

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56

# Chapter 17 FLOODPLAIN OVERLAY DISTRICT (FP) AND RIPARIAN SETBACK DISTRICT (R)

- 9-17-1: FINDINGS OF FACT AND STATUTORY AUTHORITY:
- 9-17-2: PURPOSE:
- 9-17-3: ESTABLISHMENT OF FLOODPLAIN OVERLAY AND RIPARIAN SETBACK DISTRICTS:
- 9-17-4: WARNING AND DISCLAIMER OF LIABILITY:
- 9-17-5: DEFINITIONS
- 9-17-6: FLOODPLAIN AND FLOODWAY SUBDISTRICT USE REGULATIONS:
- 9-17-7: RIPARIAN SETBACK DISTRICT USE REGULATIONS:
- 9-17-8: CATEGORICAL EXCLUSIONS:
- 9-17-9: CONDITIONAL USE PERMIT PROCEDURE:
- 9-17-10: NONCONFORMING STRUCTURES AND USES IN FLOODPLAIN OVERLAY AND RIPARIAN SETBACK DISTRICTS:
- 9-17-11: STREAM ALTERATION PERMIT PROCEDURE:

## 9-17-1: STATUTORY AUTHORITY:

- A. Importance To County: The rivers and creeks of the county are important to its citizens as a source of recreation, fish and wildlife habitat, aesthetic beauty, a source of irrigation water for the farmlands as well as other economic and lifestyle values.
- B. Flood Losses Resulting From Periodic Inundation: The flood hazard areas of the county are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- C. General Causes Of These Flood Losses: These flood losses are increased by:
  - 1. The cumulative effect of obstructions and constriction to flood heights and velocities;
  - 2. Development within flood hazard areas which are vulnerable to floods or hazardous to other lands;
  - 3. The removal of riparian vegetation.
- D. Methods Used To Analyze Flood Hazard: The studies listed below are hereby adopted as the primary sources of flood hazard analysis:
  - 1. The special flood hazard areas identified by the federal emergency management agency in its flood insurance study (FIS) for Blaine County, Idaho and incorporated areas dated November 26, 2010, with accompanying flood insurance rate maps (FIRM), and other supporting data, are adopted by reference and declared a part of this chapter. The FIS and the FIRM are on file at the land use and building services office located at 219 First Avenue South, Suite 208, Hailey, Idaho.
  - 2. Flood hazard analysis sources as determined by the Blaine County engineer, floodplain manager, or other expert hired by the county and the administrator to be the best available information.
- E. Statutory Authority: The legislature of the state of Idaho in Idaho Code 46-1020 through 46-1024, authorized local government units to adopt a floodplain map and floodplain management ordinance that identifies floodplains and that sets forth minimum development requirements in floodplains that are designed to promote the public health, safety, and general welfare of its citizenry.
- F. This chapter shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations etc. Where this chapter imposes a greater restriction, the provisions of this ordinance shall not be affected.

## 9-17-2: PURPOSE:

The standards and mechanisms established herein are intended to protect floodplain and riparian areas in the county. The floodplain overlay and riparian setback districts restrict and/or prohibit uses which endangers the health, safety and/or property during flood events, which result in environmental damage and increased flood heights or velocities. By regulating development and alterations to floodplains and riparian areas this chapter seeks to:

- A. Protect members of the public and public resources and facilities from injury, loss of life, property damage or financial losses due to flooding or erosion;
- B. Protect and restore unique, fragile and valuable elements of floodplain and riparian areas including wildlife habitat;
- C. Mitigate avoidable impacts to aquatic systems by regulating alterations in and adjacent to riparian areas;
- D. Prevent cumulative adverse environmental impacts to water availability, water quality, wetlands and streams;
- E. Augment the requirements of the National Flood Insurance Program (NFIP) and maintain the county as an eligible community for federal flood insurance benefits;
- F. Alert members of the public, such as appraisers, owners, real estate companies, individuals, potential buyers or lessees, to the development limitations of riparian areas and floodplains;
- G. Provide county officials with sufficient information to protect floodplains, watercourses and riparian areas; and
- H. Implement the county comprehensive plan, as amended, and all county functional and community plans.
- I. Minimize prolonged adverse impacts due to flooding and post-flood recovery.



- 1 J. Minimize the need for, and excessive costs borne by, rescue and emergency services associated with flooding.
- 2 K. Ensure that property owners within areas of special flood hazard are held accountable for the impacts from their private development.

**9-17-3: ESTABLISHMENT OF FLOODPLAIN OVERLAY AND RIPARIAN SETBACK DISTRICTS:**

**A. Establishment of Districts:**

1. The floodplain overlay district is hereby established. The regulations of this district apply to all lands within the jurisdiction of the county that lie within the special flood hazard area boundaries as established by subsection 9-17-1D of this chapter. Except as stated in subsection 9-17-1D2 of this chapter, any boundary established by a registered professional engineer in the state that is in conflict with the effective flood insurance study (FIS) must be submitted to and approved by FEMA through revised FIRM, or through a letter of map change (LOMC) issued by FEMA. Such amendments or revisions to the effective FIRMs authorized by FEMA shall be considered amendments or revisions to the maps adopted hereinabove and may be used as the best available information. 1a. Establishment of Subdistricts: The floodplain areas within the jurisdiction of this chapter are divided into two (2) subdistricts: the floodway subdistrict and the floodplain subdistrict. The boundaries of these subdistricts are determined in accordance with subsection 9-17-1D.

2. The riparian setback district is hereby established. The regulations of this district shall include the setbacks from the ordinary high water mark according to the class of stream as delineated in subsection 9-17-7B of this chapter.

**B. Rules for Interpretation:**

1. The floodplain overlay district boundaries are partially represented on the floodplain overlay district map for the county. The precise boundaries shall be determined by on site elevations in accordance with subsection 9-17-1D.

The administrator shall make the necessary interpretation of the boundary based upon the FEMA designation or the recommendation of the county engineer, floodplain Manager, or other expert hired by the county. An applicant contesting the location of the boundary may submit applicant's own technical evidence when presenting applicant's case to the administrator, county engineer, or floodplain manager, for the conditional use permit, stream alteration permit, building permit or subdivision application. Technical data shall be subject to review and the stricter of the technical data or FIRM and FIS shall be enforced for compliance with NFIP standards.

2. The riparian setback district boundaries will not be designated on the official county zoning map. These boundaries shall include the setbacks from the ordinary high water mark according to the class of stream as delineated in subsection 9-17-7B of this chapter.

3. Land used primarily for commercial agricultural purposes is excluded from section 9-17-7, "Riparian Setback District Use Regulations", of this chapter, provided a ten foot (10') natural vegetation buffer, as measured from the ordinary high water mark, shall be preserved or maintained along all designated streams. Revegetation of this natural vegetation buffer shall not be required where the watercourse moves its channel.

**9-17-4: WARNING AND DISCLAIMER OF LIABILITY:**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. Streams and rivers are dynamic ecosystems and channel realignments, erosion, sedimentation, and unpredictability of surface and ground water should be expected. This chapter does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This chapter shall not create liability on the part of the county or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

**9-17-5: DEFINITIONS:**

As used in this chapter, the following words and terms shall have the meanings ascribed to them in this subsection:

**BASE FLOOD:** The flood having a one percent (1%) chance of being equaled or exceeded each year.

**BASE FLOOD ELEVATION (BFE):** A determination by the Federal Insurance Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year. When the BFE has not been provided in a Special Flood Hazard Area, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA-approved engineering methodologies. This elevation, when combined with the Freeboard, establishes the Flood Protection Elevation.

**BASEMENT:** The portion of a structure including crawl space with its floor subgrade (below ground level) on all sides.

**COMPENSATORY STORAGE:** A standard for the Floodplain Overlay District which preserves the ability of the floodplain to store flood waters. Sometimes referred to as "cut-and-fill", compensatory storage means that loss of flood storage due to buildings or fill dirt in the floodplain is compensated for by providing an equal volume of storage to replace what is lost.

**DEVELOPMENT:** Any manmade change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures, or the construction of additions or substantial improvements to buildings, structures or accessory structures; the placement of mobile homes; mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials; and the deposition or extraction of materials, including the construction of dikes, berms and levees.

**FLOOD INSURANCE RATE MAP (FIRM):** An official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

**FLOOD INSURANCE STUDY (FIS):** An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations; or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**FLOOD OR FLOODING:**

A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland waters from streams, rivers, and other watercourses.
- B. The unusual and rapid accumulation or runoff of surface waters from any source.
- C. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in a.2. of this definition and are akin to a river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73

**FLOOD PROTECTION ELEVATION (FPE):** The Base Flood Elevation plus the Freeboard.  
A. In "Special Flood Hazard Areas" where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet (2') feet of freeboard; and  
B. In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least two feet (2') feet above the highest adjacent grade.

**FLOODPLAIN:** See Special Flood Hazard Area.

**FLOODWAY (REGULATORY):** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

**FREEBOARD:** A factor of safety usually expressed in feet above a flood level for the 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, obstructed bridge openings, debris and ice jams and the hydrologic effects of urbanization in a watershed. The Base Flood Elevation (BFE) plus the freeboard establishes the Flood Protection Elevation (FPE). Freeboard shall be two feet (2').

**LETTER OF MAP CHANGE (LOMC):** An official FEMA determination, by letter, to amend or revise effective flood insurance rate maps, flood boundary and floodway maps, and flood insurance studies. LOMCs are issued in the following categories:

- A. Letter of Map Amendment (LOMA): an official amendment, by letter, to an effective National Flood Insurance Program (NFIP) map. A LOMA establishes a property's location in relation to the Special Flood Hazard Area (SFHA). LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain but is actually on natural high ground above the base flood elevation.
- B. Letter of Map Revision (LOMR): FEMA's modification to an effective Flood Insurance Rate Map (FIRM). LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the FIRM, and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM.
- C. Letter of Map Revision Based on Fill (LOMR-F): FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway. The LOMR-F does not change the FIRM, FBFM, or FIS report.
- D. Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS). Upon submission and approval of certified as-built documentation, a LOMR may be issued by FEMA to revise the effective FIRM. Building Permits and/or Flood Development Permits cannot be issued based on a CLOMR, because a CLOMR does not change the NFIP map.

**LOWEST FLOOR:** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR § 60.3 and this ordinance.

**MANUFACTURED HOME:** A structure 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. The term "manufactured home" does not include a "recreational vehicle".

**NEW CONSTRUCTION:** Structures for which the start of construction commenced on or after the effective date of this ordinance and includes any subsequent improvements to such structures.

- RECREATIONAL VEHICLE:** A vehicle that is:
- A. Built on a single chassis,
  - B. not more than four hundred (400) square feet or less when measured at the largest horizontal projection,
  - C. Designed to be self-propelled or permanently towed by a light duty truck, and
  - D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**REGULATORY FLOODWAY:** See Floodway

**SPECIAL FLOOD HAZARD AREA (SFHA):** The land within the Floodplain Overlay District, subject to a one percent (1%) or greater chance of flooding in any given year. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

**STRUCTURE:** An edifice, building, or any piece of work artificially built up or composed of parts jointed together in some definite manner, including a gas or liquid storage tank.

**SUBSTANTIAL DAMAGE:** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent (50%) of its market value before the damage occurred. See definition of "substantial improvement". Permits for any repairs shall be counted cumulatively over time.

**SUBSTANTIAL IMPROVEMENT:** Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent (50%) of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. Permits for any improvement shall be counted cumulatively over time. If the improvement project is conducted in phases, the total of all cost associated with each phase, beginning with the issuance of the first permit, shall be utilized to determine whether "substantial improvement" will occur. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a "historic structure" and the alteration is approved by variance issued pursuant to this chapter.

1 **9-17-6: FLOODPLAIN AND FLOODWAY SUBDISTRICT USE REGULATIONS**

2 A. Floodway Subdistrict Use Regulations: Because of the possibility of flooding and changeable characteristics of streams in the county, floodway uses  
3 are highly restricted. All uses within the floodway shall comply with the following:

- 4 1. Compliance with all specific use regulations outlined in section 9-17-6E of this chapter.
- 5 2. Demonstrate the proposed encroachment will not result in any increase in water surface elevation during the occurrence of the base flood, based  
6 on hydrologic and hydraulic analyses performed in accordance with standard engineering practice.
- 7 3. Pre-notification and appropriate documentation, as determined by the administrator, shall be submitted to the Blaine County Land Use office prior  
8 to the start of work.
- 9 a. Permitted Uses:
- 10 (1) Maintenance or repair of pre-existing agricultural uses including, but not limited to, pipes, headgates, diversion structures, pumps,  
11 fences and weirs, provided that no agricultural buildings are involved.
- 12 (2) Activities operating in accordance with a county-approved stream alteration permit
- 13 b. Prohibited Uses:
- 14 (1) Any encroachment into the floodway, including fill, new construction, substantial improvements or modifications, stream alterations or  
15 other development that would cause any increase in velocity of the stream or increase of the base flood elevation, thus jeopardizing the  
16 county's eligibility in the NFIP.
- 17 (2) Any development that may cause adverse impacts to areas downstream, upstream or across stream unless the adverse impacts may  
18 be mitigated to the satisfaction of the county through the stream alteration permit process.
- 19 (3) Any use located within a wellhead protection area that may adversely impact a potable water source.
- 20

21 B. Floodplain Subdistrict Use Regulations: Because of hazard to individual and public health, safety, and welfare, uses in the floodplain are restricted or  
22 designated for individual consideration under the categorical exclusion or conditional use permit process. All uses within the floodplain shall comply  
23 with the following:

- 24 1. Compliance with all specific use regulations outlined in section 9-17-~~6F-6E~~ of this chapter.
- 25 2. Demonstrate the proposed development will not result in any obstruction, increase in velocity, or increase in the water surface elevation during the  
26 occurrence of the base flood.
- 27 3. Pre-notification and appropriate documentation, as determined by the administrator, shall be submitted to the Blaine County Land Use office prior  
28 to the start of work.
- 29 a. Permitted Uses:
- 30 (4) Agricultural, recreational, and residential accessory uses (nonstructural) which are designed to withstand flooding and will not increase  
31 the risk of flood losses on other land, to the public nor to the environment; inundation or flood damage to said permitted uses shall not  
32 be considered extraordinary circumstances. This includes the temporary installation of flood control barriers, (90) days or less, when  
33 located within five feet (5') of the structure during flooding.
- 34 (5) Sub-grade utilities such as fiber optics, pipelines, power or gas lines provided that they do not involve the placement of fill or that  
35 requirements for balanced cut and fill are met;
- 36 (6) At-grade pavers, sidewalks, and pedestrian or equestrian pathways or trails.
- 37 b. Categorically Excluded Uses: A conditional use permit shall not be required provided the landowner or agent, before commencing any work,  
38 first obtains a written decision from the administrator, in consultation with the county engineer, floodplain manager, or his/her designated  
39 representative, that the development falls within and meets one of the following categorical exclusions.
- 40 (1) single-family residences and structures and uses accessory thereto, when located fully within an approved platted building envelope  
41 shown on a recorded subdivision plat;
- 42 (2) fences, provided they will not block the passage of floodwaters;
- 43 (3) retaining walls, bulkheads, driveways, decks, porches, pools, spas, and landscaping berms;
- 44 (4) docks, piers, boat ramps, and marinas;
- 45 (5) farm and garden buildings, and the storage of boats, campers and travel trailers by residents;
- 46 (6) wireless communication facilities, refer to chapter 3 of this title;
- 47 (7) above grade utilities;
- 48 (8) bridges and culverts within or spanning Class 2, 3 or 4 streams; and
- 49 (9) any other "development" not specifically listed.
- 50 c. Conditional Uses: For any proposed conditional use, the applicant shall demonstrate that the use or activity will have no adverse impact or that  
51 such impacts can be mitigated to the maximum extent feasible:
- 52 (1) commercial or public works sand and gravel extractions;
- 53 (2) gravel or shale pits, or asphalt plants;
- 54 (3) bridges and culverts within or spanning Class 1 streams; and
- 55 (4) residential uses located outside platted building envelopes;
- 56 (5) other projects as the director deems necessary due to potential adverse impacts;
- 57 d. Prohibited Uses:
- 58 (1) subdivision lots or lands for residential development within the floodplain that do not include a buildable site;
- 59 (2) any use or structure that could cause flood damage to other property or environmental damage;
- 60 (3) the restriction or blockage of a side or overflow channel; or
- 61 (4) any use located within a wellhead protection area that may adversely impact a potable water source.
- 62

66 C. Dimensional Standards: Any buildable lot within a floodplain overlay district shall use the setbacks required in the riparian setback district for the class  
67 of stream involved. More restrictive setbacks may be imposed through the conditional use permit or subdivision review process.

68 D. Development Density: The base development density in the floodplain overlay district shall be the base density in the adjacent zoning district or one  
69 unit per five (5) acres, whichever is less dense.

70 Floodway land may be included in determining development density. For a parcel of land which straddles the floodplain overlay district and a  
71 residential district, individual lots may be drawn which include portions of the floodplain overlay district. However, each lot will include land outside of  
72 the riparian setback and outside of the floodplain overlay district.

73

- 1 E. Specific Use Requirements: The following provisions apply to uses within the floodway and floodplain subdistricts. The burden of proof always rests  
2 with the applicant.
- 3 1. Local Public Interests: The proposed application (use) does not conflict with the local public interest, i.e., the affairs of the people in the area  
4 directly affected by the proposed use. This includes, but is not limited to, property values, fish and wildlife habitat, aquatic life, recreation, water  
5 quality, potable water sources or an impact upon a locally important factor.  
6
- 7 2. Changes To The Flood Insurance Rate Map: any boundary or base flood elevation established by a registered professional engineer in the state  
8 that is in conflict with the effective flood insurance study (FIS) must be submitted to and approved by FEMA through revised FIRM, or through a letter  
9 of map change (LOMC) issued by FEMA. Such amendments or revisions to the effective FIRMs authorized by FEMA shall be considered  
10 amendments or revisions to the maps adopted hereinabove and may be used as the best available information.  
11
- 12 3. Riparian Habitat: Replacement of native riparian habitat, including vegetation, shall be required for all disturbed areas within the required  
13 setbacks.  
14
- 15 4. Balanced Cut and Fill Required. Fill is prohibited in the SFHA unless compensatory storage is maintained. Quantities of fill must be calculated  
16 and offset by excavated material near the fill to the appropriate volume to account for the filled land. Fill is permitted along the driveway alignment to  
17 allow the driveway to meet the garage elevation provided the conveyance of floodwaters is maintained.  
18
- 19 5. Location: Building sites or envelopes shall be located outside of the Floodplain Overlay District unless such a location would result in greater  
20 adverse impacts to wetland, riparian, or other risk areas.  
21
- 22 6. Anchoring: All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the  
23 structure.  
24
- 25 7. Requirements for Structures Partially in the Floodplain Overlay District. When a structure is partially located in the floodway or floodplain  
26 subdistricts, the entire structure shall meet the requirements for new construction and substantial improvements.  
27
- 28 8. Additional Permits: Categorical exclusions, conditional use permits and building permits shall be reviewed to determine that all necessary permits  
29 have been obtained from those federal, state or local governmental agencies from which prior approval is required.  
30
- 31 9. Construction Materials and Methods: All new construction and substantial improvements shall be constructed with materials and utility equipment  
32 resistant to flood damage, using methods and practices that minimize flood damage. All new and replacement electrical, heating, ventilation,  
33 plumbing and air conditioning equipment and other service facilities shall be designed or elevated or both, so as to prevent water from entering or  
34 accumulating within the components during conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units,  
35 bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.  
36
- 37 10. Basements: Basements are prohibited within the floodplain and floodway subdistrict.  
38
- 39 11. Utilities: New and replacement water disposal, sanitary sewage, and water supply facilities shall be designed to minimize or prevent the  
40 infiltration of floodwaters to avoid impairment to them or contamination from them during flooding. A permit shall be received from the South  
41 Central Public Health District who shall determine the specific system to be used.  
42
- 43 12. Residential construction.
- 44 a. New construction and substantial improvement of any residential structure shall have the lowest floor elevated to or above flood protection  
45 elevation. Floodproofing of "lowest floor" space is not permitted.
- 46 b. Fully closed areas below the lowest floor that are subject to flooding are prohibited or shall be used solely for parking of vehicles, building  
47 access or limited storage and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of  
48 floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or  
49 exceed the following minimum criteria:
- 50 (1) A minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject  
51 to flooding shall be provided. Credit is only provided for openings below BFE;
- 52 (2) The bottom of all openings shall be no higher than one foot (1') above grade;
- 53 (3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit  
54 of floodwaters.
- 55 (4) Fully enclosed areas below the lowest floor shall only be used for limited building access or storage.
- 56 (5) For crawl space foundation types, construction must follow the guidelines as set forth in this chapter or FEMA TB (technical bulletin)  
57 11-01, crawl space construction for structures located in special flood hazard areas: national flood insurance program interim guidance  
58 whichever is more restrictive, specifically:
- 59 (i) Below grade crawl spaces are prohibited at sites where the velocity of floodwaters exceeds five feet (5') per second;
- 60 (ii) Interior grade of the crawl space below the BFE must not be more than two feet (2') below the lowest adjacent exterior grade  
61 (LAG);
- 62 (iii) Height of the below grade crawl space, measured from the lowest interior grade of the crawl space to the bottom of the floor  
63 joist must not exceed four feet (4') at any point;
- 64 (iv) Contain an adequate drainage system that removes floodwaters from the interior area of the crawl space.  
65
- 66 13. Nonresidential Construction: New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall  
67 either have the lowest floor, or top side of slab on grade, elevated to the level of the base flood elevation; or, together with attendant utility and  
68 sanitary facilities, shall:
- 69 a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- 70 b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- 71 c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted  
72 standards of practice for meeting provisions of this subsection for the structural design, specifications and plans. Such certifications shall be provided  
73 to the administrator.



- 1 d. Nonresidential structures that are elevated, and not floodproofed, must meet the same standards for space below the lowest floor as described  
2 in "Residential Construction" of this subsection.
- 3 e. Applicants floodproofing nonresidential buildings are hereby notified that flood insurance premiums will be based on rates that are one foot (1')  
4 below the floodproofed level (e.g., a building constructed to the base flood level will be rated as 1 foot below that level).
- 5 14. Manufactured Homes: All manufactured homes to be placed or substantially improved within zones AH and AE shall be elevated on a  
6 permanent foundation such that the lowest floor of the manufactured home is at least elevated to the flood protection elevation and be  
7 securely anchored to an adequately anchored foundation system in accordance with the provisions of this subsection.  
8
- 9 15. Recreational Vehicles: In the Floodplain Overlay District, recreational vehicles, must either:
- 10 a. Be stored on the site for fewer than one hundred eighty (180) consecutive days and are subject to removal during base flood conditions;
- 11 b. Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and  
12 security devices, and have no permanently attached structures or additions, or
- 13 c. The recreational vehicle must meet all the requirements for "new construction", including the anchoring and elevation requirements.
- 14 16. Subdivision Proposals (Refer also to Title 10, Subdivision Regulations):
- 15 a. All subdivision proposals shall be consistent with the need to minimize flood damage and shall meet the requirements of this chapter;
- 16 b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed  
17 to minimize flood damage;
- 18 c. All subdivision proposals shall provide adequate drainage to minimize potential flood damage; and
- 19 d. Where base flood elevation data has not been provided or is not available, it shall be generated for subdivision proposals and other  
20 proposed developments which contain at least fifty (50) lots or five (5) acres (whichever is less). The subdivision applicant shall submit the  
21 determined base flood elevation data to FEMA prior to Preliminary Plat approval and obtain approval from FEMA prior to Final Plat  
22 approval.
- 23 17. Tanks: When gas and liquid storage tanks are to be placed in the floodplain subdistrict, the following criteria shall be met:
- 24
- 25 a. Underground tanks shall be anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic  
26 loads during the base flood, including the effects of buoyancy.  
27
- 28 b. Above-ground tanks shall be anchored to prevent flotation, collapse, or lateral movement during conditions of the base flood or elevated to  
29 the FPE.  
30
- 31 c. Tank inlets, fill openings, outlets and vents shall be:  
32
- 33 (1) At or above the FPE or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during  
34 conditions of the base flood; and  
35
- 36 (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during  
37 conditions of the base flood.  
38
- 39 18. Standards For Shallow Flooding Areas (AO Zones): Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base  
40 flood depths in these zones range from one foot to three feet (1' - 3') where a clearly defined channel does not exist or where the path of flooding  
41 is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following  
42 provisions apply:
- 43 a. New construction and substantial improvements of residential structures within AO zones shall have the lowest floor elevated above the  
44 highest adjacent grade of the building site, to or above the depth number specified on the FIRM (at least 2 feet if no depth number is  
45 specified and no less than 2 feet).
- 46 b. New construction and substantial improvements of nonresidential structures within AO zones shall either:
- 47 (1) Have the lowest floor elevated above the highest adjacent grade of the building site, to or above the depth number specified on the  
48 FIRM (at least 2 feet if no depth number is specified and no less than 2'); or  
49
- 50 (2) Together with attendant utility and sanitary facilities, be completely floodproofed to or above that level so that any space below that  
51 level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of  
52 resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a  
53 registered professional engineer or architect.  
54
- 55 19. AH/AO Zone Drainage. Adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from  
56 proposed structures.  
57
- 58 20. No Base Flood Elevation Data Available. In areas without base flood elevation data, the following provisions apply:  
59
- 60 a. new construction, including placement of manufactured homes, and substantial improvements of existing structures shall have the lowest floor  
61 elevated no less than two feet (2') above the highest adjacent grade at the building site to assure that the structure is reasonably safe from  
62 flooding.  
63
- 64 b. Openings sufficient to facilitate the movement of floodwaters in accordance with the construction standards are required for enclosed areas  
65 below the required floor elevation.  
66
- 67 21. Base Flood Elevation Data Available. In areas with base flood elevation data, the following provisions apply:  
68
- 69 a. All finished elevations as specified hereunder shall be certified on a FEMA Elevation Certificate by a licensed surveyor secured by the  
applicant, and made part of permit records.
- (1) As-built elevation of lowest floor including basement, of all new or substantially improved structures;

- 1 (2) As-built floodproofed elevation of all new or substantially improved nonresidential structures;
- 2 (3) As-graded elevation of lowest grade within 25 feet of structures;
- 3 (4) As-graded elevation of lowest crawl space grade, as applicable.

4 b. Floodproofing measures shall be designed consistent with the flood protection elevation for the particular area, flood velocities, durations, rate  
 5 of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The applicant shall submit a plan or  
 6 document certified by a registered professional engineer that the floodproofing measures are consistent with the regulatory flood protection  
 7 elevation and associated flood factors for the particular area. Floodproofing plans shall include the operation, inspection and maintenance of  
 8 such measures.

9

10 **9-17-7: RIPARIAN SETBACK DISTRICT USE REGULATIONS:**

11

12 A. Applicability: Only those permitted uses or activities, as noted in subsection D of this section, are allowed within specified stream setbacks.

13 B. Definitions: As used in this chapter, the following words and terms shall have the meanings ascribed to them in this subsection:

14

15 **HAND EQUIPMENT:** Any construction machinery such as chain saws, wheelbarrows, post hole diggers (not attached to vehicles) and all handheld  
 16 tools.

17

18 **ORDINARY HIGH WATER MARK:** The mark on all watercourses, where the presence and action of waters is so common and continued in all  
 19 ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation and destroy its value for  
 20 agricultural purposes. In areas where riprap bank stabilization has occurred the measurement shall begin on the landward side of such stabilization  
 21 work.

22

23 **RIPARIAN AREAS:** Lands adjacent to a watercourse or water body that are influenced by water, have the presence of riparian vegetation and have  
 24 an important function in mitigating flood damage.

25

26 **RIPARIAN VEGETATION:** The vegetation associated with streams that are subject to and sustained by seasonal surface water inputs, or high  
 27 ground water elevations. Species commonly found in riparian areas are listed by the Idaho conservation data center as "wetlands and riparian plants  
 28 associations in Idaho". Riparian areas in Blaine County shall be delineated by the presence of riparian plant communities that appear on the  
 29 conservation data center list or other lists adopted by resolution of the board.

30

31 **STREAMS:** Those areas where surface water produces a defined channel or bed which demonstrates evidence of the passage of water. Dry  
 32 washes, irrigation ditches, canals, surface water runoff devices or other entirely artificial water bodies/watercourses (unless specifically referred to  
 33 herein) are not included. "Streams" are further defined as follows:

34

35 **Class 1 Streams:** Streams and/or reaches of streams with the potential to have extensive flooding, erosion and attendant hazards and include the  
 36 Big Wood River.

37

38 **Class 2 Streams:** Streams and/or reaches of streams that flow year round during years of normal rainfall and have the potential for significant  
 39 flooding and erosion. Such streams include the East Fork of the Big Wood River, Little Wood River, Salmon River (Upper), Smiley Creek, Trail  
 40 Creek and Warm Springs Creek.

41

42 **Class 3 Streams:** Smaller perennial or intermittent streams and/or reaches of streams that are prone to periodic flooding and erosion. Class 3  
 43 streams shall include, but are not limited to, the following: Beaver Creek, Broadford Slough, Croy Creek, Deer Creek, Eagle Creek, Greenhorn  
 44 Creek, Purdum Slough, Fish Creek and Rock Creek.

45

46 **Class 4 Streams:** All spring fed creeks and their tributaries, which are not subject to erosive flooding, such as Grove Creek, Loving Creek, Mudd  
 47 Creek, Patton Creek, Silver Creek, Spring Creek and Wilson Creek.

48

49 **YARDSCAPE:** Introduced vegetation such as grass and ornamental shrubs, forbs and trees that may require irrigation in a normal cycle.

50 C. Nondisturbance In Stream Setbacks: Except as provided below, no disturbance of land shall be allowed in the stream setbacks set forth in  
 51 subsection E of this section, including, but not limited to, dredging, filling, new construction, substantial improvements or modifications, installation of  
 52 septic systems, scraping by motorized equipment, and removal of vegetation or root systems.

53 D. Permitted Uses: The purpose of this subsection is to indicate the type of activities that can enhance the flood protection function and allow  
 54 landowners uses that do not significantly increase flood hazard.

- 55 1. The planting of native riparian vegetation with hand equipment.
- 56 2. Agricultural purposes on lands used primarily for agriculture, provided a ten foot (10') wide buffer of a mix of native riparian grasses, forbs, shrubs,  
 57 and trees is preserved or maintained on the stream bank, to match adjacent streambank ecology.
- 58 3. Maintenance of yard scape existing prior to July 22, 1991, provided a ten foot (10') wide buffer of a mix of native riparian grasses, forbs, shrubs,  
 59 and trees is preserved or maintained on the stream bank, to match adjacent streambank ecology.
- 60 4. Activities operating in accordance with a county approved permit, including riparian and stream restoration activities.
- 61 5. Emergency bank stabilization activities as provided in this chapter.
- 62 6. Electric, natural gas, cable communications and telephone utility related activities within an existing right of way or easement where necessary.
- 63 7. The control and maintenance of noxious weeds, provided chemical control methods are in accordance with USEPA label restrictions and only  
 64 hand sprayers are used.
- 65 8. The following management activities:

66 a. Removal of fallen dead branches or fallen dead trees, although this practice is discouraged due to the beneficial wildlife, fisheries and  
 67 environmental value of fallen dead branches and trees;

- 1           b. Removal of hazardous leaning trees or dead branches (this does not include trees that are in declining health but do not pose a hazard); and
- 2           c. The clearing of one private access trail to the stream of up to eight feet (8') in width, or clearing for a public trail.
- 3           9. Platted subdivision lots which contain designated building envelopes or development proposals previously approved by the county may be
- 4           developed pursuant to the conditions on that subdivision plat; provided, that the development does not intrude into the riparian setback farther than
- 5           the boundary of the envelope or a previously approved structure(s).

6 E. Dimensional Standards: Any buildable lot within this district shall be subject to the following minimum setbacks, subject to subsection E5 of this  
7 section, as measured from the ordinary high water mark:

- 8           1. Class 1 stream: Seventy five foot (75') setback.
- 9           2. Class 2 stream: Fifty foot (50') setback.
- 10          3. Class 3 stream: Twenty five foot (25') setback.
- 11          4. Class 4 stream: Twenty five foot (25') setback.
- 12          5. More restrictive setbacks may be imposed through the conditional use process if site conditions or protection of natural resources so warrant. More
- 13          restrictive setbacks are also imposed through the subdivision review.
- 14          6. When application of this chapter would deny reasonable use of the property, an applicant may seek an exception from the standards and
- 15          requirements of this chapter by means of a variance as provided in chapter 30 of this title.

16 **9-17-8: CATEGORICAL EXCLUSIONS:**

17 Administrator's Review of Categorical Exclusions. The administrator, in consultation with the county engineer or the floodplain manager, shall review  
18 all written requests for determinations of categorical exclusions under subsections A and B of this section, and promulgate appropriate forms to be  
19 used for such requests. The applicant shall have the burden of demonstrating that the proposed development falls within and meets the requirements  
20 of a categorical exclusion. The administrator shall issue a written decision within thirty one (31) days of receipt of an application for determination of  
21 categorical exclusion. The administrator, prior to issuance of its decision, may request additional information from the applicant, including, without  
22 limitation, technical review from the county engineer at the applicant's expense, and the failure to provide such requested information within sixty (60)  
23 days of request shall be grounds for denial of the request for determination of categorical exclusion. The thirty one (31) day time period for issuance  
24 of the administrator's decision shall begin to run anew following the date of the administrator's receipt of additional information from the applicant.  
25 Such period also shall be tolled during any periods that the administrator does not have reasonably safe access to the site of the proposed site  
26 alteration. Any person aggrieved by the written decision of the administrator as to a categorical exclusion may appeal the administrator's decision to  
27 the board according to the procedures and time requirements of section 9-32-3 of this title.

28  
29  
30 **9-17-9: CONDITIONAL USE PERMIT PROCEDURE:**

31 Application for a conditional use in the district shall be made on a form furnished by the administrator. Upon receipt of the completed form, the  
32 application shall be placed on the agenda of the next available regular meeting of the hearing examiner, commission or the board when concurrent  
33 stream alteration permit applications are submitted which require board approval, and shall meet the requirements for notification by publication and  
34 mail (subsection B of this section).

35  
36  
37 A. General: It is recognized that certain uses possess unique and special characteristics with respect to their location, design, size, method of operation,  
38 circulation and public facilities. In order to protect the public health, safety and welfare and guarantee conformance with the plan, permits are  
39 required for such uses upon review by the commission or the board.

40 B. Procedure: The following sections of chapter 25, "Conditional Use Permits", of this title, shall be followed:

- 41           1. Section 9-25-4, "Public Hearing And Notice".
- 42           2. Section 9-25-5, "Action By The Commission Or The Board".
- 43           3. Section 9-25-6, "Notification By The Administrator".
- 44           4. Section 9-25-7, "Appeals Process".
- 45           5. Section 9-25-8, "Expiration And Renewal".
- 46           6. Section 9-25-9, "Special Provision".

47 C. Application: An application for a conditional use permit shall be filed with the administrator by at least one holder of an interest in the property or their  
48 agent accompanied by the fee established. The application shall include the following information:

- 49           1. All information requested in subsections 9-25-2A1 through A5, A7, A8 and A9 (A6 is excluded).
- 50           2. Additional information that may be requested by the administrator in order to review a specific application may include, but is not limited to, the
- 51           following:
  - 52           a. Eight (8) sets of plans when application requires commission approval, six (6) sets of plans when application requires board approval, or two (2)
  - 53           sets of plans when the application requires hearing examiner approval or when submitting an application for a building permit, drawn to scale
  - 54           showing the nature, location, dimensions and elevation of the lot, existing or proposed structures, fill, storage of materials, floodproofing measures
  - 55           and the relationship of the above to the location of the channel, floodway and the flood protection elevation for the lowest portion of the floor
  - 56           system which shall be two feet (2') above the base flood elevation or highest adjacent grade of the building site where no base flood
  - 57           elevation exists.
  - 58           b. Site specific information from the methods used to analyze flood hazard listed in subsection 9-17-1D of this chapter, including base floodelevation
  - 59           and location of the boundaries of the floodway and floodplain.



- 1 c. A valley cross section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross sectional areas to be  
2 occupied by the proposed development and high water information.
- 3 d. Plans (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and spatial  
4 arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities; photographs  
5 showing existing land uses and vegetation upstream and downstream and soil types.
- 6 e. A profile showing the slope of the bottom of the channel or flow line of the stream.
- 7 f. Specifications for building construction and materials, floodproofing, filling, dredging, grading, channel improvement, storage of materials, water  
8 supply and sanitary facilities.
- 9 g. Existing direction of water forces, areas of critical erosion, potential for channel movement or relocation and related hydraulic considerations.
- 10 h. Potential depth of inundation by flood.
- 11 i. Existing or potential overflow channels.
- 12 j. Groundwater table level at high water in the spring.
- 13 k. Existing vegetation, soils and habitat for fish and streamside wildlife.
- 14 l. When the proposed use involves a potential contaminant source or potential contaminant as set forth in appendix A of this title on file in the county,  
15 and is located within a wellhead protection area, written comment from Idaho department of environmental quality and from any other appropriate  
16 agency, including, but not limited to, owners of public water systems located within the wellhead protection area, shall be solicited if this is  
17 determined by the administrator to be necessary.
- 18 m. A written statement by a licensed engineer that the project will have no adverse impact or that such impacts have been identified and mitigated to  
19 the maximum extent feasible.
- 20 D. Evaluation And Determination: Transmit one copy of the information described in subsection C of this section to an engineer (designated by the  
21 county) or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights  
22 and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, other technical matters and environmental  
23 damage. Such technical review shall be at the applicant's expense. Fee for such review shall be paid by the applicant prior to public hearing.  
24  
25 Based upon the technical evaluation by this designated engineer or expert and other pertinent information, the commission or the board shall  
26 determine the specific flood hazard at the site and shall evaluate the suitability of the proposed use in relation to the flood hazard and possible  
27 environmental damage.
- 28 E. Criteria For Evaluation: The applicant shall show that the criteria of this regulation has been satisfied. The commission or the board shall consider  
29 other requirements specified in this chapter as well as the following:
  - 30 1. The relationship of the proposed use or development to the comprehensive plan and floodplain management program for the area.
  - 31 2. The preservation of the inherent natural characteristics of the watercourses and floodplain areas. This includes maintaining the storage and  
32 carrying capacity of these areas.
  - 33 3. The compatibility of the proposed use or development with existing development and development anticipated in the foreseeable future.
  - 34 4. The danger to life and property due to increased flood heights or velocities caused by encroachments.
  - 35 5. The effect upon fish and wildlife habitat, including existing vegetation.
  - 36 6. The availability of alternative locations not subject to flooding for the proposed use or development.
  - 37 7. The probability of mass erosion to adjacent property as opposed to normal stream bank erosion and accretion.
  - 38 8. The safety of access to the property in times of flood of ordinary and emergency vehicles.
  - 39 9. The danger that materials may be swept on to other lands or downstream to the injury of others.
  - 40 10. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
  - 41 11. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners and the local  
42 public interest.
  - 43 12. The importance of the service provided by the proposed facility to the community.
  - 44 13. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
  - 45 14. Effect of and susceptibility to obstruction by landslides, avalanches, ice jams or timber.
  - 46 15. If the applicant or landowner with respect to an application for a conditional use permit under this chapter is the state of Idaho, or any agency,  
47 board, department, institution, or district thereof, the commission or the board, in addition to all other applicable standards and criteria hereunder,  
48 shall take into account the plans and needs of the state, or any agency, board, department, institution or district thereof, as required by Idaho  
49 Code section 67-6528.
  - 50 16. The project will not have an adverse impact on potable water sources when the project is located within a wellhead protection area.
- 51 F. Conditions Attached To Conditional Use Permits: Upon consideration of the factors listed above and the purposes of this chapter, the commission or  
52 the board shall attach such conditions to the granting of conditional use permits as deemed necessary to further the purposes of this chapter,  
53 including, but not limited to:

- 1 1. Infiltration Of Floodwaters: Modification of water disposal and water supply facilities to minimize or eliminate infiltration of floodwaters. A permit shall be received from the South Central Public Health District who shall determine the specific system to be used.
- 2
- 3 2. Periods Of Use: Limitations of periods of use and operation.
- 4 3. Operational Controls: Imposition of operational controls, sureties and deed restrictions.
- 5 4. Certification: Certification in writing by a registered engineer after completion that work was done according to county requirements and stipulations.
- 6
- 7 5. Drainage: Overflow channels and upland drainage swales shall remain open and unobstructed.
- 8 6. Limiting the removal of woody debris and other vegetation within the Floodplain Overlay District.
- 9 7. Revegetation of all disturbed areas within the floodplain and/or riparian setback. Security agreement may be drawn up for up to 150% of the estimated cost of work, or other amount as determined by the hearing examiner, commission or board.
- 10
- 11 8. Project staging materials and equipment shall be temporarily stockpiled and removed prior to spring run-off or stored outside of flood-prone areas.
- 12
- 13 9. Requiring compensatory excavation/removal of material prior to placement of fill.
- 14 10. Requiring a maintenance agreement to ensure that property owners are continually maintaining the flood carrying capacity of the stream.
- 15 11. Permit Exemptions: stating that the approval does not exempt the applicant from requirements of other agencies.
- 16 12. Requiring that Best Management Practices, as outlined by Idaho Department of Environment Quality, are maintained throughout implementation of the project and until vegetation is established for purposes of storm water management and drainage.
- 17

18

#### 19 9-17-10: NONCONFORMING STRUCTURES AND USES IN FLOODPLAIN OVERLAY AND RIPARIAN SETBACK DISTRICTS:

20

21

22

A. Non-Conforming Structures or Uses: A structure or use which is not in conformity with the provisions of this chapter is subject to the following conditions:

23

##### 1. Riparian Setback District:

24

a. Maintenance. All legally established, nonconforming structures can be maintained (e.g., painting and non-structural repairs).

25

b. Relocation. A nonconforming structure that is moved any distance shall comply with current Title 9 regulations.

26

c. Alteration. Legally established nonconforming residential structures may be altered within their existing building footprint. Additionally, attached decks, porches, and patios may be altered in their existing footprint, excluding the addition of permanent roof structures.

27

d. Restoration. A nonconforming structure or a structure containing a nonconforming use which has been damaged by natural causes may be restored to its original condition, provided such work is started within six (6) months of such damage. A nonconforming building or use that is moved or torn down by the owner cannot be replaced.

28

e. Expansion- Residential. A residential structure or use may be expanded through the variance process subject to the following provisions:

29

(1) No portion of the expansion shall be within the required riparian setback.

30

(2) The expansion must not impact any stream channel, overflow channel or special flood hazard area.

31

(3) The expansion must not exceed an additional twenty percent (20%) in square foot area footprint of the existing structure or use.

32

(4) If accessory structures are located within the riparian setback, these existing nonconforming structures must be removed or otherwise brought into conformance if the applicant is expanding the primary residential structure.

33

f. Expansion- Non-residential. Non-residential structure or use expansions will be permitted only through the variance process.

34

35

36

37

38

39

40

41

42

43

44

45

46

47

##### 2. Floodplain Overlay District:

a. Modification or Expansion. Any structural alteration, repair, addition, or improvement of a non-conforming structure shall meet the requirements of this chapter for new construction. Costs associated with each structural alteration, repair, addition, or improvement shall be cumulatively counted and shall not exceed 50% of the market value of the structure prior to the start of construction or the requirements of Substantial Damage and Substantial Improvement, as outlined in this chapter, shall apply.

b. Maintenance. Maintenance (e.g., painting and other non-structural repairs) is allowed and is not considered a modification. Any cost associated with maintenance shall not be counted towards modification or expansion.

48

B. Building Envelopes: Platted subdivision lots which contain designated building envelopes may be developed pursuant to the conditions on that subdivision plat without the necessity of obtaining a variance or conditional use permit, provided that the site alteration, including yardscape, does not intrude into the riparian setback farther than the designated building envelope. (Ord. 91-9, 7-22-1991; Ord. 88-4, 9-13-1988)

49

50

51

52

53

#### 54 9-17-11: STREAM ALTERATION PERMIT PROCEDURE:

55

56

57

58

59

60

A. Purpose: The board of county commissioners hereby finds that in order to more adequately control hazards from flooding existing lands within the floodplain overlay district, to ensure that the important environmental features of the state and localities are protected and enhanced, to protect life and property in areas subject to natural hazards at flooding, to protect, preserve and enhance fish, wildlife habitat and recreation resources, to avoid undue water and air pollution, to ensure that residents of the county continue to qualify for the national flood insurance program and to ensure that all persons desiring to undertake any stream alteration are afforded equal protection and procedural due process of law, this section is adopted establishing a formal stream alteration permit system and establishing appropriate standards and criteria to govern the issuance or denial of such permits.

61

B. Interference With Stream Channels Restricted: No person may excavate in, disturb, fill, build in, upon or across, deposit in or change the channel of any non intermittent stream in the county from high water mark to high water mark; or within the floodplain subdistricts, without a stream alteration permit issued by the board of county commissioners.

62

63

64

65

66

If a property has intermittent streams upon it, a possible change in the channel shall be reviewed under this section at the time of development or subdivision of the property.

1 C. Procedures: Application shall be made for a stream alteration permit upon a form furnished by the administrator (see subsection C4 of this section).  
2 Forms shall also be provided the applicant for a permit from the department of water resources and the army corps of engineers.

3 1. Application: An application for a stream alteration permit shall be filed with the administrator by at least one holder of interest or their agent. The  
4 application may include, but not be limited to, the following information to be specified by the administrator:

- 5 a. Applicant's name, address and phone number.
- 6 b. Name of engineer, if applicable.
- 7 c. Property location and legal description.
- 8 d. Name and reach of stream and area of proposed work, including a river milepost description.
- 9 e. Length of the stream to be worked.
- 10 f. Type of work to be done.
- 11 g. Type of equipment to be used.
- 12 h. Starting and completion dates of work.
- 13 i. Vicinity map of the area.
- 14 j. Names and addresses of property owners on both sides of the stream three hundred feet (300') above and one thousand feet (1,000')  
15 downstream from the proposed work site.
- 16 k. Plans and information done to appropriate scale accurately and legibly showing:
  - 17 (1) Location and dimension of lot or property.
  - 18 (2) Location of existing or proposed structures and location of previous stream alterations.
  - 19 (3) Typical cross section of the proposed work.
  - 20 (4) Location of the lot in relation to the stream channel, floodway and floodplain.
  - 21 (5) A valley cross section of the area to be altered, if requested by the county engineer, showing the stream channel, floodway limit  
22 lines, elevations of land areas adjacent to the stream and the elevation of the intermediate regional flood (IRF). The county  
23 engineer, in consultation with FEMA officials, shall review and approve the cross section.
  - 24 (6) Location of any drainage ways or overflow channels through the property affected.
- 25 l. A statement to address potential beneficial and adverse impacts of the project, including the areas upstream, downstream and across the  
26 stream. In addition, the application shall include a written statement by a licensed engineer that the project will have no adverse impact or  
27 that such impacts have been identified and mitigated to the maximum extent feasible.
- 28 m. Date application was sent to the army corps of engineers and the department of water resources.

29 2. State and Federal Permits: The applicant shall provide the administrator with written approval from all applicable state and federal agencies prior  
30 to project implementation. The administrator may require state and federal permits prior to scheduling a public hearing if the project so warrants  
31 due to potential adverse impacts to adjacent land owners or local public interest.

32 3. Certification, Public Hearing and Action by Board:

- 33 a. Certification: Upon receipt of the application and all other required data, the administrator shall certify the application as complete and affix the  
34 date of application acceptance thereon.
  - 35 b. Public Hearing: Allowing sufficient time to conduct a site visit, receive input from the county engineer and other governmental agencies, if  
36 applicable, and write staff reports the administrator shall then schedule the application for the board's next available hearing time wherein  
37 the legal notice requirements can be met.
  - 38 c. Technical Review; Fee: Technical review shall be at the applicant's expense. Fee for such technical review shall be paid by the applicant prior  
39 to public hearing.
  - 40 d. Board Consideration: The board shall consider the application and take public input at a duly noticed public hearing as set forth herein below,  
41 and shall evaluate the application based on the standards of evaluation listed in subsection D of this section. The board shall approve,  
42 conditionally approve or disapprove the application making appropriate findings to support its decision.
  - 43 e. Continuance of Hearing: The board may order the hearing to be continued up to thirty one (31) days at the same place, in which case no further  
44 published notice shall be required other than that requested by the board. Continuation beyond thirty one (31) days shall require further  
45 published notice, established herein below.
  - 46 f. Written Findings: The board shall adopt its written findings of fact and decision within fifteen (15) days after decision by the board. The  
47 procedures in subsection 9-25-4C of this title shall be followed. The public hearing shall be scheduled within sixty (60) days of certification.
- 48 4. Emergency Bank Stabilization: There are times when immediate action must be taken to prevent major flood losses. At such times, the normal  
49 application and review procedure may be waived; however, before action may be taken, the county must be contacted and verbal approval  
50 received from two (2) county commissioners. The board may wish to contact the county engineer to review the request. If emergency bank  
51 stabilization is approved, the applicant shall apply for a stream alteration permit within three (3) months of any stabilization and implement the  
52 provisions of any approved stream alteration permit by March 31 of the year following the stabilization. If a stream alteration permit is approved,  
53 the applicant for the emergency bank stabilization shall:
- 54 a. Post sufficient financial security as determined by the board; and
  - 55 b. Complete restoration of the affected property to state minimum standards by either March 31 of the year following the stabilization or by another  
56 date so specified by the board.
- 57  
58

