Submittal Prior to submittal of any Floodplain Permit Application. Applicants are encouraged to schedule a meeting with the Floodplain Administrator and any other applicable agency, which may include a site inspection, in order to best determine the procedures, provisions and necessary permits for a given proposal.

The Permit Application shall include, but is not limited to the following:

- A. A completed and signed Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and other Water Bodies;
- B. The required review fee;
- C. Two copies of plans which are drawn to scale showing the location, dimensions, and elevation of proposed project (i.e.; landscape alterations, existing and proposed structures, including the placement of manufactured homes, etc.) and the location of the foregoing in relation to the Regulated Flood Hazard Areas; and
- D. Prior to the expiration of the formal sixty (60) working day review period, the Applicant shall submit valid documentation of all required applicable permits which may include but is not limited to, a 310 permit, SPA 124 Permit, Section 404 Permit, a 318 Authorization, 401 Certification or a Navigable Rivers Land Use License or Easement from all other federal, state, and local agencies, for the proposed floodplain project. The Floodplain Administrator cannot approve or conditionally approve a Floodplain Permit Application until the Applicant has provided the Floodplain Administrator with documentation to show all applicable permits for the project have been obtained.

6.3. Additional Information That May Be Required

- A. Within the Regulated Flood Hazard Areas, Applicant(s) shall provide elevation documentation that is stamped by a surveyor or engineer in relation to NAVD 88 that verifies residential structures are constructed so that the lowest floor elevation, including basements, is 2 feet above the Base Flood Elevation. (44 CFR 60.3(c)(2); Montana Code Annotated § 76-5-402).
- B. Within the Regulated Flood Hazard Area, Applicant(s) shall provide elevation documentation that is stamped by a surveyor or engineer in relation to NAVD 88 that verifies all nonresidential structures are flood proofed to a minimum of 2 feet above Base Flood Elevation and pursuant to Section 7. (44 CFR 60.3(c)(3),(4); Montana Code Annotated § 76-5-402).
- C. A certificate from a engineer or architect that the nonresidential flood proofed structure shall meet the floodproofing criteria of Section 7 of these Regulations. (44 CFR 60.3(C)(4)).
- D. Project design certified by an engineer.
- E. Other information deemed necessary by the Floodplain Administrator in order to determine whether the proposed project will comply with applicable Floodplain development standards and requirements. Examples of other information that may be requested include, but are not limited to, hydraulic calculations assessing the impact on BFEs on velocities; assessment by an independent hydrologist, and/or land survey or certifications by a registered land surveyor, professional engineer or licensed architect that states the requirements of these Regulations are met.

6.4. Determining Base Flood Elevations

A. Shallow Flooding (AO Zones)

Shallow flooding areas are delineated as AO Zone floodplains on the Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) or Digitized Flood Insurance Rate Map (DFIRM). The depth of 100-Year Flood is indicated as the depth number on the FIS and FIRM or DFIRM and shall be referenced to the highest adjacent grade or stream flow line in determining which fill and/or flood-proofing heights are to be utilized in applying the provisions. In the absence of depth or elevation information, a minimum of 2 foot flood depths shall be used. (44 CFR 60.3(c)).

B. A-Zones with no Base Flood Elevation

Since there are no 100-year frequency water surface profiles computed for Zone A Floodplains, the following conditions shall also apply:

1. The Applicant shall obtain and the Floodplain Administrator shall review and reasonably utilize any 100-Year Flood and Floodway elevation data available from a Federal, State, or other source, until such data has been provided by FEMA to enforce these Regulations;
2. Historical flood elevations may be used by the Floodplain Administrator in determining suitable fill or flood-proofing elevations to be achieved and used in accordance with these Regulations;
3. If historical flood evidence is not available, then the Floodplain Administrator shall determine, from a field review at the proposed development site, an appropriate fill and/or flood-proofing elevation to be utilized in applying these Regulations. In the absence of depth or elevation information, a minimum of 2 foot flood depth shall be used; and
4. The Floodplain Administrator shall make interpretations where needed as to the exact location of the unnumbered A Zone floodplain boundary where there appears to be a conflict between a mapped boundary and actual field conditions. (44 CFR 60.3(b)).

6.5. Alteration of Regulated Flood Hazard Area

A. Floodplain areas with Flood Elevations and no delineated Floodway

A development proposed for a 100-Year Floodplain, where water surface elevations are available but no Floodway is delineated, may not significantly increase flood velocities or depths or generally alter patterns of flood flow. The Floodplain Administrator may require an Applicant to furnish additional hydraulic data before acting on a Permit Application for such a Floodplain. The data may include, but is not limited to, any of the following:

- A. A hydraulic study documenting probable effects on upstream, downstream, or adjacent property owners caused by the proposed development; or
2. The calculated increase in the 100-year flood water surface profile caused by the proposed development.

B. Conditional Letter of Map Revision (CLOMR)

If any of the following situations are applicable, the Application must include documentation of FEMA's approval of a CLOMR before the Application can be deemed sufficient by the Floodplain Administrator:

1. If a proposed project would result in an increase to the Base Flood Elevation in excess of the allowable level (0.00 feet in Floodway unless a lesser encroachment is specified in the FIS. Greater than 0.00 feet requires a variance and a CLOMR.), on a stream or river that has been studied through detailed hydrologic and hydraulic analyses and for which Base Flood Elevations (BFEs) and a Floodway have been designated;
2. When a regulatory Floodway has not been designated, the Application shall verify/state that any New Construction, Substantial Improvements, or Alteration of an artificial obstruction will not increase the water surface elevation of the Base Flood more than one-half (0.5) foot at any point, or significantly increase the Base Flood velocity, within the community; (ARM 36.15.604).
3. Encroachment Certification-Applications for projects in the Floodway are required to provide an encroachment certification also known as a "no-rise" certification to document that the development of the project will not affect flood heights. The certification must be supported by technical data, which would include a computer model to show the affect of the proposed project on the floodway as shown on the community's map; and
4. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

6.6. Initial Application Review Process

For all Floodplain Permit Applications, the initial review process is as follows:

Upon completion of review of an Application that has been deemed sufficient by the Floodplain Administrator, the Floodplain Administrator shall approve, approve with conditions, or deny the Application within sixty (60) working days. If the Application is deemed insufficient, the Floodplain Administrator will notify the Applicant in writing of deficiencies. The formal sixty (60) day Application review period shall start the next working day after the Floodplain Administrator determines the Application contains all required elements and is sufficient for review.

A. Element and Sufficiency Review

1. Within 10 working days the Floodplain Administrator shall determine whether the Application contains all of the applicable elements and whether each required element contains detailed, supporting

information that is sufficient for the review of the proposed Floodplain project under these Regulations by the Floodplain Administrator.

2. If the Floodplain Administrator determines that elements are missing from the Application or if the Floodplain Administrator determines that any of the elements are insufficient for review, the Floodplain Administrator shall notify the Applicant in writing of any deficiencies. No further action shall be taken on the Application by the Floodplain Administrator until the Application is resubmitted by the Applicant.
3. This process shall be repeated until the Applicant either submits an Application containing all the required elements and sufficient information required by these Regulations and the Application or the Application is withdrawn.
4. Once the Application is deemed to contain all required elements and is sufficient for review, the sixty (60) working-day formal Application review period shall begin, starting the next working day after the determination has been made.

B. Notice Requirements for Floodplain Permit Applications:

1. Upon receipt of a complete and sufficient Application, the Floodplain Administrator shall prepare a notice containing the facts pertinent to the Application and shall publish the notice twice at least six days apart in a newspaper of general circulation in the area. Notice shall also be served by certified mail upon adjacent property owners. The State Floodplain NFIP Coordinator with DNRC shall also receive notice by the most efficient method. 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)).
2. In riverine situations and when applicable under 44 CFR 60.3(b), adjacent communities and DNRC must be notified prior to any alteration or relocation of a watercourse of a designated Floodplain, and submit evidence of such notification to FEMA. (44 CFR 60.3(b)(6)).

6.7. Review of Application

A. Consideration – Standards

In approving, conditionally approving, or denying a Floodplain Permit Application, the Floodplain Administrator shall consider whether the proposed New Construction, Alteration or Substantial Improvement of an artificial obstruction complies with these Regulations, including but not limited to, the standards set forth in Section 8 [Construction Standards] and the following:

1. That all New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area, including the placement of Manufactured Homes, will be reasonably safe from flooding;. (44 CFR 60.3(a)(3); ARM 36.15.216(1)&(2))
2. The request for fill for a residential or commercial building is not followed by a request for a basement for the same residential or commercial building, which would put the finished floor of the building below the BFE, which would negate the purpose of the fill;
3. That all New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area shall comply with any applicable zoning regulation;
4. For projects involving bank stabilization, channelization, levees, floodwalls and/or diversions, off-property impacts including increased flood peaks, flood stage, flood velocity, erosion and sedimentation, should be considered and found to be non-existent, neutral or able to be mitigated;
5. Such other factors as are in harmony with the purposes of these Regulations, the Montana Floodplain and Floodway Management Act, and the National Flood Insurance Program; (ARM 36.15.216(2)(g))
6. That all New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area shall not adversely impact other property owners or significantly increase flood heights, without showing that the impacts could be mitigated; and
7. When applicable under 44 CFR 60.3(b), assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

B. Consideration – Evidence

In making their decision to approve, conditionally approve, or deny an Application, the Floodplain Administrator shall determine whether or not the Application contains sufficient information to demonstrate and discuss the following, as applicable:

1. Meets the criteria in Sections 5 and 7 of these Regulations;
2. The danger to life and property due to increased flood heights, increased floodwater velocities, backwater or alterations in the pattern of flood flow caused by the obstruction or encroachment; (ARM 36.15.216(2)(a))

3. The danger that the obstruction or encroachment may be swept onto other lands or downstream to the injury of others; (ARM 36.15.216(2)(b))
4. The ability of the proposed water supply and/or sanitation system to prevent disease, contamination, and unsanitary conditions are not affected by the proposal;
5. The susceptibility of any New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area and its contents, to flood damage and the effects of such damage on any property owners in the area;
6. The construction or Alteration of the obstruction or encroachment shall be in such manner as to lessen the flooding danger; (ARM 36.15.216(2)(d))
7. The importance of the New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area, or the public services provided by such New Construction, Substantial Improvement or Alteration of any Structure, to the community;
8. The necessity of the facility for a waterfront location;
9. The availability of alternative locations not subject to flooding for the New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area; (ARM 36.15.216(2)(c))
10. The compatibility of the New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area with existing development and anticipated development in the foreseeable future; (ARM 36.15.216(2)(f))
11. The relationship of the New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area to the comprehensive plan and floodplain management program for the area;
12. The ability to adequately access the property in times of flooding for ordinary and emergency services;
13. The additional impacts that were listed in Section 10 and set forth in the Application;
14. The Floodplain Administrator shall consider all other applicable scientific information, including, but not limited to; the Yellowstone River Channel Migration Zone as depicted in the February 2009 report "Yellowstone

River Channel Migration Zone Mapping” (copies of this study are available in the Park County Planning or Environmental Health Offices, or the Park County Website), historical photos, historical flow data, and any other applicable scientific studies or data; and/or

15. When Base Flood Elevation data has not been provided in accordance with these Regulations, the Floodplain Administrator shall obtain, review and reasonable utilize any BFE data and Floodway data available from a Federal, State or other source, in order to administer the provisions of these Regulations. Where BFE data are utilized in Zone A, the Floodplain Administrator shall obtain and maintain records of lowest floor and floodproofing elevations for any new and substantially improved construction. (44 CFR 60.3(b)(4)).

6.8. Decision

A. Floodplain Administrators Record of Decision

1. In rendering a decision to approve, conditionally approve, or deny the proposed Floodplain permit Application the Floodplain Administrator shall issue written findings of fact that discuss the Application’s compliance with Section 7 and other sections of these Regulations.
2. All approved permits will be signed by the Floodplain Administrator.
3. When the Floodplain Administrator approves, conditionally approves, or denies the proposed Application, he/she shall send the Applicant a letter. The letter shall:
 - a. Identify the Regulations and/or statutes that are used in reaching the decision to approve, deny, or impose conditions;
 - b. Provide the facts and conclusions that the Floodplain Administrator relied upon in making his/her decision and reference documents or other materials that form the basis of the decision;
 - c. Set forth the time limit for approval, pursuant subsection B [Floodplain Permit Application Approval Period] below; and
 - d. Point out the disclosure provisions that require all property owners with property in a designated Floodplain or Floodway, or their agents to notify potential buyers that such property is located within the Regulated Flood Hazard Area by adding a condition to the Floodplain permit. (ARM 36.15.204(2)(g)).

B. Floodplain Permit Application Approval Period

1. Upon approval or conditional approval of the Floodplain permit Application, the Floodplain Administrator shall provide the Applicant with a dated and signed permit.
 - a. The permit shall be in force for no more than one calendar year at which time the permit will become null and void; however, the Floodplain Administrator may extend the approval for more than one year if that approval period is included as a specific condition of the permit and is discussed and documented during the initial Floodplain permit Application.
 - b. At least 30 days prior to the expiration of the Floodplain permit, the Applicant must submit a written request to extend the approval for a period of one additional year. The Floodplain Administrator shall send a letter to the applicant approving or denying the extension.
 - c. The Floodplain Administrator shall forward copies of all permits to DNRC. (ARM 36.15.204(2)(e).

C. Inspections of Completed Projects:

1. The Applicant shall provide documentation that the New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area was completed and complies with all conditions imposed at the time of the permit.
2. A certificate of compliance shall be signed and submitted to the Floodplain Administrator after the New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area is completed and within the time frame conditioned on the permit.
3. A final site visit by the Floodplain Administrator may be conducted after the certificate of compliance is submitted to ensure compliance with the permit.
4. Changes to the natural environment may render the permit null and void if the Floodplain Administrator determines that the New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area is no longer in accordance with these Regulations or the permit. Below is a list of changes that may be taken into consideration, including but not limited to:
 - a. Changes in the Floodplain delineation;
 - b. Changes in base flood elevations;

- c. Changes in topographic elevations;
- d. Changes necessary to complete the project that were not included in the approved permit;
- e. Changes in the river/stream channel;
- f. Changes in setbacks and distance requirements.

SECTION 7. FLOOD PROOFING AND CONSTRUCTION STANDARDS

All New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area shall meet the following criteria, along with any applicable provisions identified in 44 CFR 60.3 (Appendix B). Applicants are encouraged to meet with the local Floodplain Administrator prior to any New Construction, Substantial Improvement and Alterations in order to determine what flood proofing / constructions standards apply to their specific proposal.

- 7.1. Flood Proofing for Residential, Commercial and Industrial Structures located in the designated Flood Fringe and outside the designated Floodway:** Please refer to ARM 36.15.702 (Appendix A) for a complete list of flood proofing standards for residential and industrial standards in the designated flood fringe.
- 7.2. Flood Proofing Requirements for Electrical Systems:** Please refer to ARM 36.15.901 (Appendix A) for a complete list of flood proofing requirements for Electrical Systems.
- 7.3. Flood Proofing Requirements for Heating Systems:** Please refer to ARM 36.15.902 (Appendix A) for all requirements for heating systems.
- 7.4. Flood Proofing Requirements for Plumbing Systems:** Please refer to ARM 36.15.903 (Appendix A) for a complete list of requirements for plumbing systems.

SECTION 8. EMERGENCIES

8.1. General

Emergency repair and replacement of severely damaged public transportation facilities, public water and sewer facilities, public flood control works, and private projects that threaten human health and safety are subject to the permitting requirements of these Regulations.

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

8.2. Emergency Application Requirements

- A. Prior to any action, the property owner and or the person responsible for taking emergency action shall notify the Floodplain Administrator and submit an Emergency Notification Form within five (5) days of the action taken as a result of an emergency.
- B. Within 30 days of initiating the emergency action, a person who has undertaken an emergency action must submit an 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 (Unless otherwise specified by the Floodplain Administrator).
(ARM 36.15.217).

8.3. Permit Evaluation

A person, who has undertaken an emergency action, may be required to modify or remove the project in order to meet the approved permit requirements and these Regulations.

SECTION 9. VARIANCES

9.1. General - A Variance is a grant of relief from the requirements of these Regulations that would permit construction in a manner otherwise prohibited by these Regulations.

9.2. Variance Application Requirements

- A. Required Information:
 - 1. A completed Variance Application; and
 - 2. A completed Application and the required information listed in Section 6.2 of these Regulations.
- B. Additional Information that may be required:
 - 1. Additional information specific to the variance request; and
 - 2. the additional information that may be required as listed in Section 6.2 of these Regulations.

9.3. Variance Application Evaluation

Initial Review Process - If the Floodplains permit or Variance Application is not deemed correct and complete, the Floodplain Administrator will notify the Applicant in writing by certified mail of deficiencies within 10 working days.

- A. The Floodplain Administrator should notify DNRC of pending variances.
- B. All requirements set forth in the in section 6.7.A [Application Review] apply to the Review process of Variance Applications.
- C. Notice Requirements for Floodplain Variance Application - All requirements set forth in section 6.7.B [Notice Requirements] apply to this section.

9.4. Review of Variance Application

- A. Consideration – Criteria - Variances shall only be granted upon a determination that the Variance is the minimum necessary relief when considering the flood hazard and the findings of each of the following: (44 CFR 60.6(a)(4))
 - 1. Showing a good and sufficient cause; (44 CFR 60.6(a)(3))
 - 2. A determination that failure to grant the Variance would result in exceptional hardship to the applicant; (44 CFR 60.3(a)(3)); ARM 36.15.218(b)). Hardship cannot be financial in nature or self imposed;
 - 3. A determination that the granting of a Variance will not result in increased flood heights, 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 60.3(a)(3); ARM 36.15.218(a))

4. The New Construction, Substantial Improvement, and Alteration of any Structure located within a Regulated Flood Hazard Area is adequately flood proofed; (ARM 36.15.218(c))
 5. Reasonable alternative locations outside the designated Floodplain are not available; (Section 76-5-406(3), MCA; ARM 36.15.218(d))
 6. The danger to life and property by water that may be backed up or diverted by the obstruction or use; (Section 76-5-406(1), MCA)
 7. The danger that the obstruction or use will be swept downstream to the injury of others; (Section 76-5-406(2), MCA)
 8. The construction or alteration of the obstruction or use in such a manner as to lessen the danger; (Section 76-5-406(4), MCA)
 9. The permanence of the obstruction or use; (Section 76-5-406(5), MCA)
 10. The anticipated development in the foreseeable future of the area that may be affected by the obstruction or use; (44 CFR 60.6(a)(3); Section 76-5-406(6), MCA; ARM 36.15.218)); and
 11. The Applicants failure to comply with these Regulations did not result in the hardship the Applicant is seeking relief from.
- B. Special Considerations: 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 necessary to preserve the historic character and design of the structure. (44 CFR 60.6(a)).
- C. Variance Prohibitions: Unless a CLOMR has been issued, a Variance shall not be used within any designated Floodway if the result would be any increase to the allowable Floodway surcharge elevations or velocities, during the base flood discharge or in the Regulated Flood Hazard Areas where BFE's have been specified but a floodway has not been designated, there is more than a 1.0 foot increase in the BFE from a proposed project upon construction.

9.5. Decision

A. Governing Body Determination

1. The Park County Commission is hereby appointed as the local decision making body for Variances.
2. The Park County Commission shall hear, make findings and approve, conditionally approve or deny all Variances.
3. Upon consideration of the criteria in Section 10 and the intent of these Regulations, the Park County Commission may attach such conditions to the granting of Variances as it deems necessary to further the purpose and objectives of these Regulations.
4. Any person or persons aggrieved by the decision of the Park County Commission may appeal such decision in the courts of competent jurisdiction. (Mont. Code Ann. § 76-5-209(1))
5. The Floodplain Administrator shall maintain a record of all actions involving a Variance, including the Park County Commission's findings and decision and shall send a copy of each Variance granted to DNRC. (44 CFR 60.6(a)(6); Mont. Code Ann. § 76-5-405)
6. The community shall report such Variances issued in its biennial report submitted to FEMA. (44 CFR 60.6(a)(6))

B. Variance Application Approval Period – All requirements set forth in the Application Approval Period in Section 6.9 (B) apply to the process for Variance application approval period.

C. Inspections of Completed Projects – All requirements set forth in the Inspections of Completed Projects found in Section 6.9 (C) apply to the process for inspections for completed projects.

SECTION 10. APPEALS

10.1. General

Applicant(s) may appeal any final determination made by the Floodplain Administrator to the Park County Commission. All appeals need to be submitted in writing to the Park County Floodplain Administrator.

10.2. Appeals Application Requirements

A. Required Information

1. A completed Appeals Application;
2. A copy of the Floodplain Administrator's decision or determination;
3. Additional information specific to the appeal request that may be required;
4. An appeal may be submitted to the Park County Planning Department or Park County Environmental Health Department by an Applicant or anyone who may be aggrieved by the Floodplain Administrator's decision or determination;
5. Appeals must be received within 30 days of the date of the decision or determination of the Floodplain Administrator in which the property involved is located. The appeal must specify the grounds upon which the appeal is being requested.

10.3. Appeal Application Evaluation

A. Initial Review Process

1. The Floodplain Administrator may notify DNRC and FEMA of pending appeals.
2. The review process for appeals follows the Application Evaluation Initial review process as listed in Section 6.7.

B. Notice Requirements for Floodplain Appeals:

The Notice process follows the notice requirements for Applications as listed in Section 6.7.B of these Regulations.

10.4. Review of Appeals Application

The following information should be adequately evaluated by the Park County Commission:

1. The Floodplain Administrators' determination and supporting information;

2. Additional information provided by the person appealing;
3. These Regulations; and
4. Public comments.

10.5. Determination

- A. The Park County Commission shall be the final authority regarding all appeals. In rendering an appeal determination, the Commission is not authorized to grant variances or special exceptions to the provisions outlined in these Regulations. All variances and special exceptions shall be processed in accordance with these Regulations.
- B. Any person or persons aggrieved by the decision of the Park County Commission may appeal such decision in the 6th Judicial Court, Park County, Montana. (Mont. Code Ann. § 76-5-209(1))

SECTION 11. ENFORCEMENT

11.1. Initial Review, Investigation, and Notice

A. Initial Review

An investigation of a natural or artificial obstruction or nonconforming use shall be made by the Floodplain Administrator on their own initiative, upon notification in writing of the potential violation, or upon written request of the Park County Commission. Upon the request of an owner, owner's agent, lessee, or lessee's agent whose lands will be entered to undertake the investigation, the Floodplain Administrator shall release the names and addresses of the persons or governing body requesting the investigation. (Mont. Code Ann. § 76-5-105(2)).

B. Other Remedies

1. Action under this section shall not bar enforcement of these Regulations by injunction or other appropriate remedy.
2. This section does not prevent the Park County Commission or Floodplain Administrator from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

C. Notice to Enter and Investigate Lands or Waters

The Floodplain Administrator may make reasonable entry upon any lands and waters in Park County for the purpose of making an investigation, inspection or survey to verify compliance with these Regulations. The Floodplain Administrator shall provide notice of entry by mail, electronic mail, phone call, personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the Floodplain Administrator shall affix a copy of the notice to one or more conspicuous places on the property for five (5) days.

11.2. Notices to Respond and Orders to Take Corrective Action Requirements

- A. **Floodplain Administrator:** When the Floodplain Administrator determines that a violation of these Regulations 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.

- B. **Property Owner/Owner's Agent:** The order to take corrective action is final unless, within ten working days after the order is received, the owner submits a written request for a request to appeal the determination made by the Floodplain Administrator. Upon submission of an appeal, the Applicant may provide additional information justifying the need for an appeal to the Park County Commission.
- C. **Appeal Request:** For all appeals the Floodplain Administrator shall schedule a public hearing before the Park County Commission. The public hearing shall be notified in accordance with section 6.7.B [Notice Requirements] of these Regulations. At the hearing, the Floodplain Administrator shall present all applicable information to the Park County Commission, including any subsequent information provided by the Applicant. The Applicant(s) shall present any necessary information to the Park County Commission regarding the violation notification. The Park County Commission shall consider all applicable evidence of record and make a final determination.
- D. **Failure to comply with Order to Take Corrective Action:** If an owner fails to comply with the final Notice to Respond and Take Corrective Action, in addition to other legal actions, the Floodplain Administrator shall notify the owner that failure to take corrective action within 30 additional days will cause Park County to submit a 1316 Violation Declaration to the Federal Insurance Administrator. The notice must state that new and renewal flood insurance shall be denied to a structure upon a finding by the Federal Insurance Administrator of a valid violation declaration. If the violation continues after the additional 30-day notice, the Floodplain Administrator shall provide the Federal Insurance Administrator a 1316 Violation Declaration consisting of:
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 Park County 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.

11.3. Additional Enforcement Information

Judicial Review: Except as otherwise provided, persons subject to a hearing decision of the Park County Commission may appeal the decision to the district court pursuant to the contested case provisions of the Montana Administrative Procedure Act after the Department's appeals process is exhausted.

SECTION 12. PENALTIES

12.1. Violation/Penalties:

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 on the floodplain 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 (including the conditions and safeguards established in variances) shall, upon conviction thereof, be fined not more than \$100 (one hundred dollars) 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. (Mont. Code Ann, § 76-5-110).

The County Attorney's Office may pursue civil action(s) against anyone found to be in violation of these Regulations.