

## **Title 18**

### **FLOODPLAIN REGULATIONS**

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#### **Chapter 18.04**

### **GENERAL PROVISIONS**

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#### **18.04.010 Title and citation.**

The ordinance codified in this title shall be known and cited as the Butte-Silver Bow floodplain ordinance. This title is in accordance with and exercising the authority of the laws of the state of Montana. (Ord. 89 § 1.01, 1979)

#### **18.04.020 Purpose.**

To promote the public health, safety, and general welfare, to minimize flood losses in areas subject to

flood hazards, and to promote wise use of the floodplain, this title has been established with the following purposes intended:

- A. To guide development of the one-hundred-year floodplain areas of Butte-Silver Bow consistent with the enumerated findings by:
  - 1. Recognizing the right and need of watercourses to periodically carry more than the normal flow of water;
  - 2. Participating in coordinating efforts of federal, state and local management activities for one-hundred-year floodplain; and,
  - 3. Ensuring the regulations and minimum standards adopted, insofar as possible, balance the greatest public good with the least private injury.
  
- B. Specifically, it is the purpose of this title to:
  - 1. Restrict or prohibit uses which are dangerous to health, safety of property in times of flood, or cause increased flood heights or velocities;
  - 2. Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;
  - 3. Develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazards;
  - 4. Minimize the need for rescue and relief efforts associated with flooding undertaken at the expense of the general public;
  - 5. Ensure potential buyers are notified that property is within a one-hundred-year floodplain and subject to the provisions of these regulations; and
  - 6. Ensure that those who occupy one-hundred-year floodplains assume responsibility for their actions.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 1.02, 1979)

#### **18.04.030 Jurisdictional area.**

This title shall apply to all lands within the jurisdiction of Butte-Silver Bow, state of Montana, shown on the official floodplain map as being located within the district established and defined herein.

(Ord. 89 § 2.02, 1979)

#### **18.04.040 Compliance.**

No structure or land use shall be located, extended, converted, or structurally altered without full compliance with the terms of this title and other applicable regulations. These regulations meet the minimum

requirements as set forth by the Montana Board of Natural Resources and Conservation and the National Flood Insurance Program.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 2.05, 1979)

#### **18.04.050 Abrogation and greater responsibility.**

It is not intended by this title to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or underlying zoning. However, where this title imposes greater restrictions, the provisions of this title shall prevail. All other ordinances and resolutions inconsistent with this title are repealed to the extent of the inconsistency only.

(Ord. 89 § 2.06, 1979)

#### **18.04.060 Interpretation.**

In their interpretation and application, the provisions of this title shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

(Ord. 89 § 2.07, 1979)

#### **18.04.070 Warning and disclaimer of liability.**

This title does not imply that areas outside the floodplain boundaries or land uses permitted within such areas will always be totally free from flooding or flood damages. Nor shall this title create a liability on the part of, or a cause of action against, Butte-Silver Bow or any officer or employee thereof for any flood damages that may result from reliance upon this title.

(Ord. 89 § 2.08, 1979)

#### **18.04.080 Protection of resources.**

No provision of this title shall prevent the complete use, development, or recovery of any mineral, forest, or agricultural resource by the owner thereof.

(Ord. 89 § 2.10, 1979)

#### **18.04.090 Disclosure by property owners.**

All property owners in an identified one-hundred-year floodplain as indicated on the Official Floodplain Maps must notify potential buyers or their agents that such property is subject to the provisions of these regulations.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 2.11, 1979)

#### **18.04.095 Severability.**

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

(Ord. 403 § 1 (part), 1991)

## Chapter 18.08

### DEFINITIONS

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- 18.08.315 Suitable fill.
- 18.08.320 Variance.
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#### **18.08.005 Act.**

"Act" means Montana Floodplain and Floodway Management Act, Title 76-5-101 through 406, MCA. (Ord. 403 § 1 (part), 1991)

#### **18.08.010 Alteration.**

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

alteration.

(Ord. 403 § 1 (part), 1991: Ord. 89 § 2.12 (part), 1979)

#### **18.08.020 Appeal.**

"Appeal" means a request for a review of the floodplain administrator's interpretation of any provision of this title or a request for a variance.

(Ord. 89 § 2.12 (part), 1979)

#### **18.08.040 Area of special flood hazard.**

"Area of special flood hazard" means the land in the floodplain within a community subject to inundation by a one percent or greater chance of flooding in any given year, i.e., the one-hundred-year floodplain.

(Ord. 403 § 1 (part), 1991: Ord. 89 § 2.12 (part), 1979)

#### **18.08.050 Artificial obstruction--development.**

"Artificial obstruction" means any obstruction which is not a natural obstruction and includes any dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any one-hundred-year floodplain which may impede, retard or alter the pattern 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.

(Ord. 403 § 1 (part), 1991: Ord. 89 § 2.12 (part), 1979)

#### **18.08.060 Base flood.**

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year. A base flood is the same as a one-hundred-year flood.

(Ord. 403 § 1 (part), 1991: Ord. 89 § 2.12 (part), 1979)

#### **18.08.065 Base flood elevation.**

"Base flood elevation" means the elevation above sea level of the base flood in relation to National Geodetic Vertical Datum of 1929 unless otherwise specified in the flood hazard study.

(Ord. 403 § 1 (part), 1991)

#### **18.08.070 Channel.**

"Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

(Ord. 89 § 2.12 (part), 1979)

#### **18.08.080 Channelization project.**

"Channelization project" means the excavation and/or construction of an artificial channel for the purpose of diverting the entire flow of a stream from its established course.  
(Ord. 403 § 1 (part), 1991; Ord. 89 § 2.12 (part), 1979)

**18.08.082 DHES.**

"DHES" means the State of Montana Department of Health and Environmental Sciences.  
(Ord. 403 § 1 (part), 1991)

**18.08.085 DNRC.**

"DNRC" means the State of Montana Department of Natural Resources and Conservation.  
(Ord. 403 § 1 (part), 1991)

**18.08.130 Establish.**

"Establish" means to construct, place, insert, or excavate.  
(Ord. 89 § 2.12 (part), 1979)

**18.08.132 Existing manufactured home park or subdivision.**

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision where the construction of facilities for servicing the manufactured home lots is completed before the effective date of the floodplain management 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.  
(Ord. 403 § 1 (part), 1991)

**18.08.137 FEMA.**

"FEMA" means the Federal Emergency Management Agency.  
(Ord. 403 § 1 (part), 1991)

**18.08.140 Flood or flooding.**

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry lands from the overflow of inland waters or the unusual and rapid accumulation or runoff of surface waters from any source.  
(Ord. 403 § 1 (part), 1991; Ord. 89 § 2.12 (part), 1979)

**18.08.160 Flood insurance rate map (FIRM).**

"Flood Insurance Rate Map (FIRM)" means the map on which FEMA has delineated both the floodplains and the risk premium zone.  
(Ord. 403 § 1 (part), 1991; Ord. 89 § 2.12 (part), 1979)

#### **18.08.170 Flood Insurance Study.**

"Flood Insurance Study" means the report in which FEMA has provided flood provides, as well as the Flood Boundary-Floodway Map and the water surface profiles.  
(Ord. 403 § 1 (part), 1991; Ord. 89 § 2.12 (part), 1979)

#### **18.08.180 Floodplain.**

"Floodplain" means the areas subject to these regulations, generally adjoining a stream that would be covered by floodwater of a base flood except for sheetflood areas that receive less than one foot of water per occurrence and are considered Zone B by FEMA. The floodplain consists of a floodway and floodway fringe.  
(Ord. 403 § 1 (part), 1991; Ord. 89 § 2.12 (part), 1979)

#### **18.08.190 Floodway.**

"Floodway" means 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 foot.  
(Ord. 403 § 1 (part), 1991; Ord. 89 § 2.12 (part), 1979)

#### **18.08.195 Floodway fringe.**

"Floodway fringe" means that portion of the floodplain outside the limits of the floodway.  
(Ord. 403 § 1 (part), 1991)

#### **18.08.200 Levee.**

"Levee" means a manmade 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.  
(Ord. 403 § 1 (part), 1991)

#### **18.08.203 Levee system.**

"Levee system" means a flood protection system that consists of a levee, or levees and associated structures, such as drainage and enclosure devices, which are constructed and operated in accordance with sound engineering practices.  
(Ord. 403 § 1 (part), 1991)

#### **18.08.206 Lowest floor.**

"Lowest floor" means any floor used for living purposes, storage, or recreation. This includes any floor that could be converted to such a use.  
(Ord. 403 § 1 (part), 1991)

#### **18.08.210 Manufactured home.**

"Manufactured home" means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. This does not include "recreational vehicles." It does include mobile homes constructed prior to 1976.

(Ord. 403 § 1 (part), 1991)

#### **18.08.213 Manufactured home park or subdivisions.**

"Manufactured home park or subdivision" means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

(Ord. 403 § 1 (part), 1991)

#### **18.08.216 Mean sea level.**

"Mean sea level" means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations are referenced.

(Ord. 403 § 1 (part), 1991)

#### **18.08.230 New construction.**

"New construction" means structures for which construction, substantial improvement, or alteration commences on or after the effective date of these regulations.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 2.12 (part), 1979)

#### **18.08.240 Official floodplain maps.**

"Official floodplain maps" means the Flood Insurance Rate Maps and Flood Boundary/Floodway Maps provided by FEMA for Butte-Silver Bow and the Floodplain Management Study for Big Hole River, by U.S. Department of Agriculture Soil Conservation Service, as approved by FEMA and DNRC.

(Ord. 403 § 1 (part), 1991)

#### **18.08.250 One-hundred-year flood.**

"One-hundred-year flood" means a flood having a one percent chance of being equalled or exceeded in any given year. A one-hundred-year flood has nearly a twenty-three percent chance of occurring in a twenty-five-year period. A one-hundred-year flood is the same as a base flood.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 2.12 (part), 1979)

#### **18.08.260 Permit issuing authority.**

"Permit issuing authority" is Butte-Silver Bow, state of Montana.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 2.12 (part), 1979)

#### **18.08.270 Recreational vehicle.**

"Recreational vehicle" means a vehicle which is (1) built on a single chassis; (2) four hundred square feet or less when measured at the largest horizontal projectors; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily for use as temporary living quarters for recreation, camping, travel or seasonal use, not for use as a permanent dwelling.  
(Ord. 403 § 1 (part), 1991)

**18.08.275 Responsible political subdivision.**

"Responsible political subdivision" is Butte-Silver Bow, state of Montana, upon endorsement of the ordinance codified in this title by the Montana Board of Natural Resources and Conservation in accordance with Section 76-5-302, MCA, and ARM 36.15.201 through 36.15.204.  
(Ord. 403 § 1 (part), 1991: Ord. 89 § 2.12 (part), 1979)

**18.08.280 Riprap.**

"Riprap" means stones, rocks, concrete blocks, or analogous material that is placed along the banks or bed of a stream to alleviate erosion.  
(Ord. 403 § 1 (part), 1991: Ord. 89 § 2.12 (part), 1979)

**18.08.285 Sheetflooding.**

"Sheetflooding" means areas subject to one-hundred-year flooding with depths less than one foot. Sheetflood areas are generally removed from the main stream channel and have been identified as Zone B by FEMA or as a sheetflood zone by the Soil Conservation Service.  
(Ord. 403 § 1 (part), 1991)

**18.08.290 Start of construction.**

"Start of construction" means commencement of clearing, grading, filling or excavating to prepare a site for construction.  
(Ord. 403 § 1 (part), 1991: Ord. 89 § 2.12 (part), 1979)

**18.08.295 Stream.**

"Stream" means a waterway giving direction to a current of water at least nine months of the year and having a well-defined bed and banks.  
(Ord. 403 § 1 (part), 1991)

**18.08.300 Structure.**

"Structure" means a walled and roofed building, a manufactured home, 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.  
(Ord. 403 § 1 (part), 1991: Ord. 89 § 2.12 (part), 1979)

**18.08.305 Substantial damage.**

"Substantial damage" means damage sustained by a structure when the cost of restoring the structure to its condition before damage would equal or exceed fifty percent of the market value of the structure before the damage occurred.

(Ord. 403 § 1 (part), 1991)

#### **18.08.310 Substantial improvement.**

A. "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent 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.

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

1. Any project for improvement of a structure to comply with existing state of 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 a State Inventory of Historic Places.

(Ord. 403 § 1 (part) 1991: Ord. 89 § 2.12 (part), 1979)

#### **18.08.315 Suitable fill.**

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

(Ord. 403 § 1 (part), 1991)

#### **18.08.320 Variance.**

"Variance" means a grant of relief from the requirements of this title which permits construction in a manner that would otherwise be prohibited by this title.

(Ord. 403 § 1 (part), 1991: Ord. 89 § 2.12 (part), 1979)

#### **18.08.330 Violation.**

"Violation" means the failure of a structure or other development to be fully compliant with these regulations. A structure or other development without elevation certificate, certification by a licensed engineer or architect of compliance with these regulations or other evidence of compliance is presumed to be in violation until such time as documentation is provided.

(Ord. 403 § 1 (part), 1991)

## Chapter 18.12

### DISTRICT

Sections:

**18.12.010 District establishment.**

**18.12.020 Establishment of official floodplain map.**

**18.12.030 Rules for interpretation of floodplain district boundaries.**

**18.12.050 Establishment of districts--Designated.**

**18.12.060 District boundaries.**

#### **18.12.010 District establishment.**

Floodplain districts as established by this title are defined by the base flood elevations and one-hundred-year floodplains as delineated in the Flood Insurance Study. The basis for the Flood Insurance Study is a scientific and engineering report entitled, "The Flood Insurance Study for Butte-Silver Bow, Montana," dated February, 1982, with accompanying Flood Insurance Rate Maps and Flood Boundary Floodway Maps and is adopted by reference and declared to be a part of this title. These maps and the "Floodplain Management Study, Big Hole River, Silver Bow County Montana" shall hereafter be referred to as the official floodplain maps.

(Ord. 403 § 1 (part), 1991: Ord. 110 § 1(B), 1980: Ord. 89 § 2.01, 1979)

#### **18.12.020 Establishment of official floodplain map.**

The official floodplain map, together with all explanatory matter thereon and attached thereto, including officially adopted studies, maps, and profiles of the designated floodplains and floodways, are adopted by reference and declared to be a part of this title. The official floodplain map shall be on file in the offices of the floodplain administrators.

(Ord. 89 § 2.03, 1979)

#### **18.12.030 Rules for interpretation of floodplain district boundaries.**

The boundaries of the one-hundred-year floodway shall be determined by scaling distances on the official floodplain maps and using the floodway data table contained in the flood insurance study report. The maps may be used as a guide for determining the one-hundred-year floodplain boundary, but the exact location of the floodplain boundary shall be determined where the base flood elevation intersects the natural ground. For unnumbered A Zones and AO Zone floodplains, where there is a conflict between a mapped floodplain boundary and actual field conditions, the floodplain administrator may interpret the location of the one-hundred-year floodplain boundary based on field conditions or available historical flood information. Any person contesting the location of the floodplain or floodway boundary may present his case and submit his own technical evidence to the Department of Natural Resources and conservation in accordance with appeals procedures established by that agency.

(Ord. 403 § 1 (part), 1991: Ord. 89 § 2.04, 1979)

#### **18.12.050 Establishment of districts--Designated.**

For the purpose of this title, the following use districts are hereby established:

FP Floodplain (zone "A" of the Flood Insurance Rate Maps)

FW Floodway (as designated on the floodway maps)

FWF Floodway Fringe (as designated on the floodway maps).

(Ord. 89 § 3.02, 1979)

#### **18.12.060 District boundaries.**

The boundaries of the districts established by this title coincide with the delineations for the floodplains and floodways as officially adopted by FEMA and the Soil Conservation Service. Floodplain districts shall automatically convert to the two district provisions of this title (flood fringe district and floodway district) upon adoption of floodway delineations for the floodplain district.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 3.03, 1979)

### **Chapter 18.16**

#### **FLOODPLAIN DISTRICT**

Sections:

**18.16.005 Applications.**

**18.16.010 Uses allowed without permits.**

**18.16.020 Uses requiring permits.**

**18.16.030 Prohibited uses.**

**18.16.040 Floodplain boundary interpretation.**

#### **18.16.005 Applications.**

The minimum floodplain development standards listed in this chapter apply to the one-hundred-year floodplains delineated by approximate methods and identified as unnumbered A Zones on the Flood Insurance Rate Maps.

(Ord. 403 § 1 (part), 1991)

#### **18.16.010 Uses allowed without permits.**

All uses allowed in a floodway under Section 18.20.010 without a permit shall also be allowed without a permit in the unnumbered A-Zone floodplains.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 3.04(A), 1979)

#### **18.16.020 Uses requiring permits.**

All uses allowed within floodways subject to the issuance of a permit shall also be allowed by permit within any unnumbered A-Zone floodplains. Such uses shall be subject to the conditions noted in Sections 18.28.010 through 18.28.070. Also, the provisions of Section 18.24.020 apply to the A-Zone flood-plains with no floodway delineated or water surface profile computed. Since there are no one-hundred-year flood water surface profiles computed for A-Zone floodplains, the following conditions also apply:

- A. Elevation data on the one-hundred-year flood shall be provided for subdivision proposals according to the definitions and rules of the Montana Sanitation Subdivisions Act, MCA 76-4 Part 1 and the rules adopted by DHES under this Act. These data shall be used in applying Section 18.24.020 of these regulations. Subdivision proposals shall also provide for adequate drainage to minimize potential flood hazards;
  - B. The floodplain administrator may obtain, review and reasonably use any base flood elevation and floodway data available from federal, state, or other sources, until such data have been provided by FEMA, to enforce Section 18.24.020 of these regulations; and
  - C. The floodplain administrator may use historical flood elevations to determine suitable fill or floodproofing elevations as required by Section 18.24.020 of these regulations;
  - D. 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 or floodproofing elevation to use in applying Section 18.24.020 of these regulations. In the absence of depth of elevation information, a minimum two-foot flood depth shall be used; and
  - E. Proposed structures must be anchored to prevent flotation or collapse and must be located as far from stream channels as practicable.
- (Ord. 403 § 1 (part), 1991; Ord. 89 § 3.04(B), 1979)

#### **18.16.030 Prohibited uses.**

Prohibited uses within A-Zone floodplains shall be those uses, with the same exceptions, that are prohibited within floodway fringe areas as provided in Section 18.24.025.  
(Ord. 403 § 1 (part), 1991; Ord. 110 § 1(C), 1980; Ord. 89 § 3.04(C), 1979).

#### **18.16.040 Floodplain boundary interpretation.**

The floodplain administrator shall make interpretations where needed as to the exact location of the unnumbered A-Zone floodplain boundary when there is a conflict between a mapped boundary and actual field conditions.  
(Ord. 403 § 1 (part), 1991)

### **Chapter 18.20**

#### **FLOODWAY DISTRICT**

Sections:

- 18.20.005 Applications.**
- 18.20.010 Uses allowed without permits.**
- 18.20.020 Uses requiring permits.**
- 18.20.030 Prohibited uses.**

#### **18.20.005 Applications.**

The minimum floodplain development standards listed in this chapter apply to the floodway and floodway fringe portions of the one-hundred-year floodplain as delineated on the Flood Boundary/Floodway Maps, and also correspond to the numbered A or AE Zones depicted on the Flood Insurance Rate Maps. (Ord. 403 § 1 (part), 1991)

**18.20.010 Uses allowed without permits.**

The following open spaces uses shall be allowed without a permit anywhere within the floodway, provided that such uses conform to the provisions of Section 18.28.140, are not prohibited by any other ordinance, resolution or statute, and do not require structures other than portable structures, fill, excavation or permanent storage of materials or equipment:

- A. Agricultural uses, such as raising crops, dairying, horticultural and pasture;
- B. Industrial-commercial uses, such as loading areas, parking areas, and emergency landing strips;
- C. Private and public recreational uses, such as golf courses, ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, hunting and fishing areas, and hiking and horseback riding trails;
- D. Forestry, including processing of forest products with portable equipment;
- E. Residential uses, such as lawns, gardens, parking areas, and play areas;
- F. Irrigation and livestock supply wells, provided that they are located at least five hundred feet from domestic water supply wells;
- G. Fences, except permanent fences crossing channels; and
- H. Recreational vehicles provided that they be on the site for fewer than one-hundred-eighty consecutive days, or be 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 secure devices and has no permanently attached additions.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 3.05(A), 1979)

**18.20.020 Uses requiring permits.**

The following artificial obstructions may be permitted within the floodway, subject to the issuance of a permit under the conditions set forth in this section and Section 18.28.080:

- A. Excavation of material from pits or pools, provided that:
  - 1. A buffer strip of undisturbed land of sufficient width to prevent flood flows from channeling into the excavation is left between the edge of the channel and the edge of the

excavation;

2. The excavation meets all applicable laws and regulations of other local and state agencies; and
  3. Excavated material is disposed of or stockpiled outside the floodway.
- B. Railroad, highway, and street stream crossings, provided that the crossings are designed to offer minimal obstructions to the flood flow. Stream crossings shall not increase the elevation of the one-hundred-year flood more than one-half foot nor cause a significant increase in flood velocities.
- C. Limited filling for highway, street, and railroad embankments not associated with stream crossings, provided that:
1. Reasonable alternative transportation routes outside the designated floodway are not available; and
  2. Such floodway encroachment is located as far from the stream channel as possible and shall not result in a cumulative increase in base flood elevations, after allowable encroachments into the floodway fringe, exceeding one-half foot.
- D. Buried or suspended utility transmission lines, provided that:
1. Suspended utility transmission lines are designed such that the lowest point of the suspended line is at least twelve 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; and
  3. Utility transmission lines carrying toxic or flammable materials are buried to a depth at least twice the calculated maximum depth of scour for a one-hundred-year flood. The maximum depth of scour may be determined from any of the accepted hydraulic engineering methods acceptable to the floodplain administrator.
- E. Storage of materials and equipment, provided that:
1. The material or equipment is not subject to major damage by flooding and is properly anchored at all times to prevent flotation or downstream movement; or
  2. The material or equipment is readily removable within the limited time available after flood warning. Storage of flammable, toxic, hazardous or explosive materials shall not be permitted.
- F. Domestic water supply wells, provided that:

1. They are driven or drilled wells located on ground higher than surrounding ground to assure positive drainage from the well;
  2. Well casings are watertight to a distance of at least twenty-five feet below the ground surface;
  3. Water supply and electrical lines have a watertight seal where the lines enter the casings;
  4. All pumps and electrical lines and equipment are either of the submersible type or are adequately floodproofed; and
  5. Check valves are installed on main water lines at wells and at all building entry locations.
- G. Buried and sealed vaults for sewage disposal in recreational areas, provided that they meet applicable laws and standards administered by the Department of Health and Environmental Sciences and the Butte-Silver Bow health department.
- H. Public or private campgrounds provided that:
1. Access roads require only limited fill and do not obstruct or divert flood waters; and
  2. Recreational vehicles and travel trailers are licensed and ready for highway use. They are ready for highway use if on wheels or jacking system with wheels intact, are attached to the site with only quick disconnect type utilities and securing devices, and have no permanently attached additions. No dwellings or permanent mobile homes are allowed (camp trailers without wheels or towing vehicles or otherwise not quickly movable are considered permanent mobile homes).
- I. Structures accessory to the uses permitted in this section such as boat dock, marinas, sheds, permanent fences, crossing channels, picnic shelters and tables, and toilets, 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 in accordance with Section 18.28.100D and placed so as to offer a minimal obstruction to flood flows;
  5. The structures will be firmly anchored to prevent flotations; and
  6. Service facilities within these structures, such as electrical, heating, and plumbing facilities, are floodproofed in accordance with Section 18.28.140.

J.

K. Substantial improvements to any structure provided that the provisions of Section 18.24.020 are met. In the floodway, the structure must be floodproofed or elevated on a permanent foundation rather than a fill.

L. All other nonconforming uses, artificial obstructions or substantial improvements are specifically listed in or prohibited by this title.  
(Ord. 403 § 1 (part), 1991; Ord. 89 § 3.05(B), 1979)

### **18.20.030 Prohibited uses.**

The following artificial obstructions are prohibited within the floodway:

- A. New construction of any residential, commercial, or industrial structure;
- B. Alterations of structures unless it can be shown the alteration won't raise flood heights;
- C. The construction or permanent storage of an object (except as allowed under Section 18.20.020E and I) subject to flotation or movement during flood level periods;
- D. Solid waste disposal and solid absorption sewage systems and water distribution systems and hazardous waste disposal; and
- E. Storage of highly toxic, flammable, explosive materials, hazardous or storage of petroleum products;
- F. Encroachments, including fill, new construction, substantial improvements and any other development within the adopted regulatory floodway that would result in erosion of the embankment, obstruction of the natural flow of waters, or increase in flood levels during the occurrence of the one-hundred-year flood;
- G. Manufactured homes.

(Ord. 403 § 1 (part), 1991; Ord. 110 § 1(D), 1980; Ord. 89 § 3.05(C), 1979)

## **Chapter 18.24**

### **FLOODWAY FRINGE DISTRICT**

Sections:

**18.24.010 Uses allowed without permits.**

**18.24.020 Uses requiring permits.**

**18.24.025 Prohibited uses.**

**18.24.030 Conditions for floodplain permits.**

**18.24.010 Uses allowed without permits.**

All uses allowed in the floodway without a permit under Section 18.20.010 of this title shall also be allowed without a permit in the flood fringe. In addition, individual or multiple-family subsurface sewage disposal systems are allowed only when they are reviewed and approved under laws and regulations administered by the Department of Health and Environmental Sciences or the Butte-Silver Bow health department.  
(Ord. 403 § 1 (part), 1991; Ord. 89 § 3.06(A), 1979)

#### **18.24.020 Uses requiring permits.**

All uses allowed in the floodway subject to the issuance of a permit under Section 18.20.020 shall also be allowed by permit within the flood fringe. In addition, new construction, substantial improvements, and alterations to structures are allowed by permit. This includes but is not limited to residential, commercial, and industrial structures, and suitable fill, shall be allowed by permit within the flood fringe subject to the provisions of Section 18.28.100.  
(Ord. 403 § 1 (part), 1991; Ord. 89 § 3.06(B), 1979)

#### **18.24.025 Prohibited uses.**

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

- A. Solid and hazardous waste disposal; and
- B. Storage of highly toxic, flammable, hazardous, or explosive materials. Storage of petroleum products may be allowed by permit if stored on compacted fill at least two feet above the base flood elevation and anchored to a permanent foundation to prevent downstream movement.

(Ord. 403 § 1 (part), 1991)

#### **18.24.030 Conditions for floodplain permits.**

The following are conditions for issuance of floodplain permits:

- A. If the elevation of the base flood is available, the new construction or substantial improvements to residential structures must be built on compacted fill as specified in Section 18.28.100C. If such elevation is not available, the highest known historical flood elevation may be used to establish fill heights. If the development contains fifty lots or five acres, whichever is less, the procedures in Appendix A (following Chapter 18.36) shall be followed.
- B. If the elevation of the base flood is available, the new construction or substantial improvements to commercial and industrial structures must meet the floodproofing requirements set forth in Section 18.28.100D. If such elevation is not available, the highest known historical flood elevation may be used to establish floodproofing heights. If the development contains fifty lots or five acres, whichever is less, the procedures in Appendix A (following Chapter 18.36) shall be followed.

(Ord. 403 § 1 (part), 1991; Ord. 110 § 1(E), 1980; Ord. 89 § 3.06(C), 1979)

### **Chapter 18.28**

## PERMITS

### Sections:

- 18.28.010 Conditions.
- 18.28.020 Building on compacted fill.
- 18.28.030 Compliance with floodproofing requirements.
- 18.28.060 Sewage and solid waste disposal.
- 18.28.070 Modification or denial of permits.
- 18.28.080 Floodway permits--Requirement.
- 18.28.090 Floodway permits--Issuance.
- 18.28.100 Floodway fringe permits.
- 18.28.105 Floodplain areas with flood elevations and no delineated floodway.
- 18.28.110 Shallow flooding (AO Zones).
- 18.28.120 Flood control work permits.
- 18.28.130 Additional factors considered in granting or denying permits.
- 18.28.140 Floodproofing requirements.
- 18.28.150 Emergency waiver.
- 18.28.160 Requirement.
- 18.28.170 Application--Contents.
- 18.28.180 Application--Information required.
- 18.28.190 Applicants--Required certifications.
- 18.28.200 Permit review expiration date.

### **18.28.010 Conditions.**

The conditions set forth in Sections 18.28.020 through 18.28.060, insofar as each is applicable, shall be attached to each floodplain permit.  
(Ord. 89 § 4.01(A) (part), 1979)

### **18.28.020 Building on compacted fill.**

If the elevation of the base flood is available, the new construction or substantial improvements to residential structures must be built on compacted fill as specified in Section 18.28.100C. If such elevation is not available, the highest known historical flood elevation may be used to establish fill heights. If the development contains fifty lots or five acres, whichever is less, the procedures in Appendix A (following Chapter 18.36) shall be followed.

(Ord. 403 § 1 (part), 1991; Ord. 110 § 1(F), 1980; Ord. 89 § 4.01(A)(1), 1979)

### **18.28.030 Compliance with floodproofing requirements.**

If the elevation of the base flood is available, the new construction or substantial improvements to commercial and industrial structures must meet the floodproofing requirements set forth in Section 18.28.100D. If such elevation is not available, the highest known historical flood elevation may be used to establish floodproofing heights. If the development contains fifty lots or five acres, whichever is less, the procedures in Appendix A (following Chapter 18.36) shall be followed.

(Ord. 403 § 1 (part), 1991; Ord. 110 § 1(G), 1980; Ord. 89 § 4.01(A)(2), 1979)

### **18.28.060 Sewage and solid waste disposal.**

Sanitary sewage and solid waste disposal systems must be approved under laws and standards

administered by the Department of Health and Environmental Sciences and the Butte-Silver Bow health department prior to any approval given under this title.  
(Ord. 89 § 4.01(A)(5), 1979)

#### **18.28.070 Modification or denial of permits.**

Permits for floodplain developments may be modified or denied if the additional information shows that proposals would increase flood damage to other properties or would cause a threat to the health or safety of its occupants.  
(Ord. 89 § 4.01(B), 1979)

#### **18.28.080 Floodway permits--Requirement.**

As provided in the Montana Water Use Act of 1973, MCA 85-2-301, all new surface water diversions and changes in place of diversion after July 1, 1973, require permits or approval, respectively from the Department of Natural Resources and Conservation. Within floodways, the Department of Natural Resources and Conservation shall review each proposed diversion or change in place of diversion to determine if flood flows may be affected. If it appears that a proposed diversion or change in place of diversion may significantly affect flood flows, the Department of Natural Resources and Conservation may require the applicant to provide additional information and to apply for a permit with the floodplain administrator under the Floodway Management and Regulation Act. A permit under the Floodway Management and Regulation Act shall not be granted if, in the judgment of the floodplain administrator:

- A. The proposed diversion will significantly increase the upstream base flood elevation to the detriment of neighboring property;
- B. The proposed diversion is not designed and constructed to minimize potential erosion from flooding of a base flood; and
- C. Any permanent diversion structure crossing the full width of the stream channel is not designed and constructed to safely withstand up to a base flood.

(Ord. 403 § 1 (part), 1991: Ord. 89 § 4.02(A), 1979)

#### **18.28.090 Floodway permits--Issuance.**

No permit will be issued for new artificial obstructions, nonconforming uses, encroachments, including fill, new construction, substantial improvements and any other development unless it is demonstrated by a registered professional engineer that the development will not result in any increase of the elevation of the base flood or any increase in flood velocities.  
(Ord. 403 § 1 (part), 1991: Ord. 110 § 1(I), 1980: Ord. 89 § 4.02(B), 1979)

#### **18.28.100 Floodway fringe permits.**

Uses allowed by permit within the floodway fringe are subject to the following conditions:

- A. Such structures or fill must not be prohibited by any other statute, regulation, ordinance, or

resolution;

- B. Such structures or fill must be compatible with local comprehensive plans if any;
- C. The new construction, alterations or substantial improvements of residential structures including manufactured homes must be constructed on suitable fill such that the lowest floor (including basement) is elevated two feet or more above the base flood elevation. The fill shall be at an elevation no lower than the base flood elevation and shall extend for at least fifteen feet at the elevation beyond the structure in all directions. Where existing streets, utilities, or lot dimensions make strict compliance with this provision impossible, the floodplain administrator may authorize through permit approval and variance approval by the board of adjustment, a lesser amount of fill or alternative floodproofing measures. The responsible political subdivision shall notify the Department of Natural Resources and Conservation and receive its approval prior to approving any lesser fill or alternative flood-proofing.
- D. The new construction, alteration or substantial improvements to commercial and industrial structures must be either constructed on fill as specified in the preceding subsection or be adequately floodproofed up to an elevation no lower than two feet above the base flood elevation. Floodproofing of electrical, heating, and plumbing systems shall be accomplished in accordance with Section 18.28.140 and shall further include the waterproofing shall include impermeable membranes or materials for floors and walls, and watertight enclosures for all windows, doors, and other openings, and be certified by a registered professional engineer or architect that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces associated with the base one-hundred-year flood. These structures shall be designed to withstand the hydrostatic pressures resulting from a base flood.
  - 1. If the structure is designed to allow internal flooding of areas below the lowest floor, use of this space shall be limited to parking, loading areas, building access, and storage of equipment or materials not appreciably affected by floodwaters. The floors and walls shall be designed and constructed of materials resistant to flooding to an elevation no lower than two feet above the base flood elevation. Walls shall be designed to automatically equalize hydrostatic forces by allowing for entry and exit of floodwaters. Openings may be equipped with screens, louvers, valves, other coverings, or devices which permit the automatic entry and exit of floodwaters.
  - 2. Structures whose lowest floors are used for a purpose other than parking, loading, or storage of materials resistant to flooding shall be floodproofed to an elevation no lower than two feet above the base flood elevation. Floodproofing shall include impermeable membranes or materials for floors and walls and watertight enclosures for all windows, doors, and other openings. These structures shall also be designed to withstand the hydrostatic, hydrodynamic, and buoyancy effects of a one-hundred-year flood.
- E. All manufactured homes placed in the floodway fringe must have the chassis securely anchored to a foundation system that will resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to over-the-top or frame ties to ground anchors. The following conditions also apply:

1. When a manufactured home is (a) altered, (b) replaced because of substantial damage as a result of a flood, or (c) replaced on an individual site, the lowest floor must be elevated two feet above the base flood elevation. The home can be elevated on fill or raised on a permanent foundation of reinforced concrete, reinforced mortared block, reinforced piers, or other foundation elements of at least equivalent strength.
  2. Replacement or substantial improvement of manufactured homes in an existing manufactured home park or subdivision must be raised on a permanent foundation. The lowest floor must be two feet above the base flood elevation. The foundation must consist of reinforced concrete, reinforced mortared brick, reinforced piers, or other foundation elements of at least equivalent strength.
  3. Manufactured homes proposed for use as commercial or industrial structures must be elevated and anchored, rather than floodproofed;
- F. Roads, streets, highways, and rail lines shall be designed to minimize increases in flood heights. Where failure or interruption of transportation facilities would result in danger to the public health or safety, the facility shall be located two feet above the base flood elevation;
- G.
- H. Agricultural structures that have a low flood damage potential, such as sheds, barns, shelters, and hay and grain storage structures, must meet the requirements of subsection D of this section. They must be adequately anchored to prevent flotation or collapse and all electrical facilities shall be placed above the base flood elevation; and
- I. Recreational vehicles, if they are on the site for more than one-hundred-eighty consecutive days or are not ready for highway use, must meet the elevation requirements of Section 18.28.100(C). (Ord. 403 § 1 (part), 1991; Ord. 110 § 1(J), 1980; Ord. 89 § 4.03(A), 1979)

#### **18.28.105 Floodplain areas with flood elevations and no delineated floodway.**

A. A development proposed for a one-hundred-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 provisions of Chapter 18.24 and Section 18.28.100 shall apply to permit applicant to furnish additional hydraulic data before acting on a permit application for such a floodplain. The data may include, but are not limited to, any of the following:

1. A hydraulic study documenting probable effect on upstream, downstream, or adjacent property owners caused by the proposed development; or
  2. The calculated increase in the one-hundred-year flood water surface profile caused by the proposed development.
- B. Permits for such proposed development may be modified or denied if the additional information

shows that the proposed use would cause an additional flood hazard to adjacent property or significantly increase flood heights. A significant increase in flood heights is one-half foot unless existing or anticipated development in the area dictates a lesser amount of allowable increase.

(Ord. 403 § 1 (part), 1991)

#### **18.28.110 Shallow flooding (AO Zones).**

A. Shallow flooding areas are delineated as AO Zone floodplains on the Flood Insurance Rate Maps. The provisions of Chapter 18.24 and Section 18.28.100 of these regulations shall apply to any AO Zone floodplains. The depth of the one-hundred-year flood is indicated as the depth number on the Flood Insurance Rate Maps. The one-hundred-year flood depth shall be referenced to the highest adjacent grade or stream flow line in determining which fill or floodproofing heights to use in applying the provisions of Section 18.28.100C and D of these regulations. In the absence of depth or elevation information, a minimum two-foot flood depth shall be used.

B. Floodplain Boundary Interpretation. The floodplain administrator shall make interpretations where needed as to the exact location of an AO Zone floodplain boundary when there is a conflict between a mapped boundary and actual field conditions.

(Ord. 403 § 1 (part), 1991; Ord. 110 § 1(H), 1980; Ord. 89 § 4.01(C), 1979)

#### **18.28.120 Flood control work permits.**

Since structural flood control works often significantly obstruct and affect floodway flow capacity, the following flood control measures may be allowed within designated floodways subject to the issuance of a permit and the conditions set forth in this section:

A. Flood control levees and flood walls if:

1. The proposed levees and flood walls are designed and constructed to safely convey a base flood;
2. The cumulative effect on the levees and flood walls combined with allowable flood fringe encroachments does not increase the unobstructed base flood elevation more than one-half foot. The floodplain administrator may establish either a lower or higher permissible increase in the base flood elevation for individual levee projects, with the concurrence of the Department of Natural Resources and Conservation and the Federal Emergency Management Agency based upon the following criteria:
  - a. The estimated cumulative effect of other reasonable anticipated future permissible uses, and
  - b. The type and amount of existing flood prone development in the affected area;
3. The proposed levees and floodwall, except those to protect agricultural land only, are constructed at least three feet higher than the base flood elevation.

- B. Riprap, except that which is hand placed, if:
  - 1. The riprap is designed to withstand a one-hundred-year flood;
  - 2. The riprap does not increase the base flood elevation; and
  - 3. The riprap will not increase erosion upstream, downstream, or across stream from the riprap site.
- C. Channelization projects if they do not significantly increase the magnitude, velocity, or base flood elevation in the proximity of such projects;
- D. Dams, provided that:
  - 1. They are designed and constructed in accordance with approved safety standards and the Montana Dam Safety Act;
  - 2. They will not increase flood hazards downstream either through operational procedures or improper hydrologic/hydraulic design.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 4.04, 1979)

**18.28.130 Additional factors considered in granting or denying permits.**

Permits shall be granted or denied by the floodplain administrator on the basis of whether the proposed establishment, alteration or substantial improvement of an artificial obstruction meets the requirements of this title. Additional factors that shall be considered for every permit application are:

- A. The danger to life and property due to increased flood heights or velocities, or alterations in the pattern of flood flow caused by encroachments;
- B. The danger that materials may be swept onto other lands or downstream to the injury of others;
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions;
- D. The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
- E. The importance of the services provided by the proposed facility to the community;
- F. The requirements of the facility for a waterfront location;
- G. The availability of alternative locations not subject to flooding for the proposed use;
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;

- I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area;
- J. The safety of access to the property in times of flood for ordinary and emergency service; and
- K. Such other factors as are in harmony with the purposes of this title and the Montana Floodplain and Floodway Management Act, and the National Flood Insurance Program.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 4.05, 1979)

#### **18.28.140 Floodproofing requirements.**

If the following floodproofing requirements are to be utilized for a particular structure in accordance with this title, the methods used must be certified as adequate by a registered professional engineer or architect. Permitted flood-proof systems shall conform to the following conditions and the floodproofing standards listed in Section 18.28.100D of these regulations, for commercial and industrial structures.

- A. All electrical service materials, equipment, and installation for uses permitted with or without a permit in a floodplain or floodway shall conform to the following conditions:
  - 1. All incoming power service equipment, including all metering equipment, control centers, transformers, distribution and lighting panels, and all other stationary equipment must be located at least two feet above the base flood elevation;
  - 2. Portable and movable electrical equipment may be placed below the base flood elevation provided that the equipment can be disconnected by a single plug-and-socket assembly of the submersible type;
  - 3. The main power service line shall have automatic or manually operated electrical disconnect equipment located at an accessible remote location outside the one-hundred-year floodplain and above the base flood elevation;
  - 4. All electrical wiring systems installed at or below the elevation of the one-hundred-year flood shall be suitable for continuous submergence and may not contain fibrous components.
- B. Heating systems for allowed and permitted floodplain and floodway uses shall conform to the following conditions:
  - 1. Float operated automatic control valves must be installed in supply lines to gas furnaces, so that the fuel supply is automatically shut-off when floodwaters reach the floor level where the furnaces are located;
  - 2. Manually operated gate valves that can be operated from a location above the elevation of the base flood shall also be provided in gas supply lines;

3. Electric heating systems must be installed in accordance with subsection A of this section.

C. Plumbing shall conform to the following conditions:

1. Sewer lines, except those to be buried and sealed in vaults, must have check valves installed to prevent sewage backup into permitted structures; and
2. All toilet stools, sinks, urinals, and drains must be located so the lowest point of possible water entry is at least two feet above the elevation of the one-hundred-year flood.

(Ord. 403 § 1 (part), 1991; Ord. 190 § 1(A,B), 1983; Ord. 89 § 4.06, 1979)

**18.28.150 Emergency waiver.**

A. 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 permit requirements waived if:

1. Upon notification and prior to the emergency repair and/or replacement, the floodplain administrator determines that an emergency condition warranting immediate action exists; and
2. The floodplain administrator agrees upon the nature and type of proposed emergency repair and/or replacement.

B. Authorization to undertake emergency repair and/or replacement work may be given verbally if the floodplain administrator feels that a written authorization would unduly delay the emergency works. Such verbal authorization must be followed by a written authorization stating the emergency condition, the type of emergency work agreed upon, and a notation that a verbal authorization had been previously given.

(Ord. 89 § 4.07, 1979)

**18.28.160 Requirement.**

Activities or uses which require the issuance of a permit, including the expansion or alteration of such uses, shall not be initiated, established or undertaken until a permit has been issued by the floodplain administrator.

(Ord. 89 § 5.02(A), 1979)

**18.28.170 Application--Contents.**

Permit applicants shall be required to furnish such of the following as is deemed necessary for determining the suitability of the particular site for the proposed use:

- A. Plans in duplicate drawn to scale with dimensions shown, showing the nature, location, and elevation of the lot, the existing and proposed structures, fill storage of materials, floodproofing measures, location of the channel, and the mean sea level elevation of first floor of proposed structures;

- B. A plan view of the proposed development indicating external dimensions of structures, street or road finished grade elevations, well locations, individual sewage treatment and disposal sites, excavation and/or fill quantity estimates and site plans and/or construction plans. Also, if available, dated photographs showing existing land uses and channel conditions, upstream and downstream; and
  - C. Specifications for floodproofing, filling, excavating, grading, riprapping, storage of materials, water supply, and sanitary facilities and location of utilities;
  - D. A professional engineer's or registered architect's design calculations and certification that the proposed activity has been designed to be in compliance with these regulations;
  - E. Certification of floodproofing and/or elevation shall be provided on a standard form available from the floodplain administrator.
- (Ord. 403 § 1 (part), 1991; Ord. 89 § 5.02(B), 1979)

**18.28.180 Application--Information required.**

In addition to the information specified in Section 18.28.170, the following information is required for certain proposed uses when the proposal encroaches a floodplain where floodways are not available:

- A. A minimum of four surveyed river valley cross-sections as per instructions given in Appendix A, Field Survey Instructions for Flood Hazard Elevations (following Chapter 18.36);
  - B. A surveyed water surface profile as per instructions given in Appendix A, Field Survey Instructions for Flood Hazard Elevations (following Chapter 18.36); and
  - C. Certification by a registered professional engineer or architect that floodproofing measures are adequate to protect against major flood damages; or a hydrological study documenting probable effect on upstream or downstream property owners.
- (Ord. 403 § 1 (part), 1991; Ord. 89 § 5.02(C), 1979)

**18.28.190 Applicants--Required certifications.**

Applicants who have received permits are required to furnish the following, at the time of an on-site conformance inspection, for determining that the permit conditions and specifications have been complied with:

- A. Certification by a registered professional engineer or licensed land surveyor of the actual elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new, altered or substantially improved structures;
- B. If floodproofing techniques were used for buildings, the mean sea level elevation to which the flood-proofing was accomplished must be certified by a structural engineer or licensed architect in the same manner;
- C. Certification shall also be required, for artificial obstructions other than buildings, that the

activity was accomplished in accordance with these regulations and the design plans submitted with the application for the permit activity. This certification may be waived by the floodplain administrator if it can be clearly ascertained by a site inspection that the activity was accomplished in accordance with these regulations;

- D. Certification of floodproofing and/or elevation shall be provided on a standard form available from the floodplain administrator.

(Ord. 403, § 1 (part), 1991; Ord. 89 § 5.02(D), 1979)

### **18.28.200 Permit review expiration date.**

A permit application is considered to have been automatically granted sixty days after receipt of the application, except where:

- A. The floodplain administrator notifies the applicant before the sixtieth day that the permit is denied, or conditionally approved;
- B. The floodplain administrator notifies the applicant that additional hydraulic and survey information is required before acting upon the permit application; and
- C. The permit requires state endorsement as in the case of surface water diversions, variances from approved standards, etc.

(Ord. 89 § 5.03, 1979)

## **Chapter 18.32**

### **ADMINISTRATION**

Sections:

- 18.32.010 Administrator--Designated.**
- 18.32.020 Administrator--Appointed.**
- 18.32.030 Adoption of procedures.**
- 18.32.040 Maintenance of files and records.**
- 18.32.043 Additional information.**
- 18.32.047 Notice of application.**
- 18.32.050 Copies of permits.**
- 18.32.060 Notice of relocated watercourse.**
- 18.32.070 Maintenance of flood-carrying capacity.**
- 18.32.080 Board of adjustment.**
- 18.32.090 Variances--Permits not in compliance with standards.**
- 18.32.110 Appeals.**
- 18.32.120 Fees.**

### **18.32.010 Administrator--Designated.**

The Butte-Silver Bow planning director or his designated representative is designated as the floodplain administrator for Butte-Silver Bow, state of Montana, and has the responsibility of such position as outlined in this title.

(Ord. 89 § 5.01(A), 1979)

### **18.32.020 Administrator--Appointed.**

The floodplain administrator is appointed with the authority to review permit applications and proposed uses or construction to determine compliance with this title, and is required to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal and state law and local codes, including Section 404 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. 1334, and under the provisions of the Natural Streambed and Land Preservation Act.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 5.01(B), 1979)

### **18.32.030 Adoption of procedures.**

The floodplain administrator shall adopt such procedures as may be necessary to efficiently administer the provisions of this title.

(Ord. 89 § 5.01(C), 1979)

### **18.32.040 Maintenance of files and records.**

The floodplain administrator charged with the administration of this title shall maintain such files and records as may be necessary to document nonconforming uses, base flood elevations, floodproofing and elevation certificates, fee receipts, the issuance of permits, agendas, minutes, records of public hearings, and any other matter relating to floodplain management in Butte-Silver Bow. Such files and records shall be open for public inspection. In matters of litigation, the Butte-Silver Bow attorney may restrict access to specific records.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 5.01(D), 1979)

### **18.32.043 Additional information.**

The floodplain administrator may require whatever additional information is necessary to determine whether the proposed activity meets the requirements of these regulations. Additional information may include hydraulic calculations assessing the impact on base flood elevations or velocities; level survey; or certification by a registered land surveyor, professional engineer, or licensed architect that the requirements of these regulations are satisfied.

(Ord. 403 § 1 (part), 1991)

### **18.32.047 Notice of application.**

Upon receipt of an application for a permit or a variance, the floodplain administrator shall prepare a notice containing the facts pertinent to the application and shall publish the notice at least once in a newspaper of general circulation in the area. Notice shall also be served by first-class mail upon adjacent property owners and the DNRC Floodplain Management Section. The floodplain administrator shall provide the applicant with a copy of the notice and the applicant will be responsible for mailing notices to adjacent property owners and DNRC. The applicant shall provide the floodplain administrator with the list of those notified. The notice shall provide a reasonable period of time, not less than fifteen days, for interested parties to submit comments on the proposed activity.

(Ord. 403 § 1 (part), 1991)

### **18.32.050 Copies of permits.**

Copies of all permits granted must be sent to the Department of Natural Resources and Conservation on a quarter-year basis.

(Ord. 89 § 5.01(E), 1979)

### **18.32.060 Notice of relocated watercourse.**

Notification by the floodplain administrator must be made, in riverine situations, to adjacent communities and the Floodplain Management Section (DNRC) and FEMA prior to any alteration or relocation of a stream.

(Ord. 403 § 1 (part), 1991: Ord. 89 § 5.01(F), 1979)

### **18.32.070 Maintenance of flood-carrying capacity.**

The floodplain administrator is required to assure that the flood-carrying capacity within the altered or relocated portion of any stream is maintained.

(Ord. 403 § 1 (part), 1991: Ord. 89 § 5.01(G), 1979)

### **18.32.080 Board of adjustment.**

There is created a Butte-Silver Bow floodplain board of adjustment, the membership, administration and rules of procedure of which are identical to and the same as the Butte-Silver Bow zoning board of adjustment.

(Ord. 89 § 5.04(A), 1979)

### **18.32.090 Variances--Permits not in compliance with standards.**

The Butte-Silver Bow floodplain board of adjustment may, by variance, grant a permit that is not in compliance with the minimum standards contained in this title according to the following procedures:

- A. Variances shall not be issued for areas within any floodway if any additional increase in flood elevations or velocities after allowable encroachments into the floodway fringe would result;
- B. Variances shall only be issued upon:
  - 1. A showing of good and sufficient cause;
  - 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant or community;
  - 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 existing state laws or local resolutions;
  - 4. A determination that the proposed use would be adequately floodproofed;

5. A determination that a reasonable alternative location outside the floodplain is not available;
6. A determination that the variance requested is the minimum necessary, considering the flood hazard, to afford relief; and
7. An approval of the Department of Natural Resources and Conservation is obtained upon request of the Butte-Silver Bow floodplain board of adjustment of any permit application that requests a variance with this title; and

C. Variances shall be issued in writing from the Butte-Silver Bow floodplain board of adjustment and shall notify the applicant that:

1. The specific variance that is granted, along with any conditions attached, thereon;
2. Issuance of a variance to construct a building below the one-hundred-year floodplain elevation will result in increased premium rates for flood insurance; and
3. Such construction below the one-hundred-year flood elevation increases risks to life and property. The floodplain administrator shall maintain the records of variance notification, variance actions, including justification for their issuance, and forward copies of all variance actions to the Department of Natural Resources and Conservation on a quarter-year basis, and to the Federal Emergency Management Agency.

(Ord. 403 § 1 (part), 1991; Ord. 190 § 1(B), 1983; Ord. 89 § 5.04(B), 1979)

### **18.32.110 Appeals.**

Appeals from any decision of Butte-Silver Bow or its officers or agencies may be taken by any aggrieved person or persons, jointly or separately aggrieved to a court of record.

(Ord. 89 § 5.04(D), 1979)

### **18.32.120 Fees.**

A processing fee of fifty dollars shall be submitted with each permit applicant.

(Ord. 403 § 1 (part), 1991; Ord. 89 § 5.05, 1979)

## **Chapter 18.36**

### **ENFORCEMENT**

Sections:

**18.36.010 Notice of violation.**

**18.36.020 Compliance with use permits.**

**18.36.030 Violation--Penalty.**

**18.36.040 Emergency preparedness planning.**

### **18.36.010 Notice of violation.**

The floodplain administrator shall bring any violation of this title to the attention of the Butte-Silver Bow council of commissioners and the Butte-Silver Bow county attorney, and the Montana Department of Natural Resources and Conservation.  
(Ord. 403 § 1 (part), 1991; Ord. 89 § 6.01, 1979)

### **18.36.020 Compliance with use permits.**

Use permits issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and application, and no other use, arrangement, or construction. Any use, arrangement, or construction not in compliance with that authorized shall be deemed a violation of this title, and punishable as provided in Section 18.36.030. An applicant is required to submit certification by a registered professional engineer, architect, land surveyor, or other qualified person by the flood administrator that finished fill and building floor elevations, floodproofing, or other flood protection measures were accomplished in compliance with this title.  
(Ord. 403 § 1 (part), 1991; Ord. 89 § 6.02, 1979)

### **18.36.030 Violation--Penalty.**

Violation of the provisions of this title for failure to comply with any of the requirements (including permit approval prior to development of floodprone lands and violations of conditions and safeguards established in connection with variances), shall constitute a misdemeanor. Any person who violates this title or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than five hundred dollars or imprisoned for not more than six months or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Butte-Silver Bow from taking such other lawful action as is necessary to prevent or remedy any violation.  
(Ord. 403 § 1 (part), 1991; Ord. 89 § 6.03, 1979)

### **18.36.040 Emergency preparedness planning.**

In formulating community development goals, the community shall consider the development of a plan for evacuating residents of all manufactured home parks or subdivisions located within floodprone areas. This plan should be developed, filed with and approved by appropriate community emergency management authorities.  
(Ord. 403 § 1 (part), 1991)

## Appendix A Field Survey Instructions for Flood Hazard Evaluations

In evaluating a proposed use within a one-hundred-year floodplain for which no floodway has been designated, the floodplain administrator shall require the following for development of fifty lots or five acres, whichever is less, or may require other applicants to submit the following upon need for evaluation.

1. Cross-Sections. A minimum of four surveyed valley cross-sections by a registered land surveyor according to the following field survey instructions:

- a. The surveys required are cross-sections of stream channels and the floodplain on both banks.
  - b. One cross-section shall be taken at a point on the stream from which it could be extended through the site.
  - c. Three cross-sections shall be taken downstream from the site, each approximately one thousand feet apart. In no case, however, should the fall in water surface elevation between two sections exceed five feet. Cross-sections should also be taken at any bridge locations in the reach. The cross-section farthest downstream should be located at a natural constriction or at a bridge crossing. Cross-sections shall be taken at any bridge location between the site and lowest cross-section. All bridges in the reach should be described and sketched showing unobstructed waterway openings and elevations.
  - d. Distances between cross-sections are to be determined by stadia, and these distances and locations of cross-sections shall be shown on the location map.
  - e. The overbank cross-sections are to be extended to obtain a vertical rise of fifteen feet above the water surface.
  - f. If a U.S. Geological Survey river gauging station is within the reach of the stream under study, the elevation of any convenient foot mark shall be surveyed and clearly indicated on the location map.
  - g. Elevations on the water surface determined by survey as part of each valley cross-section.
  - h. Cross-sections should be plotted on ten divisions to the inch cross-section paper, using any convenient, identified scale for vertical and horizontal distance.
  - i. The elevation of any known high water mark shall be identified and included in the survey.
2. Profile. A profile sheet shall be prepared by a registered architect or registered civil engineer on cross-section paper of ten divisions to the inch, showing the observed water surface profile, location of cross-sections, site boundaries, riverbank profile, and thalweg (lowest point of the channel bottom along the reach of stream).
  3. Reference. All surveyed elevations shall be tied to mean sea level datum and the benchmark used shall be identified.
  4. Elevations. After submittal of this data, the Water Resources Division of the Department of Natural Resources and Conservation will determine the one-hundred-year floodplain elevations.
- (Ord. 110 § 1(K), 1980; Ord. 89 Appendix A, 1979)