LAKE COUNTY
MONTANA

FLOODPLAIN MANAGEMENT REGULATIONS

Effective February 6, 2013

Lake County
Planning Department

106 Fourth Avenue East
Polson, MT 59860

Phone: 406.883.7235
Fax: 406.883.7205
Email: planning@lakemt.gov

www.lakecounty-mt.org/planning

TABLE OF CONTENTS

SECTION 1
GENERAL PROVISIONS

1.1 FLOODPLAIN MANAGEMENT REGULATIONS

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

1.2 STATUTORY AUTHORITY

1. Floodplain and Floodway Management is incorporated into Montana Code Annotated (MCA) Title 76, Chapter 5, which describes the authority, procedures, and minimum standards for local regulations.

2. The authority to regulate development in specifically identified flood hazard areas is granted to political subdivisions of the State of Montana pursuant to 76-5-301, MCA.

1.3 FINDINGS OF FACT

1. Flood hazard areas specifically adopted herein as 100-year Floodplains have been delineated and designated by the Department of Natural Resources and Conservation (DNRC) and the Federal Emergency Management Agency (FEMA) pursuant to 76-5-201, MCA.

2. The regulations have been reviewed and approved by the governing body of Lake County, DNRC, and FEMA, and have been found to meet the prescribed minimum standards for development and procedures.

1.4 PURPOSE

These regulations promote public health, safety and general welfare of the residents and minimize public and private losses due to flood conditions in 100-year Floodplains. 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

7. Ensure compliance with the minimum standards for the continued participation in the National Flood Insurance Program (NFIP) 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 100-year Floodplain and those applied to that portion of the 100-year Floodplain not contained in the floodway;

7. Apply more restrictive land use regulations within the floodway of the 100-year Floodplain; and

8. Ensure that regulations and minimum standards balance the greatest public good with the least private injury.

1.6 JURISDICTIONAL AREA

These regulations apply only to the flood hazard areas specifically adopted herein as 100-year Floodplains, which are more fully and specifically described in Section 4. The jurisdictional areas are those areas of the 100-year floodplain illustrated and depicted in the referenced Lake County Flood Insurance Study (FIS), and Flood Insurance Rate Maps (FIRMs), dated February 6, 2013. The requirements for alterations to the 100-year Floodplains comprising the jurisdictional area are in Sub-Section 4.3. Areas within the 100-year Floodplain also include areas specifically identified, labeled and illustrated on maps as Floodway or Flood Fringe that have differing uses allowed and minimum building standards that apply.

The FIS and FIRM were completed for DNRC by FEMA and have been adopted by DNRC pursuant to 76-5-201, MCA, et. seq. FEMA also utilizes the FIS and accompanying FIRM for determining flood risk for National Flood Insurance premiums.

1.7 RULES FOR INTERPRETATION OF FLOODPLAIN DISTRICT BOUNDARIES

Boundaries of the 100-Year Floodplain shall be estimated by scaling distances on the FIRM and using the 100-Year Floodplain data tables contained in the FIS. The maps may be used as a guide for estimating the 100-Year Floodplain boundary, but the exact location of the floodplain boundary shall be determined where the BFE intersects the natural ground.

1. For the A Zone and AO Zone as depicted on a FIRM, where conflict exists between a mapped floodplain boundary and actual field conditions, the Floodplain Administrator may interpret the location of the 100-Year Floodplain boundary based on field conditions or available historical flood information.

2. The Floodplain Administrator may require elevation information provided by an engineer or land surveyor or other information as needed for any development that may be considered to be subject to these regulations. The Floodplain Administrator's interpretation of the boundaries and decision may be appealed as set forth in Section 13.

3. Any owner or lessee of property who believes his property has been inadvertently included in the 100-year Floodplain may submit scientific and/or technical information to the Floodplain Administrator. Changes to the National Flood Insurance Rate Maps for the National Flood Insurance Program through a FEMA Letter of Map Change process are the responsibility of the owner or lessee.

1.8 FLOODPLAIN ADMINISTRATOR

The Director of the Lake County Planning Department is officially appointed as the Floodplain Administrator. The Planning Director may appoint a professional level subordinate to serve as the official Floodplain Administrator. The Floodplain Administrator serves to administer and implement the provisions of these regulations and meet and maintain the commitments pursuant to 44 CFR 59.22(a) to FEMA when FEMA Flood Insurance was made available in the jurisdictional area of Lake County.

1.9 COMPLIANCE

Development, New Construction, Alteration or Substantial Improvement in the adopted 100-year Floodplain may not commence without full compliance with the provisions of these regulations.

1.10 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 land use regulations in effect. However, where these regulations impose greater restrictions, the provision of these regulations must prevail.

1.11 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 Lake County; and (3) deemed neither to limit nor repeal any other powers granted under state statutes.

1.12 WARNING AND DISCLAIMER OF LIABILITY

These regulations do not imply that land outside the 100-year Floodplain or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of Lake 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.

1.13 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.

1.14 DISCLOSURE PROVISION

All owners (or their agents) of property in the 100-year Floodplain shall notify potential buyers or their agents that such property is located within the 100-year Floodplain, is subject to regulation, and inform them of any permitted uses that are transferred. Information regarding 100-year Floodplains and the repository for Floodplain maps is available in the Floodplain Administrator's office.

1.15 AMENDMENT OF REGULATIONS

Once adopted, these regulations may be amended by Lake County after a public hearing and notice and approval of DNRC and FEMA. Lake County will provide a 30-day review and comment period to DNRC and FEMA.

1.16 PUBLIC RECORDS

Records including permits and applications, elevation and flood proofing certificates, certificates of compliance, fee receipts, and other matters relating to these regulations must be maintained by the Floodplain Administrator, are public records, and must be made available for inspection and for copies upon reasonable request. A reasonable fee for copying documents for members of the public may be charged and Lake County may require payment of the costs before providing the copies.

1.17 SUBDIVISION REVIEW

Subdivisions reviewed by Lake County, including new or expanded manufactured or mobile home parks, within the 100-year Floodplain must be designed to meet the following criteria:

1. The base flood elevations and boundaries of the 100-year Floodplain shall be determined and considered during lot layout and building location design;

2. Locations for future structures and development must be reasonably safe from flooding;

3. Adequate surface water drainage shall be provided to reduce exposure to flood hazards;

4. Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damage;

5. For development within the 100-year Floodplain, permits according to these regulations must be obtained before development occurs; and

6. All subdivision proposals must demonstrate compliance with the Lake County Subdivision Regulations.

1.18 DISASTER RECOVERY

In the event of a disaster, the Floodplain Administrator should conduct a windshield survey of affected areas in the 100-year Floodplain to obtain a preliminary evaluation of the extent and severity of damage to buildings. The Floodplain Administrator may notify owners that a permit may be necessary before repair or reconstruction commences on structures that:

1. Have sustained 50% or more in flood damages;
2. Have been swept away;
3. Have one or more collapsed or missing walls;
4. Cannot be reoccupied without major structural work; or
5. Have sustained more than two feet of water over the lowest floor.

Structures within the 100-year Floodplain that have suffered substantial damage or will undergo substantial improvements require a Floodplain Development Permit and must be upgraded to meet the minimum building standards herein during repair or reconstruction.

The Floodplain Administrator shall coordinate assistance and provide information to structure owners concerning Hazard Mitigation and Recovery measures with FEMA, DNRC, and other state, local and private emergency service organizations.

SECTION II
DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance 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 Floodplain – A Floodplain whose limits have been designated pursuant to Part 2, Chapter 5 of Title 76, MCA, and is determined to be the area adjoining the watercourse that would be covered by the floodwater of a base flood, a flood of a 100-year frequency. The 100-year Floodplain consists of the Floodway and Flood Fringe where specifically designated. The 100-year Floodplain comprises the jurisdictional area of 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 has nearly a 23 percent chance of occurring in a 25-year period. A 100-year flood is the same as a base flood for purposes of these regulations.

Alteration – Any change or addition to an artificial obstruction that either increases its external dimensions or increases its potential flood hazard. *See also* Substantial Improvement.

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 100-year Floodplain 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.

Base Flood (Flood of 100 Year Frequency) – A flood having a one percent (1%) chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) – The elevation above sea level of the base flood in relation to the National Geodic Vertical Datum of 1929 (NGVD 29) or the North American Vertical Datum of 1988 (NAVD 88) or unless otherwise specified.

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

Channel – The geographical area within either the natural or artificial banks of a watercourse or drain way.

Channelization Project – The excavation or construction of an artificial channel for the purpose of diverting the flow of a watercourse or drainway from its established course.

Crawl Space – Any area below the ground level and below the lowest floor having an interior dimension of four (4) feet or less measured from the interior ground surface to the top of the stem wall.

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.

Elevated Building – A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Enclosure – That portion of an elevated building below the lowest elevated floor that is either partially or fully shut-in by rigid walls.

Encroachment – Activities or construction within the Floodplain including fill, new construction, substantial improvements, alteration, and other development.

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

Engineer – A "professional engineer" defined by 37-67-101, MCA, as a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been licensed as a professional engineer by the board of professional engineers and professional land surveyors provided for in 2-15-1763, MCA.

Establish – To construct, place, insert, or excavate.

Existing Construction or Structure – Structures for which the "start of construction" commenced on or before the effective date of floodplain regulations and/or the Lake County Flood Insurance Study. "Existing construction" may also be referred to as "existing structures."

Existing Manufactured Home Park or Subdivision – A manufactured home park or subdivision where the construction of facilities for servicing the manufactured home lots is completed before the effective date of floodplain 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.

Expansion To An Exiting Manufactured Home Park or Subdivision – The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA – Federal Emergency Management Agency

Floodplain – The area including and adjoining the watercourse or drainway that would be covered by the floodwater of a flood of a 100-year frequency.

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.

Flood Insurance Rate Map (FIRM) – The map on which FEMA has delineated the 100-year floodplains, the base flood elevations (BFE), and the risk premium zones.

Flood Insurance Study (FIS) – The report in which FEMA has provided flood profiles, as well as the Flood Boundary/Floodway Map and the water surface profiles.

Flood Fringe – The identified portion of the 100-year Floodplain outside the limits of the floodway.

Floodway – The identified portion of the 100-year Floodplain and is the channel and the areas adjoining the channel that are reasonably required to carry the discharge of the base flood without cumulatively increasing the water surface elevation by more than one half foot.

Floodplain Administrator – Community official or representative appointed to administer and implement the provisions of these regulations. The Lake County Floodplain Administrator is the Lake County Planning Director or the Director's appointee.

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, HVAC systems, structures and their contents.

Freeboard – A factor of safety usually expressed in feet vertically above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Lowest Floor – Any floor of a building including a basement used for living purposes, storage, or recreation, which is at the lowest elevation. This includes any floor that could be converted to such a use.

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.

Manufactured or Mobile 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 and includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

New Construction – Structures and/or activity associated with establishing the physical structure for which the commencement of clearing, grading, filling, or excavating to prepare a site for construction occurs on or after the effective date of floodplain regulations and includes any subsequent improvements to such structures.

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 including 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.

Owner – Any person who has dominion over, control of, or title to an artificial obstruction.

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 truck; and (d) designed primarily for use as temporary living quarters for recreation, camping, travel, or seasonal use, not for use as a permanent dwelling.

Residential – A building for living purposes or place of assembly or permanent use by human beings. All other buildings are non- residential.

Riprap – Stone, rocks, concrete blocks, or analogous material that is placed within the Floodplain for the purpose of preventing or alleviating erosion.

Riverine – Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

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

Structure – A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. A structure is also a 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 of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would exceed fifty percent (50%) of the market value of the structure before the damage occurred.

Substantial Improvement – 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:

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

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.

Variance – A grant of relief from the requirements of these regulations, which would permit construction in a manner that would otherwise be prohibited by these regulations.

Violation – A failure of a structure or other development to be fully compliant with these regulations.

Windshield survey – An assessment conducted by the Floodplain Administrator to obtain a preliminary evaluation of the extent and severity of damage to buildings after a disaster.

SECTION 3
FORMS AND FEES

3.1 Forms

The following forms may be required by the Floodplain Administrator:

1. **Floodplain Development Permit Application** – The Floodplain Development Permit Application adopted by the Lake County Planning Department, to which is attached a "Joint Application for Proposed Work in Montana's Steams, Wetlands, Regulated Flood Hazard Areas, and Other Water Bodies".

2. **Floodplain Permit Compliance Report** – A report required to be submitted by the Applicant to the Floodplain Administrator once the permitted project in the 100-year Floodplain is completed or within the designated time stipulated on the Floodplain Development Permit. A compliance report including an elevation and or flood proofing certificate may be required where specified.

3. **Floodplain Variance Application** – An application submitted to the Floodplain Administrator for review of the proposed project prior to the initiation of the project requiring a variance.

4. **Floodplain Appeal Application** – A form to provide written notice and request for review of any order or decision, including those to grant, deny, or condition a Floodplain Development Permit by the Floodplain Administrator, submitted to the Floodplain Administrator for review by the Board of Lake County Commissioners.

5. **Floodplain Emergency Notification** – A written notification form required to be used by persons to notify the Floodplain Administrator of projects undertaken during an emergency to safeguard life or structures. This is not a Floodplain Development Permit Application and the person must take additional steps, as outlined in Section 11.

6. **Official Complaint Form** – A complaint form that may be used by any person to notify the Floodplain Administrator of an activity taking place without an official signed Floodplain Development Permit. Persons may make complaints without use of this form.

3.2 Fees

Reasonable fees may be adopted for review of Floodplain Development Permit applications, notices, variances, inspections, certifications or other administrative actions required by these regulations. Fees are as adopted by Lake County per the Planning Department Fee Schedule.

SECTION 4
JURISDICTIONAL AREA

4.1 100-YEAR FLOODPLAIN

1. The jurisdictional areas referenced herein as the 100-year Floodplain are the 100-year floodplains illustrated and referenced in the Flood Insurance Study (FIS) for Lake County, Montana, Number 30047CV000A, revised February 6, 2013, with associated Flood Insurance Rate Maps (FIRM).

2. The 100-year Floodplain specifically described or illustrated in the Lake County FIS including maps that have been delineated, designated and established by order of the DNRC or FEMA pursuant to 76-5-201, MCA.

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

4.2 INTERPRETATION OF 100-YEAR FLOODPLAIN BOUNDARIES

Boundaries of the 100-Year Floodplain, including the extents of the Floodway and Flood Fringe, shall be determined by scaling distances on the FIRM and using the 100-Year Floodplain data tables contained in the FIS. *See* Sub-Section 1.7 for rules for interpretation of these boundaries.

4.3 ALTERATION OF JURISDICTIONAL AREA

1. An "alteration of jurisdictional area" is a change to the existing boundary to the specific maps and data of the referenced studies in the Lake County FIS and associated FIRMs that form the basis for the 100-year Floodplain.

2. An alteration of jurisdictional area may be the result of new data and information or when technical or scientific flood data show that the base flood elevation has or may be changed or was erroneously established and the boundaries of the 100-year Floodplain are incorrect.

3. Any alteration of jurisdictional area must be based on reasonable hydrological certainty.

4. Any alteration or proposed alteration of 0.5 feet or more in the base flood elevation requires approval of the DNRC in addition to an amendment of the adopted jurisdictional area.

5. Any additional notices or approvals required by FEMA for the purpose of updating flood insurance rate maps or changes as a result of permitted activity that cause any change in topography by fill or changes in the base flood elevation is the

responsibility of the permit applicant. The Floodplain Administrator may represent any necessary approvals or endorsements by the permit authority to FEMA.

6. The Floodplain Administrator shall maintain a record of all alterations.

7. An alteration of jurisdictional area is not required when property located within the flood fringe is naturally above the base flood elevation as proven by a certified elevation survey provided by a registered professional engineer or licensed land surveyor.

8. Except in a Flood Fringe, alteration approval from DNRC is required if property is to be raised to a level above the base flood elevation by suitable fill and where the encroachment by the fill causes a rise in the base flood elevation of more than 0.5 feet. No portion of the fill may be within the floodway.

9. No alteration of jurisdictional area is required when property located within the 100-year Floodplain is elevated with fill to at or above the base flood elevation and is permitted.

Notes:

When property located within the 100-year floodplain is naturally above the base flood elevation as proven by a certified elevation survey provided by an engineer or land surveyor, the property owner may be required to submit a Letter of Map Change (LOMC, types of which may include a LOMA, LOMR, or LOMR-F) to FEMA in order to affect the flood risk designation for insurance purposes. Information on the process and requirements are available through FEMA.

Alteration of the Flood Plain usually requires FEMA approval for modification to their FEMA Insurance Rate Maps and may require preapproval by Conditional Letter of Map Revision, and/or Letter Of Map Revision or other map change approvals in addition to approval from the Floodplain Administrator and DNRC.

SECTION 5
USES ALLOWED WITHOUT A PERMIT WITHIN THE JURISDICTIONAL AREA

5.1 GENERAL

In addition to existing nonconforming uses and artificial obstructions established before the effective date of floodplain regulations in Lake County, the following open space and similar uses shall be allowed without a permit in the 100-year Floodplain, provided that they are not prohibited by any other ordinance or statute and provided that they do not require structures other than portable structures, and provided the uses do not require alteration of the 100-year Floodplain such as fill, grading, excavation or storage of materials or equipment:

1. Agricultural uses, not including related structures. Such allowed uses include tilling, farming, irrigation, ranching, harvesting, grazing, and other similar practices that do not materially alter the cross-sectional profile of the 100-year flood;

2. Accessory uses to industrial-commercial facilities, such as loading areas, parking areas, and emergency landing strips, but not including structures;

3. Private and public recreational uses such as golf courses, driving ranges, archery ranges, picnic grounds, boat-launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails, but not including structures;

4. Forestry, including processing of forest products with portable equipment;

5. Residential uses such as lawns, gardens, parking areas, and play areas;

6. Recreational vehicle use provided that the use is on the site for fewer than 180 consecutive days and the vehicle is fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system with wheels intact, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions;

7. Maintenance of existing open space uses or artificial obstructions;

8. Preventive maintenance activities such as bridge deck rehabilitation and roadway pavement preservation activities (these activities are considered maintenance, and are therefore allowed);

9. 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;

10. Fences such as those that have a low impact to the flow of water such as barbed wire fences and wood rail fences and shall not include permanent fences crossing channels;

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

12. Insignificant lakeshore projects. Projects regulated by the Lake County Lakeshore Protection Regulations that have been issued or are to be issued a Lakeshore Construction Permit which are deemed by the Floodplain Administrator to have no significant impact on the 100-year Floodplain may be granted a written waiver by the Floodplain Administrator. Lakeshore projects need to obtain a Floodplain Development Permit for activities the Floodplain Administrator finds will have a significant impact on the 100-Year Floodplain. Proposed lakeshore projects that may be granted a waiver if deemed insignificant and if in full compliance with the Lakeshore Protection Regulations, thus not requiring a Floodplain Development Permit, include the following:
    a. Open and floating docks (those that do not impede the flow of water beneath the dock; this does not include crib docks or other solid or partially open docks);
    b. Boat lifts/shore stations;
    c. Buoys;
    d. Tie-off piers;
    e. Walkways; and
    f. Other small-scale projects that do not require excavating, adding fill, or dredging the 100-year Floodplain.

SECTION 6
PROHIBITED USES, ACTIVITIES, AND STRUCTURES WITHIN THE JURISDICTIONAL AREA

6.1 FLOODWAY

The following artificial obstructions and nonconforming uses are prohibited in the Floodway area of the 100-year Floodplain:

1. A building or structure including alterations for living purposes, place of assembly or permanent use by human beings or commercial and industrial buildings, or mobile homes and manufactured homes.

2. A structure, fill or excavation that would cause water to be diverted from the Floodway, cause erosion, obstruct the natural flow of waters or reduce the carrying capacity of the Floodway. Minor excavation or fill where compatible, related, and incidental may be allowed as a permitted use with a Floodplain Development Permit.

3. The construction or permanent storage of an object (artificial obstruction) subject to flotation or movement during flood level periods and ARM 36.15.605(1)(c)).

4. Solid and hazardous waste disposal and individual and multiple family sewage disposal systems unless otherwise allowed pursuant to ARM 17.36 SubChapters 1 and 3 or local board of health authority per ARM 17.36 SubChapter 9;

5. Storage of toxic, flammable, hazardous or explosive materials; and

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

6.2 FLOOD FRINGE OR 100-YEAR FLOODPLAIN WITHOUT A FLOODWAY

The following artificial obstructions and nonconforming uses are prohibited in the Flood Fringe or 100-year Floodplain without a Floodway:

1. Solid and hazardous waste disposal;

2. Storage of toxic, flammable, hazardous or explosive materials;

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

4. Critical facilities, including buildings and associated facilities that provide essential community care and emergency operation functions such as schools, hospitals, and nursing home facilities, fire stations and police stations.

SECTION 7
PERMIT REQUIREMENTS

7.1 GENERAL

1. A Floodplain Development Permit is required for a person to establish or alter an artificial obstruction, nonconforming use, or for other development within the 100-year Floodplain.

2. Artificial obstructions, nonconforming uses, and uses not specifically listed in Sections 9 and 10 require a Floodplain Development Permit, except as allowed without a permit in Section 5 or as prohibited as specified in Section 6.

3. A Floodplain Development Permit is required to reconstruct or repair an existing structure that has experienced substantial damage or will undergo substantial improvement.

4. A Floodplain Development Permit is not required for existing artificial obstructions or nonconforming uses established in the 100-year Floodplain before the effective date of floodplain regulations.

5. Artificial obstructions and nonconforming uses in a 100-year Floodplain not exempt under Section 5 are public nuisances unless a Floodplain Development Permit has been obtained.

6. These regulations do not affect any existing artificial obstruction or nonconforming use in the 100-year Floodplain before the effective date of floodplain regulations.

7. An alteration that is any change or addition to an artificial obstruction or nonconforming use not exempt under Section 5 that increases the size or increases its potential flood hazard, requires a Floodplain Development Permit.

8. Maintenance of an artificial obstruction or nonconforming use is not an alteration.

9. The burden of proof for satisfying the requirements of these regulations shall rest with the applicant and not Lake County or its agents.

7.2 REQUIRED PERMIT APPLICATION INFORMATION

To initiate the permitting process, a Floodplain Development Permit Application shall be submitted to the office of the Floodplain Administrator and include, at a minimum, the following:

1. A completed Floodplain Development Permit Application signed by an interested owner of record;

2. The required review fee;

3. Plans in duplicate 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 100-year Floodplain boundaries, including boundaries of the floodway and flood fringe;

4. A copy of other 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 and any other required permits from federal, state, and local agencies, for the proposed project; the applicant may be required to demonstrate to the Floodplain Administrator that the application is not in conflict with other relevant and applicable permits;

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, as applicable; and

6. Prior to issuing a Floodplain Development Permit the Floodplain Administrator may require additional information necessary to determine whether the proposed activity meets the requirements of these regulations. Additional information may include, but may not be limited to, hydraulic calculations assessing the impact on the BFE or velocities.

SECTION 8
APPLICATION EVALUATION

8. 1 APPLICATION REVIEW

To ensure compliance with these regulations, the following review procedures apply to Floodplain Development Permit Applications:

1. The Floodplain Administrator shall review and evaluate the Floodplain Development Permit Application and shall either approve, approve with reasonable conditions, or deny the application within 60 calendar days of receipt of a correct and complete application.

2. A permit application is considered to have been automatically granted 60 days after receipt of the application by the Floodplain Administrator, unless the Floodplain Administrator notifies the applicant before the 60th day that additional information is required, more time is required to process the application (for appropriate reason), or that the permit is denied. Under no circumstances should it be assumed that a variance to these regulations is automatically granted.

3. If at any time during the review process the Floodplain Administrator determines additional information is required for compliance with applicable regulations, the applicant shall be notified as such, and no further action shall be taken on the application by the Floodplain Administrator until the requested information is submitted. The 60 day review period is suspended from the date of the written request for additional information until the applicant's submittal of the requested information, a process which may be repeated until an application is approved or denied, which can occur any time after submittal of an application.

4. Permits for obstructions or uses in the designated floodplains or designated floodways are conclusively considered to have been granted 60 days after the Floodplain Administrator's receipt of the application, unless the Floodplain Administrator notifies the applicant that the Floodplain Development Permit Application is denied or requires additional information for compliance with applicable regulations. Under no circumstances should it be assumed that a variance to these regulations is automatically granted.

8.2 NOTICE REQUIREMENTS FOR FLOODPLAIN DEVELOPMENT PERMIT APPLICATIONS:

After receipt of a complete application for a Floodplain Development Permit, the Floodplain Administrator shall:

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

2. Serve notice by first-class mail upon adjacent property owners.

3. Serve notice to DNRC by the most efficient method. Notice to other permitting agencies may also be given, which will occur at the discretion of the Floodplain Administrator.

4. In riverine situations, provide notice to FEMA and adjacent communities by the most efficient method if the project involves any alteration or relocation of a watercourse in the 100-year Floodplain.

5. The notices shall provide not less than 15 days for interested parties to submit comments on the proposed activity.

8. 3 PERMIT CRITERIA

Floodplain Development Permits shall be granted or denied by the Floodplain Administrator on the basis of whether 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, the Montana Floodplain and Floodway Management Act, and the minimum standards established by the Administrative Rules of Montana. In addition, the following criteria apply to all permits:

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

2. An application for a Floodplain Development Permit must demonstrate the following factors are considered and incorporated into any project requiring a permit:

    a. the danger to life and property from backwater or diverted flow caused by the obstruction;
    b. the danger that the obstruction will be swept downstream to the injury of others;
    c. the availability of alternative locations;
    d. the construction or alteration of the obstruction in such manner as to lessen the danger;
    e. the permanence of the obstruction;
    f. the anticipated development in the foreseeable future of the area which may be affected by the obstruction; and,
    g. such other factors as are in harmony with the purposes of the Montana Floodplain and Floodway Management Act, and the accompanying Administrative Rules of Montana.

8.4 FLOODPLAIN DEVELOPMENT PERMIT DECISION

1. The Floodplain Administrator shall notify the applicant of the decision to approve, conditionally approve, or deny the application, and the reasons for the decision. If approved, the permit shall be provided to the applicant and/or designated agent.

2. A copy of the approved permit must be provided to DNRC.

3. Upon approval or conditional approval of the Floodplain Development Permit application, the Floodplain Administrator shall provide the applicant with a permit outlining any permit conditions, including but not limited to the following requirements and notifications:

    a. The granting of a permit does not affect any other type of approval required by any other statute or ordinance of the state, any political subdivision, or the United States, but is an added requirement.

    b. The Floodplain Development Permit will become valid when all other necessary permits are in place.

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

    d. Requirements to notify all subsequent property owners and their agents and potential buyers of the Floodplain Development Permit issued on the property and that such property is located within a 100-year Floodplain. To supplement or further transmit required notifications, the permit may require deed restriction(s) or similar document(s) to be recorded with the Lake County Clerk & Recorder's Office notifying potential buyers of the permit requirements and/or floodplain status. Any such requirement to record a deed restriction or similar document must be substantiated through the review process.

    e. Requirements to maintain the artificial obstruction or use to comply with the conditions and specifications of the Floodplain Development Permit.

    f. Requirements to allow the Floodplain Administrator to perform on-site inspections at select intervals during construction or within a reasonable time after completion.

    g. Requirements for interim reporting to the Floodplain Administrator of construction data to confirm design elevations and other project design criteria.

h. Requirements to submit to the Floodplain Administrator a certificate of compliance report and elevation certificate where applicable within 30 days of completion or other time as specified.

i. Requirements to obtain FEMA approval of revisions that affect the applicable Flood Insurance Rate Map.

SECTION 9
DEVELOPMENT REQUIREMENTS IN THE FLOODWAY

9.1 USES REQUIRING PERMITS

Uses specifically listed in Sub-Sections 9.3 – 9.14 may be allowed by permit within the Floodway, subject to the General Requirements in Sub-Section 9.2, the requirements described for the specified uses under Sub-Sections 9.3 – 9.14, and full compliance with the rest of these regulations.

9.2 GENERAL REQUIREMENTS

1. All projects in the Floodway must undergo an encroachment analysis, except as provided in in 9.2.1.c below, to include a thorough hydrologic and hydraulic analysis prepared by an engineer to demonstrate their effect on flood flows, velocities and the base flood elevation. This requirement is also subject to the following:
   a. A conditional approval from FEMA of any proposed increase of more than zero (0.00) feet in the base flood elevation must accompany the application. An application for a FEMA Conditional Letter of Map Revision approval requires a supporting encroachment analysis.
   b. The maximum allowable increase to the base flood elevation is one half foot (0.50), unless approval of an alteration of the 100-year Floodplain pursuant to Section 4 occurs with approval of the variance pursuant to Section 12.
   c. An encroachment analysis may be waived when the project or development is judged by the Floodplain Administrator or certified by an engineer to have a de minimis encroachment (not likely measureable or discernible).

2. Projects in the Floodway must assure that the carrying capacity of the altered or relocated watercourse is maintained.

3. Projects in the Floodway must be designed and constructed to ensure that they do not increase the flood hazard on other properties and be reasonably safe from flooding.

4. Projects in the Floodway must be designed and constructed with consideration for safe access to property in times of flooding for ordinary and emergency service vehicles.

9.3 MINING OF MATERIAL REQUIRING EXCAVATION FROM PITS OR POOLS

Mining of material requiring excavation from pits or pools may be permitted within the Floodway, provided that:

1. A buffer strip of undisturbed land of sufficient width as determined by an engineer to prevent flood flows from channeling into the excavation is left between the edge of the channel and the edge of the excavation;

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

3. Excavated material may be processed on site but shall be stockpiled outside the Floodplain.

9.4 RAILROAD, HIGHWAY AND STREET STREAM CROSSINGS

Railroad, highway, and street stream crossings may be permitted within the Floodway, provided that:

1. Crossings are designed to offer minimal obstructions to the flood flow;

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

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

Limited filling for road and railroad embankments not associated with stream crossings and bridges may be permitted within the Floodway, provided that:

1. The fill is the suitable fill;

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

3. The encroachment is located as far from the stream channel as possible; and

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

9.6 BURIED OR SUSPENDED UTILITY TRANSMISSION LINES

Buried, bored, or suspended utility transmission lines may be permitted within the Floodway, provided that:

1. Suspended utility transmission lines are designed such that the lowest point of the suspended line is at least six (6) feet higher than the base flood elevation;

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

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

4. Utility transmission lines carrying toxic or flammable materials are buried to a depth of at least twice the calculated maximum scour depth determined by an engineer for the base flood.

9.7 STORAGE OF MATERIALS AND EQUIPMENT

Storage of materials and equipment may be permitted within the Floodway, provided that:

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

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

9.8 DOMESTIC WATER SUPPLY WELLS

Domestic water supply wells may be permitted in the Floodway, provided that:

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

2. They require no other structures (e.g. a well house), unless the structure is permitted;

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

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

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

6. Check valves are installed on main water lines at wells and at all building entry locations.

9.9 BURIED AND SEALED VAULTS FOR SEWAGE DISPOSAL IN CAMPGROUNDS AND RECREATIONAL AREAS

Buried and sealed vaults for sewage disposal in campgrounds and recreational areas may be permitted within the Floodway provided they meet applicable laws and standards administered by Montana Department of Environmental Quality. Only those wastewater treatment or disposal systems that meet the requirements and separation distances under ARM 17.36 SubChapters 1 and 3 or local board of health authority per ARM 17.36 SubChapter 9 are allowed.

9.10 PUBLIC AND PRIVATE CAMPGROUNDS

Public and private campgrounds may be permitted within the Floodway, provided that:

1. Access roads require only limited fill and do not obstruct or divert flood waters;

2. No dwellings or permanent mobile homes are allowed;

3. Any accessory structures meet the requirements of 9.11 and ARM 36.15.602(9); and

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.

9.11 STRUCTURES ACCESSORY OR APPURTENANT

Structures accessory or appurtenant to the above-listed permitted uses, may also be permitted within the Floodway. Such accessory or appurtenant structures that may be permitted under this section include those such as boat docks, loading and parking areas, marinas, sheds, emergency airstrips, permanent fences crossing channels, picnic shelters and tables, and toilet facilities/lavatory, provided that:

1. The structures are not intended for human habitation;

2. The structures will have a low flood damage potential;

3. The structures will insofar as possible be located on ground higher than the surrounding ground and as far from the channel as possible;

4. The structures will be constructed and placed so as to offer a minimal obstruction to flood flows;

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

6. The structures will be firmly anchored to prevent flotation;

7. Service facilities within these structures such as electrical, heating, and plumbing facilities are flood-proofed in accordance with these regulations;

8. If the structures are substantial as determined by the permit issuing authority, an encroachment analysis must be prepared by an engineer;

9. Only those wastewater disposal systems that meet the requirements and separation distances under ARM 17.36 SubChapters 1 and 3 or local board of health authority per ARM 17.36 SubChapter 9 are allowed;

10. The structures or use cannot be changed or altered without permit approval.

9.12 CONSTRUCTION OF OR MODIFICATIONS TO SURFACE WATER DIVERSIONS

Construction of or modifications to surface water diversions may be permitted within the Floodway, provided that the design is prepared by an engineer and includes:

1. Measures to minimize potential erosion from a base flood;

2. Plans that demonstrate any permanent diversion structure crossing the full width of the stream is designed to be constructed to safely withstand up to the base flood; and

3. A requirement that construction is completed under the supervision of an engineer.

9.13 FLOOD CONTROL AND BANK PROTECTION MEASURES

Flood control and bank protection measures may be permitted in the Floodway, but must be reviewed and approved by an engineer and designed and constructed to substantially resist or withstand the forces associated with flood depths, hydrodynamic and hydrostatic pressures, velocities, impact, ice, buoyancy, and uplift associated with the base flood in addition to an encroachment analysis. For bank stabilization, stream and bank restoration, channelization, and other related activities, the project may be designed to withstand a base flood once the project is mature, or within 5 years or other time as required by the Floodplain Administrator. The design shall also show compliance with the following additional criteria:

1. LEVEE AND FLOODWALLS (construction or alteration):

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

    b. Except for a levee or floodwall intended to protect agricultural land only, the proposed construction or alteration of a levee or floodwall must be at least 3 feet higher than the elevation of the base flood;

    c. Unless to protect only agricultural land, protection of structures of more than one landowner requires engineering and construction to meet state

and federal levee standards and be publicly-owned for the purpose of construction, operation and maintenance; and

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

i. The estimated cumulative effect of other reasonably anticipated future permissible uses;
ii. The type and amount of existing flood prone development in the affected area; and
iii. Impacts to existing or foreseeable development.

2. BANK STABILIZATION PROJECTS, PIER AND ABUTMENT PROTECTION, CHANNELIZATION OR STREAM RESTORATION PROJECTS:

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

b. Materials for the project may be designed to erode over time but not fail catastrophically and impact other properties. Planned erosions and unraveling of the materials may be designed to be similar in amount and rate to existing natural stream banks during the base flood.

c. The project must not increase erosion upstream, downstream, across from, or adjacent to the site.

d. The project must not increase velocity to a level that will cause erosion and the stream's biological capacity and habitat potential is not degraded.

e. Materials for the project may include but not be limited to rip rap, root wads, brush mattresses, willow wattling, woody debris or combinations of analogous materials.

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

g. The project includes compensating efforts by replacing and providing substitute resources or environments through creation, restoration, enhancement or preservation of similar or appropriate resource areas.

3. DAMS:

a. The design and construction of dams shall be in accordance with the Montana Dam Safety Act and applicable safety standards.

b. Dams shall not increase flood hazards downstream either through operational procedures or improper hydrologic design.

9.14 STREAM AND BANK RESTORATION

Stream and bank restoration projects intended to reestablish the terrestrial and aquatic attributes of a natural stream and not for protection of a structure, land or development may be permitted in the Floodway, provided:

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

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

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

4. The project is designed and maintained to withstand a base flood once the project is mature, or within 5 years of project completion, 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.

SECTION 10
DEVELOPMENT REQUIREMENTS IN THE FLOOD FRINGE OR 100-YEAR FLOODPLAIN WITH NO FLOODWAY

10.1 USES REQUIRING PERMITS

All uses and the associated requirements allowed by permit in the Floodway shall also be allowed by permit within the Flood Fringe or 100-year Floodplain with no Floodway. Additionally, new construction, substantial improvements, alterations to structures (including, but not limited to residential, commercial, agricultural, and industrial) and suitable fill shall be allowed by permit subject to the minimum development requirements in General Requirements, Sub-Section 9.2, and this section.

10.2 GENERAL REQUIREMENTS:

1. **Base Flood Elevation**
   The appropriate base flood elevation(s) shall be determined by appropriate methods and utilized in the design and layout of the project by an engineer demonstrating the appropriate design and construction criteria herein are met. 100-year Floodplains that do not have computed and published base flood elevations in the adopted flood hazard study referenced in Section 4, Jurisdictional Area, the base flood elevation must be computed as well, utilizing appropriate engineering methods and analysis.

2. **Flood Damage**
   Projects must be constructed by methods and practices that minimize flood damage and are reasonably safe from flooding.

3. **Materials**
   Structures shall be designed and constructed to be reasonably safe from flooding and constructed with materials resistant to flood damage.

4. **Structures or fill**
   Structures or fill must not be prohibited by any other statute, regulation, ordinance, or resolution; and must be compatible with subdivision, zoning, and any other land use regulations, if any.

5. **Anchoring**
   All construction and substantial improvements shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

6. **Certification**
   Certification by an engineer, architect, or other qualified person must accompany the application as to an encroachment analysis where required, adequacy of

structural elevations, determination of the base flood elevation, flood-proofing, wet proofing, dry proofing, design and construction to withstand the flood depths, hydrodynamic and hydrostatic pressures, velocities, impact, buoyancy, and uplift forces associated with the base flood. A certification is not intended to constitute a warranty or guarantee of performance, expressed or implied.

7. **Access**
   Structures must have safe vehicular access during times of flooding up to the base flood for ordinary and emergency service vehicles.

8. **Encroachment Limit**
   Allowable encroachment for developments in the 100-year Floodplain without a Floodway must be supported by an encroachment analysis and cannot exceed 0.5 feet increase to the base flood elevation. An encroachment analysis is not required for any development in the Flood Fringe where an accompanying Floodway has been designated within the 100-year Floodplain; An encroachment analysis may be waived when the project or development is judged by the Floodplain Administrator or certified by an engineer to have a de minimis encroachment (not likely measureable or discernible).

9. **Electrical Systems**
   All electrical service materials, equipment, and installation for uses allowed with or without a permit in a designated 100- year Floodplain shall conform to the following conditions:

   a. All incoming power service equipment including all metering equipment, control centers, transformers, distribution and lighting panels and all other stationary equipment must be located at least two feet above the base flood elevation.

   b. Portable and movable electrical equipment may be placed below the elevation of the base flood elevation, provided that the equipment can be disconnected by a single plug and socket assembly of the submersible type.

   c. The main power service lines must have automatically operated electrical disconnect equipment or manually operated electrical disconnect equipment located at an accessible remote location outside the Floodplain or two feet above the base flood elevation.

   d. All electrical wiring systems installed below the base flood elevation must be suitable for continuous submergence and may not contain fibrous components.

10. **Heating and Cooling Systems**
    Heating systems for uses allowed with or without a permit in a designated 100- year Floodplain shall conform to the following conditions:

a. Heating and cooling systems shall be installed with float operated automatic control valves so that fuel supply is automatically shut off when flood waters reach the floor level where located;

b. Heating and cooling systems shall have manually operated gate valves installed in gas supply lines. The gate valves must be operable from a location above the base flood elevation;

c. Heating and cooling systems shall be installed in accordance with the provisions of Sub-Section 10.2.8, Electrical Systems; and

d. Heating and cooling systems shall have furnaces and cooling units and ductwork installed at least two (2) feet above the base flood elevation.

11. **Plumbing Systems**

Plumbing systems for uses allowed with or without a permit in a designated 100-year Floodplain shall conform to the following conditions:

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

b. All toilets, stools, sinks, urinals, vaults, and drains must be located so the lowest point of possible entry is at least two (2) feet above the base flood elevation.

12. **Structural Fill**

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

a. The filled area shall be graded such that its surfaces extend to at or above the base flood elevation and at least 15 horizontal feet beyond the structure in all directions;

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

c. No portion of the fill is allowed within the floodway;

d. The fill slope must not be steeper than 1 ½ horizontal to 1 vertical unless substantiating data justifying a steeper slope is provided and adequate erosion protection is provided for fill slopes exposed to floodwaters. The erosion protection for fill slopes exposed to velocities of four feet per second and less may consist of vegetative cover consisting of grasses or similar undergrowth as approved by the Floodplain Administrator. Slopes exposed to velocities greater than four feet per second shall be protected by armoring with stone or rock slope protection;

e. The fill must be a minimum of 0.5 feet above the base flood elevation;

f. No portion of the fill is allowed in the estimated floodway if none has been delineated in the FIS; and

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

13. **Water And Sewage Systems**

1. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;

2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters; and

3. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

10.3 RESIDENTIAL REQUIREMENTS

New construction, alterations, and substantial improvements of residential dwellings including manufactured homes and recreational vehicles on site for more than 180 consecutive days must be constructed such that:

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

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

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

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

a. Use methods and practices which minimize flood damage;

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

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

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

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

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

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

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

f. Provide adequate surface drainage and access for a hauler.

10.4 NON-RESIDENTIAL REQUIREMENTS

The following requirements apply to non-residential buildings:

1. Agricultural structures used solely for agricultural purposes and used exclusively in connection with the production, harvesting, storage, drying, or raising agricultural commodities including raising of livestock, not be intended for human habitation, and having low flood damage potential are exempt from dry or wet flood proofing but shall:
   a. Be located on higher ground and as far from the channel as possible;
   b. Offer minimum obstruction to flood flows;
   c. Be adequately anchored to prevent flotation or collapse;
   d. Where electrical, heating, or plumbing systems are installed, must meet flood proofing requirements in this Section and the applicable parts of 10.2 for those systems; and
   e. Meet the elevation or dry flood proofing requirements if the structure is an animal confinement facility.

2. New construction, alterations, and substantial improvements of commercial and industrial buildings must be constructed on suitable fill, stem walls, pilings or other suitable means such that the lowest floor elevation (including basement) is two (2) feet above the base flood elevation, or if not, the building must be adequately dry or wet flood proofed according to the standards described below, as applicable. Manufactured homes proposed for use as commercial or industrial buildings cannot be wet or dry flood proofed.

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

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

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

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

        i. Automatically allow entry and exit of floodwaters;
        ii. Have two (2) or more openings with a total net area of not less than one (1) square inch for every one (1) square foot of enclosed area subject to flooding; and
        iii. Have the bottom of all openings no higher than one (1) foot above grade.

4. **Dry Flood proofing:** Building designs that do not allow internal flooding of the lowest floor must be:

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

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

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

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

SECTION 11
EMERGENCIES

11.1 General

Emergency repair and replacement of severely damaged artificial obstructions and development including public transportation facilities, public water and sewer facilities, flood control works, and private projects in the 100-year Floodplain 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.

11.2 Emergency Notification and Application Requirements

1. Emergency repair to and/or replacement of severely damaged public transportation facilities, public water and sewer facilities, and flood control works may be authorized and immediate permit requirements waived by the Floodplain Administrator if:
   a. Upon notification and prior to the emergency repair and/or replacement, the Floodplain Administrator determines that an emergency condition warranting immediate action exists; AND
   b. The Floodplain Administrator agrees upon the nature and type of proposed emergency repair and/or replacement.

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

3. 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 Development 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.

4. 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.

12.2 VARIANCE APPLICATION REQUIREMENTS:

1. Prior to any consideration of a variance, a completed Floodplain Development Permit Application and required supporting material must be submitted to the Floodplain Administrator.

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

3. If the Floodplain Development Permit application and Variance Application is deemed not correct or complete, the Floodplain Administrator shall notify the applicant of deficiencies within 30 days of receipt of the Variance Application. Under no circumstances should it be assumed that the variance is automatically granted.

4. Public notice of the Floodplain Development Permit Application and Variance Application shall be given pursuant to Sub-Section 8.2.

12.4 EVALUATION OF VARIANCE APPLICATION

A variance shall only be granted 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 findings are met:

1. There is a good and sufficient cause;

2. Failure to grant the variance would result in exceptional hardship to the applicant;

3. There is no basement or residential dwelling that has the lowest floor elevation below the base flood elevation;

4. Crawl space floors are no more than two (2) feet below the exterior lowest adjacent grade and must have an inside dimension from interior ground to the bottom of the living floor of less than five (5) feet. The crawl spaces must meet the dry flood proofing requirements in Sub-Section 10.4.1;

5. Granting of a variance will not result in increased flood heights to existing insurable buildings, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances;

6. The proposed use is adequately flood proofed;

7. The variance is the minimum necessary, considering the flood hazard, to afford relief;

8. Reasonable alternative locations are not available;

9. There is no danger to life and property by water that may be backed up or diverted by the obstruction or use;

10. There is no danger that the obstruction or use will be swept downstream to the injury of others;

11. The project, which may be through conditions of approval, incorporates measures in the construction or alteration of the obstruction or use that lessens the dangers;

12. The permanence of the obstruction or use has been considered and, if appropriate, sufficiently mitigated;

13. There is no adverse effect to anticipated development in the foreseeable future of the area that may be affected by the obstruction or use;

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

15. Any increase to the base flood elevation in a Floodway has been approved by FEMA for flood insurance purposes and any increase to the base flood elevation in the Floodway or Floodplain of more than 0.5 feet is an alteration of the 100-year Floodplain has been duly amended pursuant to Section 4; AND

16. That the DNRC has considered the variance and provided comments based on technical review.

17. In addition, the following "special considerations" apply to any variance review per 44 CFR 60.6(a):

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

b. 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.

12.5 DECISION

1. When evaluating any variance request, the Board of Lake County Commissioners shall:

    a. Evaluate the application using the criteria and findings in this section, the application requirements, and minimum development standards in Section 9 and 10;

    b. Hear, make findings, and approve, conditionally approve, or deny a variance within 60 days of a complete application;

    c. Attach conditions to the granting of variance including a project completion date and inspections during and after construction;

    d. Notify the applicant that the issuance of a variance to construct a structure below the base flood level 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; and

    e. Grant approval only if any alteration of the 100-year Floodplain has been approved or is required to be approved as a condition of approval, under Section 4.3, Alteration of Jurisdictional Area.

2. The Floodplain Administrator shall maintain a record of all actions involving variances, including the Board of Lake County Commissioners' findings and decisions, and shall send a copy of each variance action to DNRC and FEMA.

12.6 JUDICIAL REVIEW

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

SECTION 13
APPEALS

13.1 GENERAL

An administrative appeal is a request for a formal review by the Board of Lake County Commissioners of the Floodplain Administrator's order, interpretation of these regulations, or official decision to grant, condition, or deny a Floodplain Development Permit.

13.2 APPEALS REQUIREMENTS

The following provisions apply to administrative appeals of the Floodplain Administrator:

1. A Floodplain Appeal Application 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 of the Floodplain Administrator's order or official decision to grant or deny a Floodplain Development Permit must be submitted by an applicant or anyone who may be aggrieved by the Floodplain Administrator's decision or order;

3. An appeal of the Floodplain Administrator's order or official decision to grant or deny a Floodplain Development Permit must be received within 30 days of the date of the order or decision; and

4. Additional information specific to the appeal request may be requested by the Floodplain Administrator and/or Board.

13.3 NOTICE AND HEARING

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

2. The public hearing on the appeal must be held within 30 days of the notice.

13.4 DECISION

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

13.5 JUDICIAL REVIEW

Any person or persons aggrieved by the Board of Lake County Commissioners' decision on the administrative appeal may appeal such decision in a court of competent jurisdiction within 30 days after the date of the decision.

SECTION 14
ENFORCEMENT

14.1 INVESTIGATION REQUEST

An investigation of an artificial obstruction or nonconforming use within the 100-year Floodplain may be made either on the initiative of the Floodplain Administrator or on the written request of three titleholders of land which may be affected by the activity within the 100-year Floodplain. The names and addresses of the persons requesting the investigations shall be released if requested.

14.2 NOTICE TO ENTER AND INVESTIGATE LANDS OR WATERS

Lake County and 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.

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

2. If none of these persons can be found, the Floodplain Administrator shall affix a copy of the notice to one or more conspicuous places near the property.

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

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 respond requesting an administrative review by the Floodplain Administrator.

14.4 ADMINISTRATIVE REVIEW

An official order, permit, or written decision of the Floodplain Administrator is final, unless within five (5) working days or any granted extension, after the order is received, the owner submits a written request for an administrative review by the Floodplain Administrator. A request for an administrative review does not stay the order.

14.5 APPEAL OF ADMINISTRATIVE DECISION

Within ten (10) working days or any granted extension of receipt of the Floodplain Administrator's decision concluding an administrative review, the property owner or owner's agent may appeal the decision to the Board of Lake County Commissioners according to Section 13 of these regulations.

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, and/or penalties through court.

14.7 JUDICIAL REVIEW

Any person aggrieved by the decision may appeal the Board of Lake County Commissioners' decision to a court of competent jurisdiction.

14.8 OTHER REMEDIES

This section does not prevent efforts to obtain voluntary compliance through warning, conference, or any other appropriate means. Action under this part shall not bar enforcement of 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 100-year 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 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.

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 of flood insurance policies for a structure upon finding a valid violation declaration.

The Floodplain Administrator shall provide the Federal Insurance Administrator a declaration consisting of 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.