

# Emergency Floodplain Permitting



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# Emergency Floodplain Permitting

## Introduction

There is limited information and guidance provided by Federal, State, or Local regulations concerning Emergency Floodplain Permitting.

Most local floodplain ordinances only contain vague language about determining what constitutes an emergency, nor do they adequately outline a process for issuing an Emergency Floodplain Permit.

The DNRC recommends that every Community have a clearly defined Emergency Floodplain Permitting policy and process included in their local floodplain ordinances.

# Emergency Floodplain Permitting

## Introduction

Now is the time to start thinking about how your community will handle the Emergency Floodplain Permit process.

While each community may operate a little differently based upon their resources and manpower, and each community may address the emergency floodplain permitting process a little differently, they should all be able to achieve the same results.

This presentation is intended to provide food for thought when thinking about an emergency permit.

# **Emergency Floodplain Permitting**

## Presentation Overview

What Constitutes an Emergency

Who Makes the Decisions

What is Required for an Emergency Declaration

Recommended Requirements

What is Required After the Flood

# Emergency Floodplain Permitting

## What Constitutes an Emergency

Poor planning should not constitute an emergency.

If someone has waited an entire year to start the permitting process in order to address damage caused by last years high water, it may not be an emergency.

Is there a real danger to structures or infrastructure?

# **Emergency Floodplain Permitting**

## What Constitutes an Emergency

What do you consider an emergency?

What does your County Attorney consider an emergency?

What does your County Commissioners consider an emergency?

# Emergency Floodplain Permitting

## Who Makes the Decisions

If your chain of command is clearly identified, your decision making process is clearly outlined, and your permitting process in place before the flooding occurs it will allow for sound decisions.

Consult with your County Attorney so everyone understands the legal issues and ramifications.

Regardless of who makes the decision to proceed, it is up to the floodplain administrator to obtain the project details from the applicant and document the work.

# Emergency Floodplain Permitting

## Who Makes the Decisions

During localized flooding events the community floodplain administrator (FA) will usually make the decisions.

During an declared emergency the community emergency management officials are usually in charge, however the FA should try to act in an advisory capacity and help insure that the local emergency floodplain permitting policies are followed whenever possible.

Regardless of who makes the decision to proceed with work in the floodplain, it is up to the FA to obtain the project details from the applicant and document the work.

# Emergency Floodplain Permitting

## What is Required for an Emergency Decision

Your community should have emergency floodplain permitting protocols in place before the emergency occurs which clearly define the requirements.

The FA should communicate with their legal staff in order to insure that the emergency floodplain permitting process meets the communities ordinances and does not pose a liability.

Prepare documents, in advance, that can be given to everyone that explains the Emergency Floodplain Permit process and what the post-emergency requirements will be.

# Emergency Floodplain Permitting

## Recommended Requirements

### ARMs 36.15.217 WAIVER OF PERMIT FOR EMERGENCY REPAIR OR REPLACEMENT

(1) Emergency repair to and/or replacement of severely damaged public transportation facilities, public water and sewer facilities, and flood control works may be authorized and permit requirements waived if:

(a) Upon notification and prior to the emergency repair and/or replacement, the permit issuing authority determines that an emergency condition warranting immediate action exists; and

(b) The permit issuing authority agrees upon the nature and type of proposed emergency repair and/or replacement.

# Emergency Floodplain Permitting

## Recommended Requirements

2) Authorization to undertake emergency repair and/or replacement work may be given verbally if the permit issuing authority feels that a written authorization would unduly delay the emergency work. 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 verbal authorization had been previously given.

(History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-405 and Sec. 76-5-406, MCA; NEW, 9/4/74)

# **Emergency Floodplain Permitting**

## **Recommended Requirements**

### **SECTION 11. EMERGENCIES\***

#### **11.1 General**

Emergency repair and replacement of severely damaged public transportation facilities, public water and sewer facilities, flood control works, and private projects are subject to the permitting requirements of these regulations.

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

\*Draft DNRC Model Ordinance

# **Emergency Floodplain Permitting**

## **Recommended Requirements**

### **11.2 Emergency Application Requirements\***

1. Prior to any action, the property owner and or the person responsible for taking emergency action shall notify the Floodplain administrator and submit an Emergency Notification Form within five (5) days of the action taken as a result of an emergency.

2. Within 30 days of initiating the emergency action, a person who has undertaken an emergency action must submit a Flood Plain Permit Application that describes what action has taken place during the emergency and describe any additional work that may be required to bring the project in compliance with these regulations. Unless otherwise specified by the Floodplain Administrator. (ARM 36.15.217)

\*Draft DNRC Ordinances

# **Emergency Floodplain Permitting**

## **Recommended Requirements**

### **11.3 Permit Evaluation\***

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

\*Draft DNRC Ordinances

# Emergency Floodplain Permitting

## What is Required After the Flood

All work completed under an Emergency Floodplain Permit must meet local floodplain ordinances.

If an emergency project does not meet the local ordinances, it must be removed or modified to meet ordinance requirements.

All work completed within the regulatory floodplain without an emergency permit should require an after-the-fact floodplain permit and must meet local floodplain ordinances in order to remain, regardless of who completed the project.

# Emergency Floodplain Permitting

## What is Required After the Flood

Refusal to obtain an after-the -fact floodplain permit, or to modify work completed under an emergency floodplain permit, should be considered a violation of the Local Floodplain Ordinances.

Violations and the steps needed to resolve violations should be outlined in you local floodplain regulations.

Violations should only be pursued with close consultation from you communities legal staff.

# Emergency Floodplain Permitting

## What is Required After the Flood

If the US Army Corps of Engineers (USACE) has completed emergency work in your community there is usually language in the agreement signed before the emergency work was undertaken that will require the Community to be responsible/liable for the work.

If the emergency project does not meet the local ordinances, it must be removed or modified to meet ordinance requirements, at the communities expense.

The USACE regulatory division (404 permit) has been know to pursue violations against communities for projects designed and installed by the USACE mitigation division.