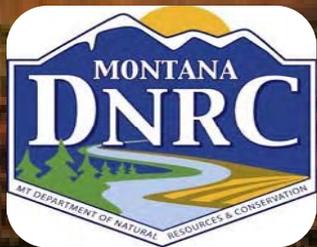


Floodplain 101 for Realtors: the Good, the Bad, & the Ugly...What Montana Real Estate Professionals Need to Know

Briona Shipman, CFM
Floodplain Training Coordinator
MT DNRC Floodplain Program
bshipman@mt.gov



Thank you:

- **Mark Simonich**
- **Helena Association of REALTORS® (HAR)**
- **MT Board of Realty Regulation**



Course Objective

- To provide MT REALTORS® with additional understanding of floodplain management and the National Flood Insurance Program (NFIP)
- Cover how local community NFIP participation can affect REALTORS® and potential purchasers of Montana floodplain property



Program Staff

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Engineer
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DNRC Water Resources Division

About Us

Bureaus

Water Rights

Regional Offices

Forms & Publications

Programs

Water Resources Division

Water Operations Bureau

DNRC Water Resources
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Administrative Support
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Engineering Specialist Regional
Office Map



DNRC Home

Floodplain Management

Text Size



The Montana DNRC Floodplain Management Program promotes common sense planning for development in flood prone areas through education for the benefit of public health, safety and welfare.

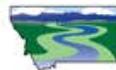
The MT DNRC Floodplain Program is pleased to announce its:

5th Annual Floodplain Resource Seminar and Floodplain Legal and Sustainable Development Workshop - July 22-26, 2013



****Free Training****

****CECs for Various Audiences****



ASSOCIATION OF
Montana
FLOODPLAIN
MANAGERS



FUTURE
WEST
P.O. Box 1253
Bozeman, MT 59771
www.future-west.org



Certification
Maintenance
NHMA
Natural Hazard Mitigation Association

The Floodplain Resource Seminar is a training venue offering sessions with an emphasis on Montana floodplain management. Course offerings include:

- MT Floodplain Legal and Sustainable Development Workshop
- Flood Insurance - Just the Facts
- Elevation Certificates
- Floodplain 101 for Realtors
- Floodplain 101/Basics of Permitting
- Certified Floodplain Manager (CFM) Prep Session and Exam

Contacts



Insurance



Permitting and Regulations



Mapping and Technical Resources



Disaster and Recovery



Training



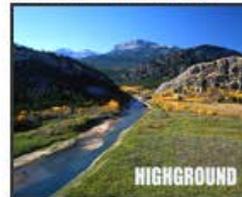
Outreach



Flood Photos



News and Announcements



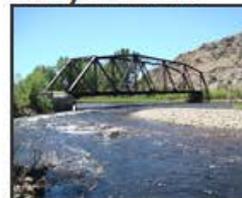
Silver Jackets



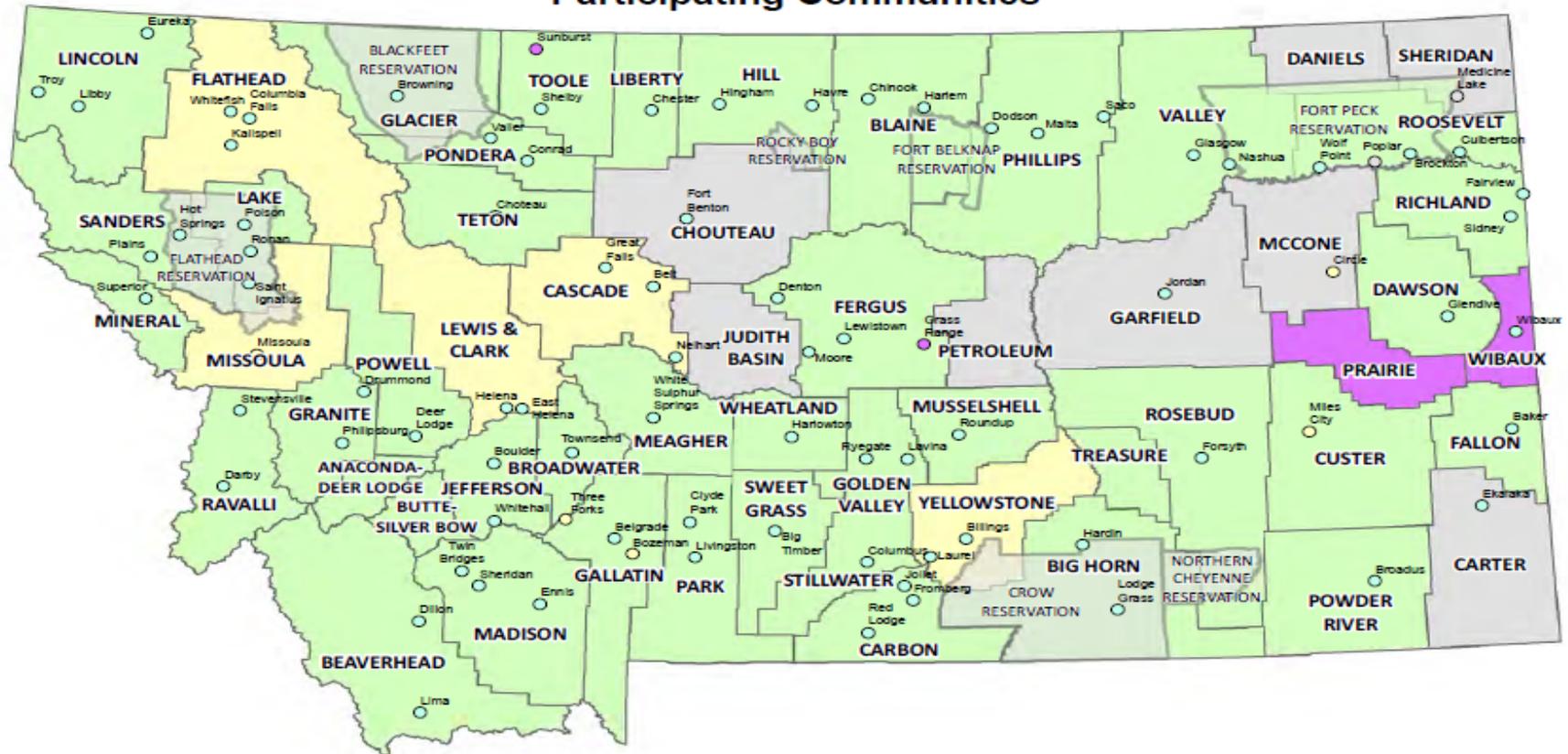
Cool Tools



Big Hole Study Products



National Flood Insurance Program (NFIP) Participating Communities



National Flood Insurance Program Status

- Participating Community
- Community Not Participating
- Community Rating System Participant *
- Sanctioned Community

* CRS communities receive discounted insurance premiums

Number of Participating Communities

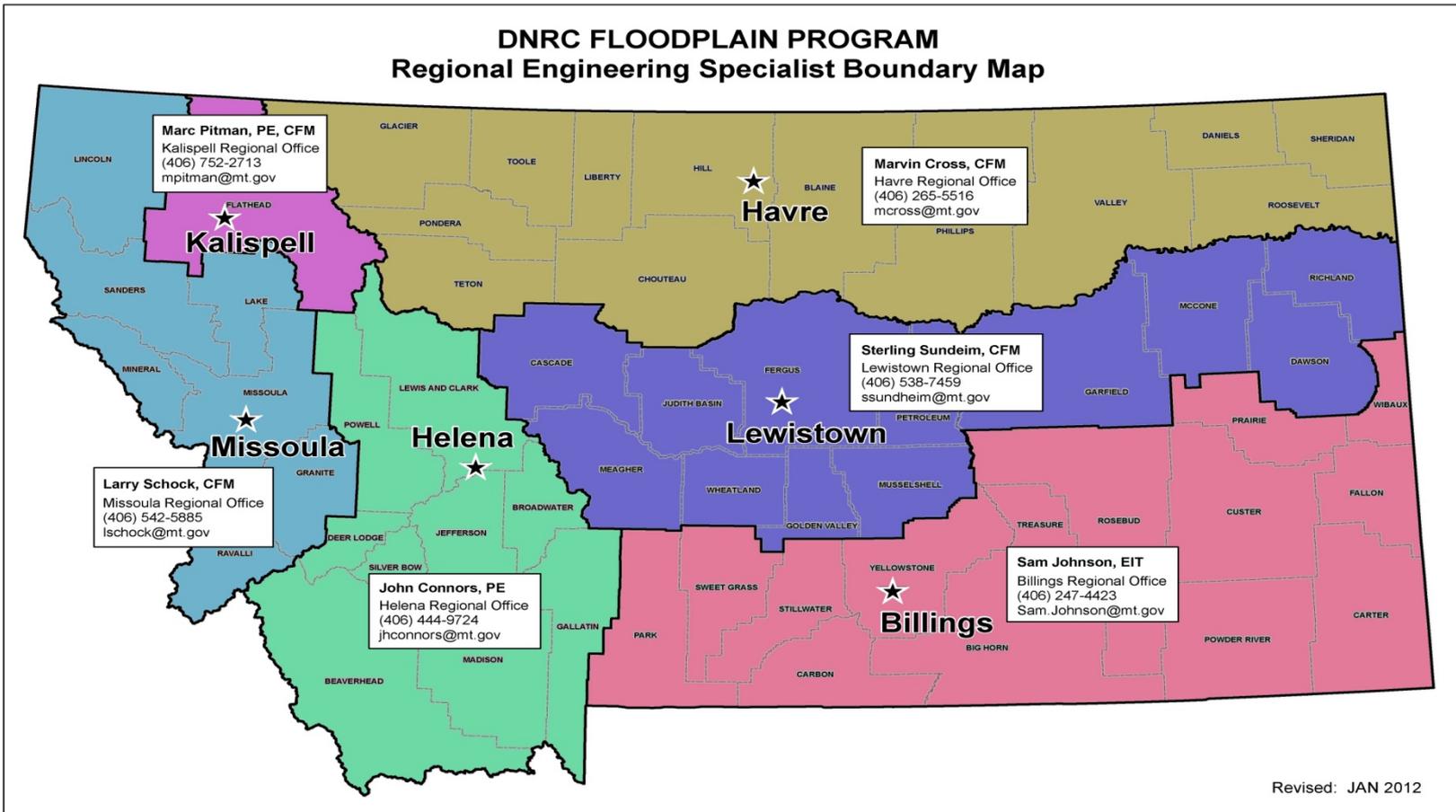
Counties	45
Municipalities	83
Reservations	2
Joint Municipality and County (Butte, Anaconda)	2
Total	132



February 2013

Requesting Assistance – DNRC Regional Engineers

DNRC FLOODPLAIN PROGRAM Regional Engineering Specialist Boundary Map



Revised: JAN 2012

**People love to live near water
– we are naturally drawn to it.**



We can live near water and follow an approach of risk reduction!



This is Where the National Flood Insurance Program Came in.

- Everything you ever wanted to know (and then some) about the National Flood Insurance Program (NFIP)



National Flood Insurance Program (NFIP): Overview

- 1968 – NFIP established by Congress
- Intended as a means of financial protection for property owners



National Flood Insurance Program: Overview

- NFIP offers flood insurance to homeowners, renters, and business owners in NFIP participating communities
- NFIP participating communities agree to adopt and enforce ordinances that meet or exceed FEMA requirements to reduce flood risk



National Flood Insurance Program: Overview

- The NFIP is administered by the Federal Emergency Management Agency (FEMA)
- The NFIP is coordinated by the State of Montana
- The NFIP is regulated and enforced by local communities



National Flood Insurance Program: Overview

Why Manage Floodplain Development? Voluntary, but...

- Local communities have to in order to maintain compliance with the NFIP and maintain eligibility for federal disaster relief funds and availability of Federal flood insurance
- Guide the development of the 100 year floodplain by insuring regulations balance the greatest public good with the least private injury (assure the actions of one landowner are not to the detriment of another landowner or the public)



National Flood Insurance Program: Overview

Why Manage Floodplain Development?

- Identify flood hazards for properties in order to determine best practices for development and/or open space areas
- Reduce flood loss and risk



National Flood Insurance Program: Overview

**Talk Floods Early and Often: Learn
the Floodplain Language**

**Educate Clients so they Know and
Understand Flood Risk**



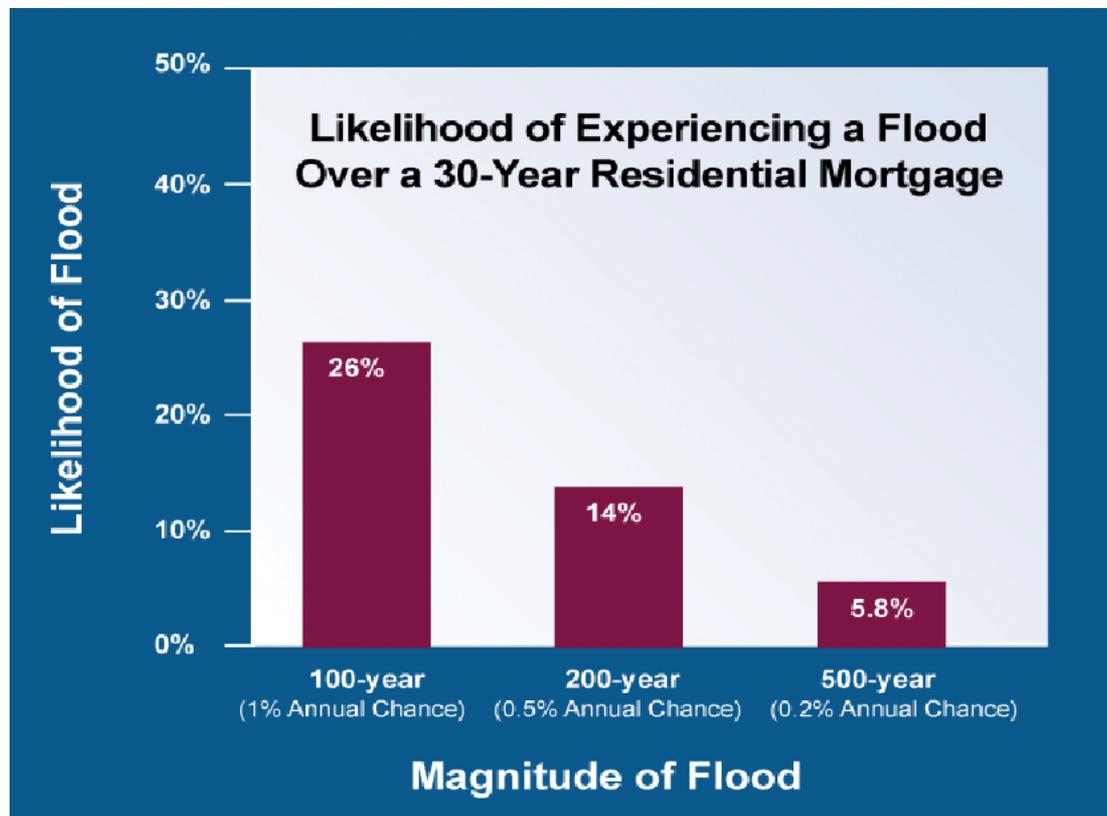
National Flood Insurance Program: Overview

**Understand Flood Risk: 26% chance of
flooding over a 30 year mortgage....**



National Flood Insurance Program: Overview

**Understand Flood Risk: 26% chance of
flooding over a 30 year mortgage....**



National Flood Insurance Program: Overview

Common Acronyms:

- BFE- Base Flood Elevation
- CLOMR – Conditional Letter of Map Revision
- DFIRM – Digital Flood Insurance Rate Map
- FIRM – Flood Insurance Rate Map
- FIS – Flood Insurance Study



National Flood Insurance Program: Overview

Common Acronyms (continued):

- LOMA – Letter of Map Amendment
- LOMR – Letter of Map Revision



National Flood Insurance Program: Overview

Floodplain Terminology:

- Base Flood (100 year flood)– the flood having a 1% chance of being equaled or exceeded in any given year = Regulatory Standard



National Flood Insurance Program: Overview

Floodplain Terminology:

- Base Flood Elevation – computed elevation to which floodwater is anticipated to rise during the base flood. The BFE is the regulatory requirement for the elevation or flood-proofing of structures, and is used in determining a structure's flood insurance premium.



National Flood Insurance Program: Overview

Floodplain Terminology:

- Encroachment – development within the floodplain including fill, new construction, substantial improvements, bridges, channel crossings, and channel modifications that increase BFE's



National Flood Insurance Program: Overview

Floodplain Terminology: ENCROACHMENT



National Flood Insurance Program: Overview

Floodplain Terminology: ENCROACHMENT



National Flood Insurance Program: Overview

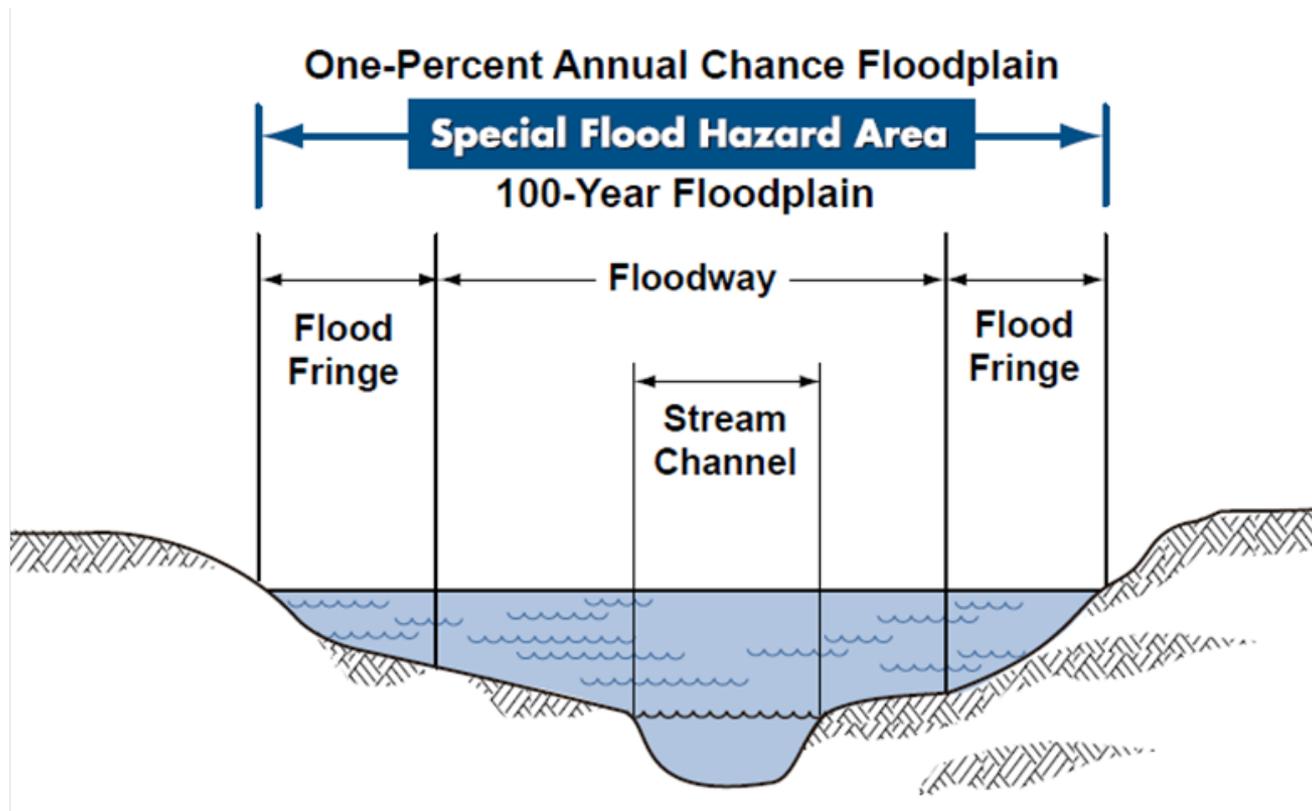
Floodplain Terminology:

Special Flood Hazard Area (SFHA)/100 Year Floodplain:

- The area inundated by floodwaters of the Base Flood.
- The area where NFIP regulations must be enforced and where flood insurance is mandatory.



National Flood Insurance Program: Overview



National Flood Insurance Program: Overview

Floodplain Terminology:

- Freeboard – a margin of safety added to the base flood elevation to account for waves, debris, miscalculations, impacts from new development, or lack of data
- Can assist in significant savings on flood insurance premiums



National Flood Insurance Program: Overview

Floodplain Terminology: FREEBOARD



Adhering to Floodplain Parameters: Regulations, Mapping, Insurance, & Mitigation



Adhering to Floodplain Parameters: Regulations

NFIP Federal Regulations

In order to participate in the NFIP: the State and local Communities must adopt and enforce floodplain management regulations that meet or exceed the requirements specified under Section 60.3, Title 44, of the Code of Federal Regulations (CFR)



The Montana Rules vs. NFIP Minimum Requirements

**With exhaustive
CLOMR/LOMR processes

Standard	Montana Administrative Rules	NFIP Minimum Requirements
Freeboard	2 Feet	No freeboard required
Floodway Standards	**1/2 foot Surcharge	**1 Foot Surcharge
Floodway Uses	Prohibits habitable structures with/in the floodway	Allows structures in Floodway with documentation of zero-rise
Mobile Home Applications	Requires all mobile homes to be elevated to the freeboard protection level.	Will allow for mobile home placed in and existing mobile home park to be elevated to 36" above the adjacent grade.

Adhering to Floodplain Parameters: Mapping

FEMA's Flood Hazard Mapping Program:



- Identifies flood hazards
(rivers, lakes, drainages, etc.)

- Assesses flood risks

- Partners with States and communities to provide accurate flood hazard and risk data

- Flood Hazard Mapping is the basis of NFIP regulations and flood insurance requirements.

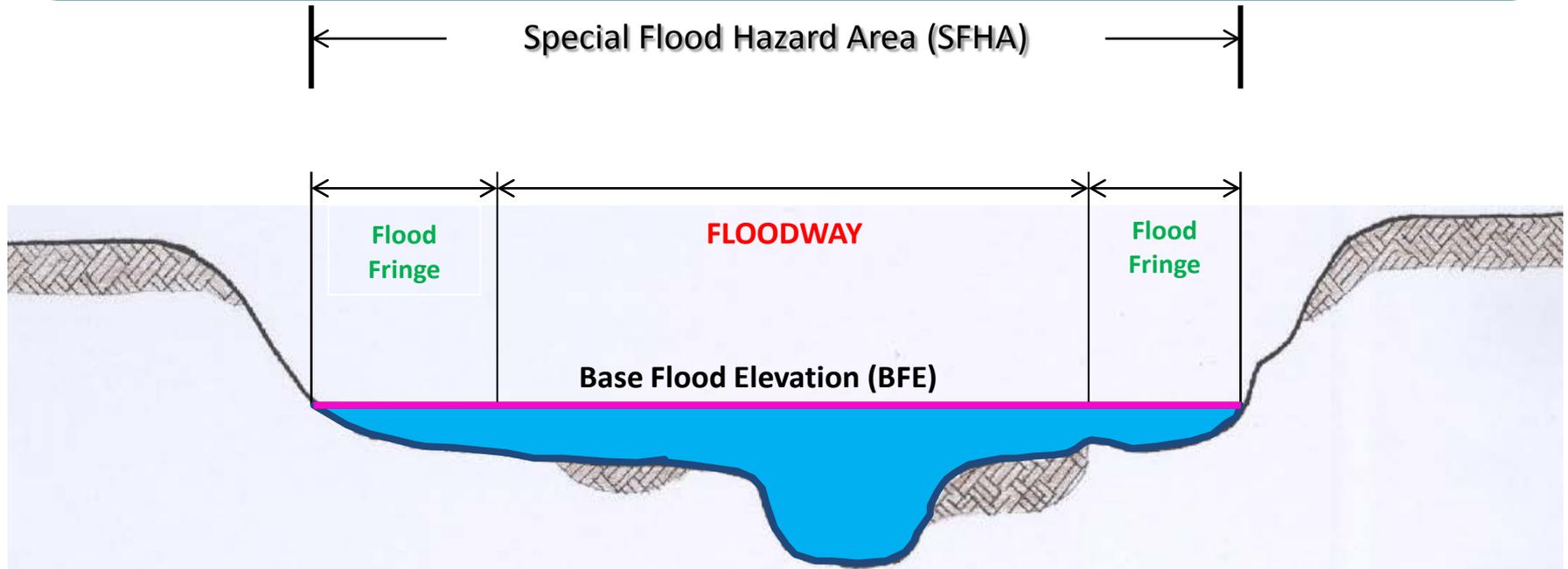
Adhering to Floodplain Parameters: Mapping

FEMA's Flood Hazard Mapping Program:



- Understanding the processes behind the mapping is key to knowing what can and can't be done on property.

Adhering to Floodplain Parameters: Mapping



Flood Fringe - Area of the Floodplain that could be encroached upon and used for development by raising the ground.

Encroachment cannot cause more than 0.5 ft. rise.

FLOODWAY – Regulatory Area Only - Limited Development and no Encroachment allowed – Not a Physical Feature.

Adhering to Floodplain Parameters: Mapping

Floodway or Regulatory Floodway:

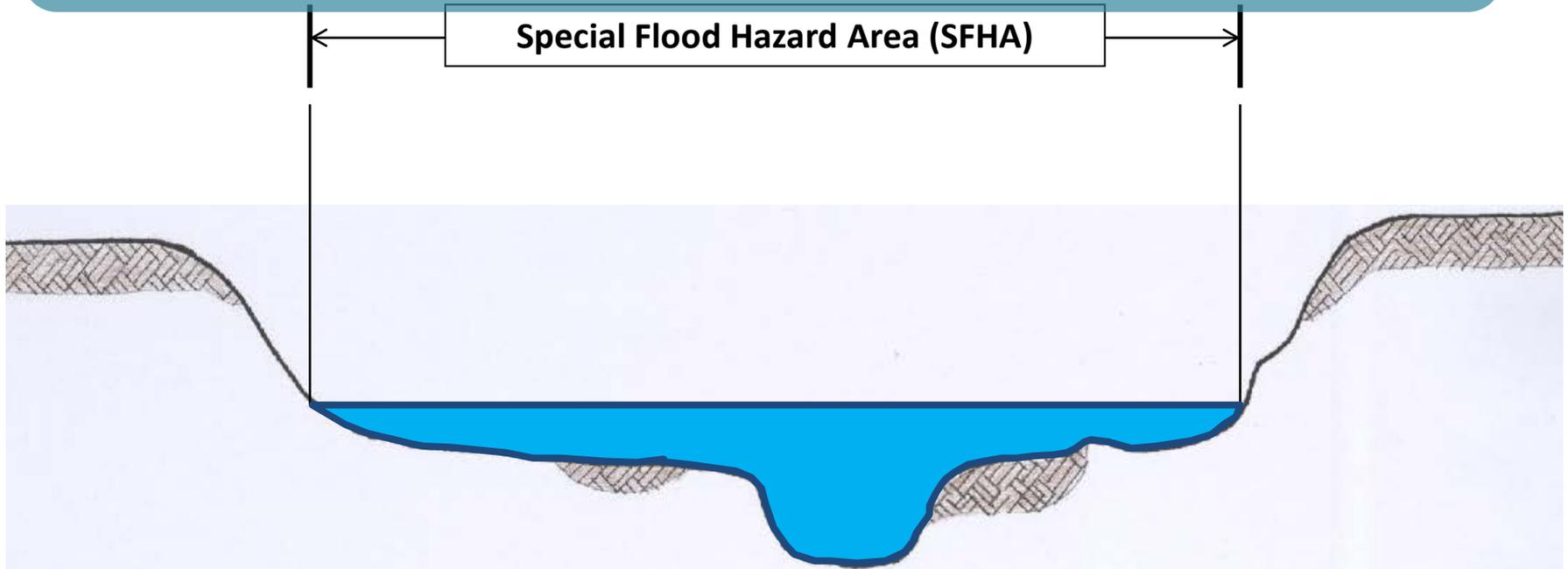
- The **Floodway** is a **regulatory measure** to assist communities with protecting the river corridor where flows are most sensitive to encroachment. NOT a physical feature.
- The channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height (= 0.5 ft in MT).
- The **Floodway** is the river channel and that portion of the floodplain that must remain open to permit passage of the base flood. Floodwaters are generally deepest and swiftest in the floodway.

Adhering to Floodplain Parameters: Mapping

Floodway or Regulatory Floodway:

- **The State of Montana has higher standards for identified floodways than the NFIP minimum standards:**
 - **½ foot surcharge**
 - **No new structures in the floodway**

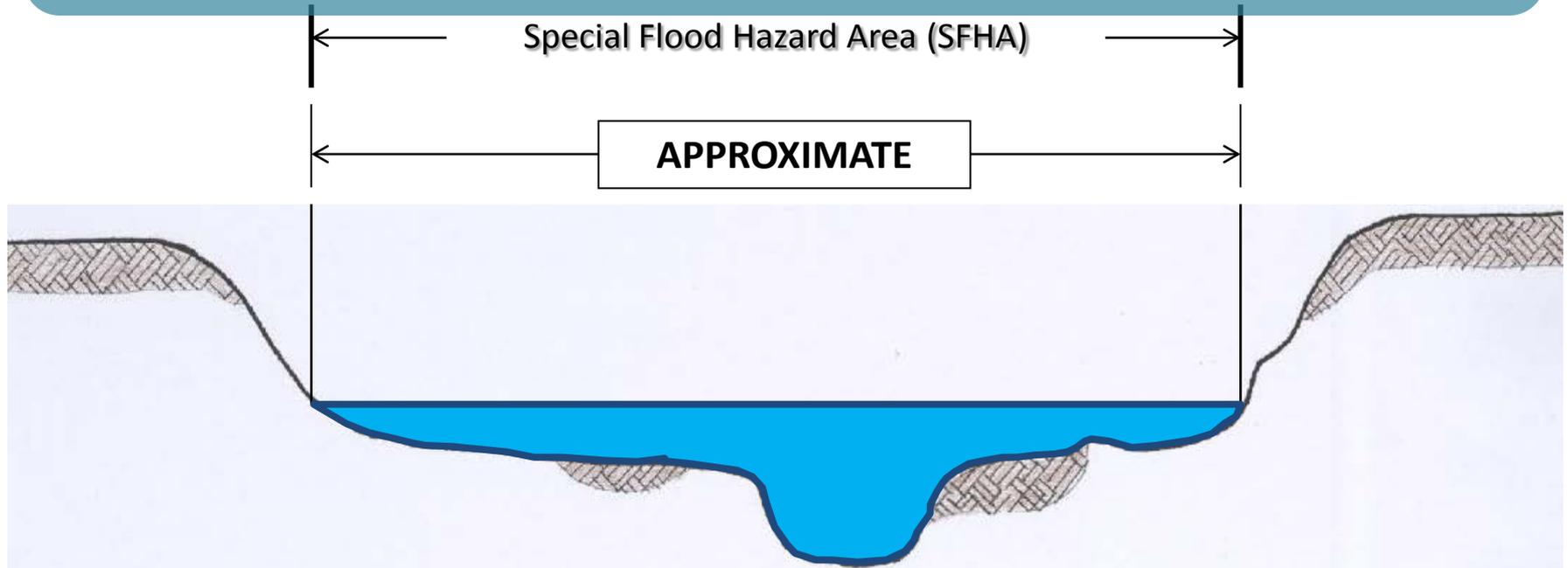
Adhering to Floodplain Parameters: Mapping



Three different types of floodplain studies can be used to identify the SFHA:

- Approximate Study
- Limited Detail Study
- Detailed Study

Adhering to Floodplain Parameters: Mapping



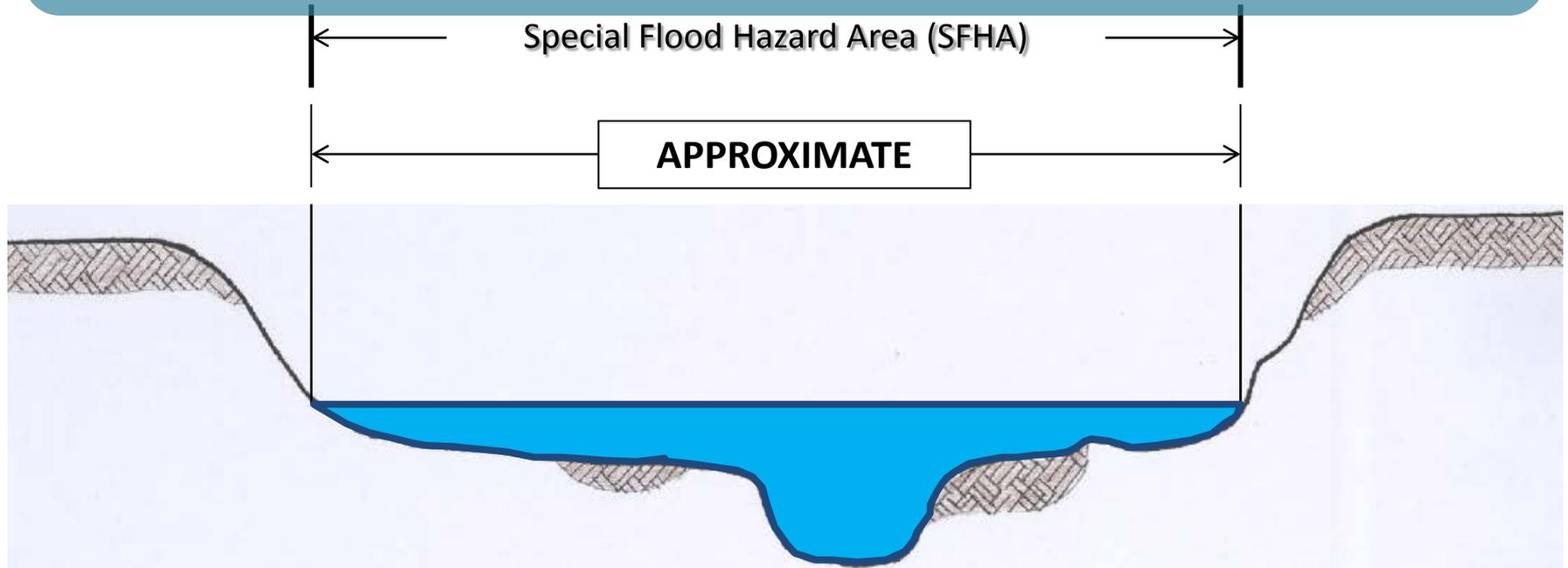
No Base Flood Elevations

No Hydrology

No Hydraulic Modeling

No Flood Profiles

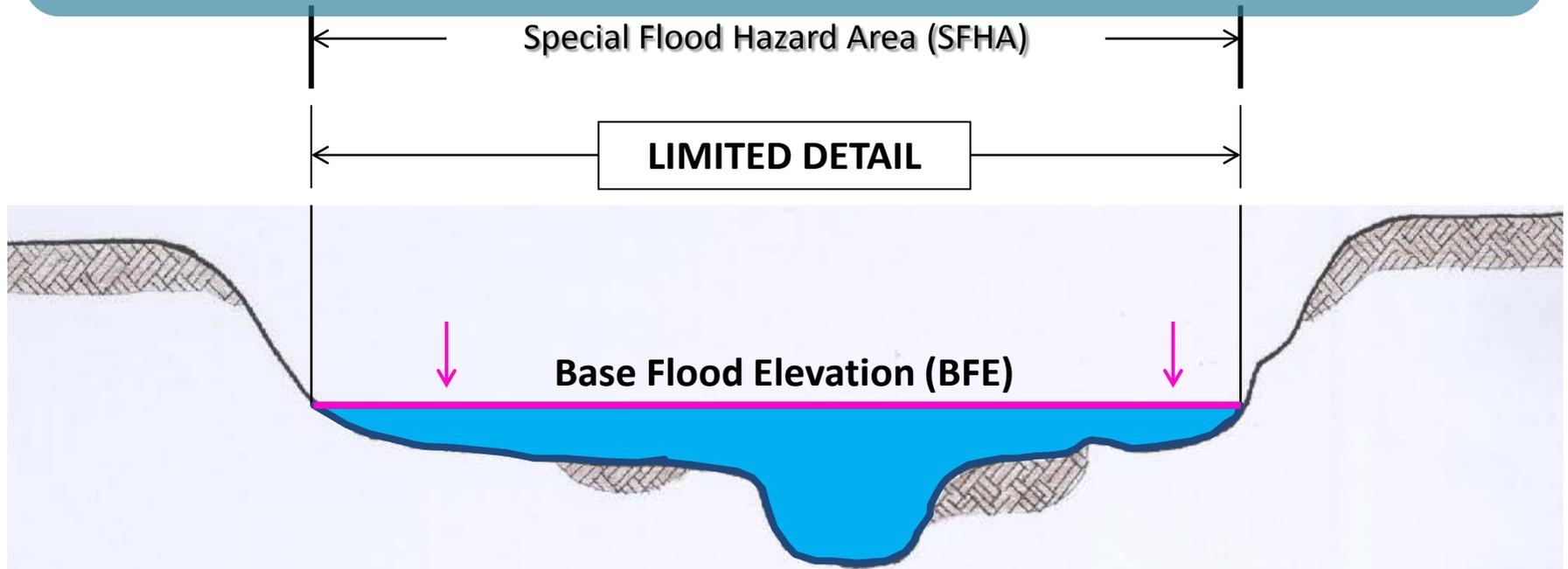
Adhering to Floodplain Parameters: Mapping



Represented as “flood fringe” in most local ordinances.

Establishing BFE’s could be a significant cost accrued by your client

Adhering to Floodplain Parameters: Mapping

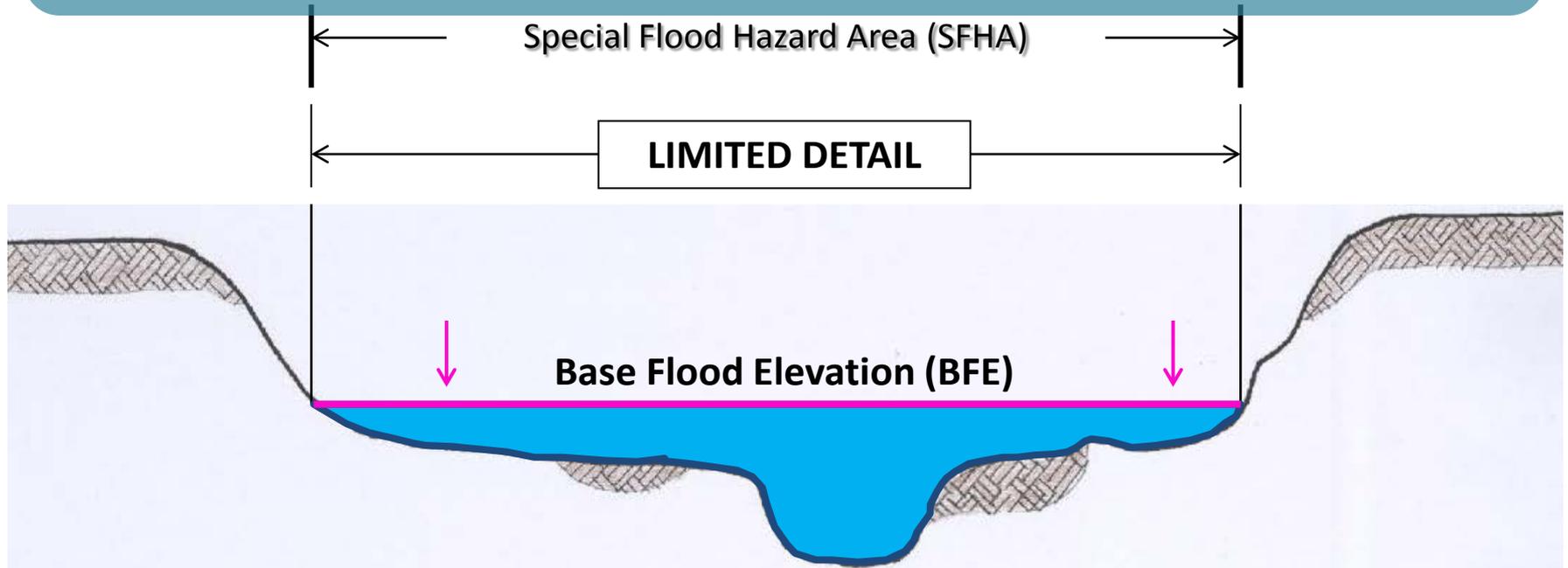


Flood Profiles and BFEs published in FIS.

Has limited Hydrology and Topographic Data

Has Limited Hydraulic Modeling at Bridges and Crossings

Adhering to Floodplain Parameters: Mapping

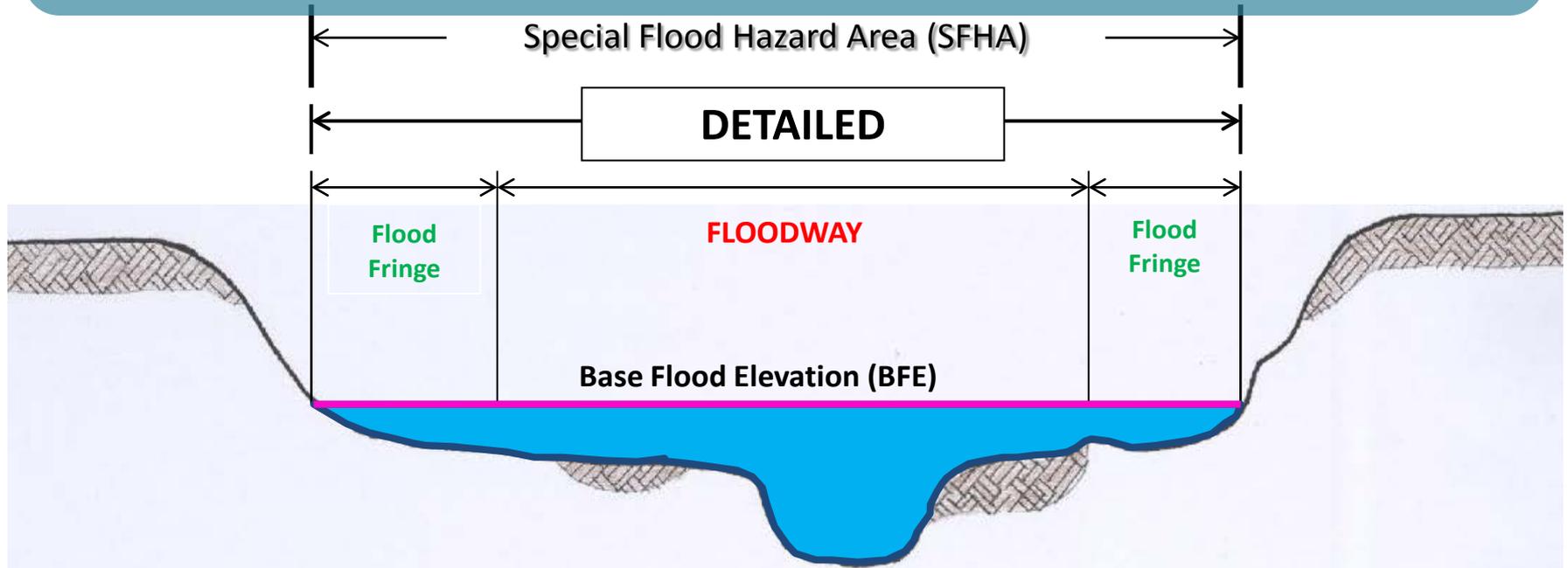


No floodway

BFE's are provided

Defined as flood fringe in most local ordinances

Adhering to Floodplain Parameters: Mapping



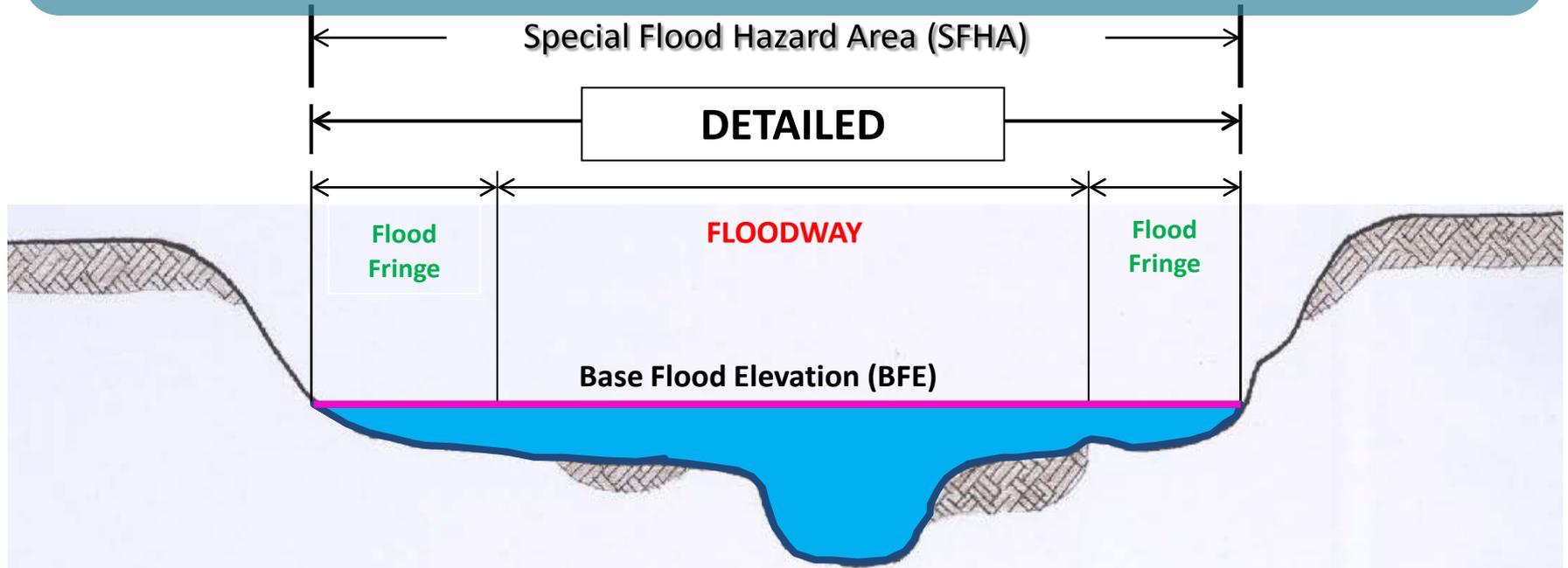
Flood Profiles and BFEs are published in FIS.

Based Upon Detailed Hydrology and Topographic data.

Based Upon Detailed Hydraulic Modeling.

Floodway Data Tables are published in the FIS.

Adhering to Floodplain Parameters: Mapping



Floodway – more restrictive for development

Costs for encroachment analysis for floodway projects

Provides BFEs and cross sections – can cost much less for already established BFE's

Adhering to Floodplain Parameters: Mapping

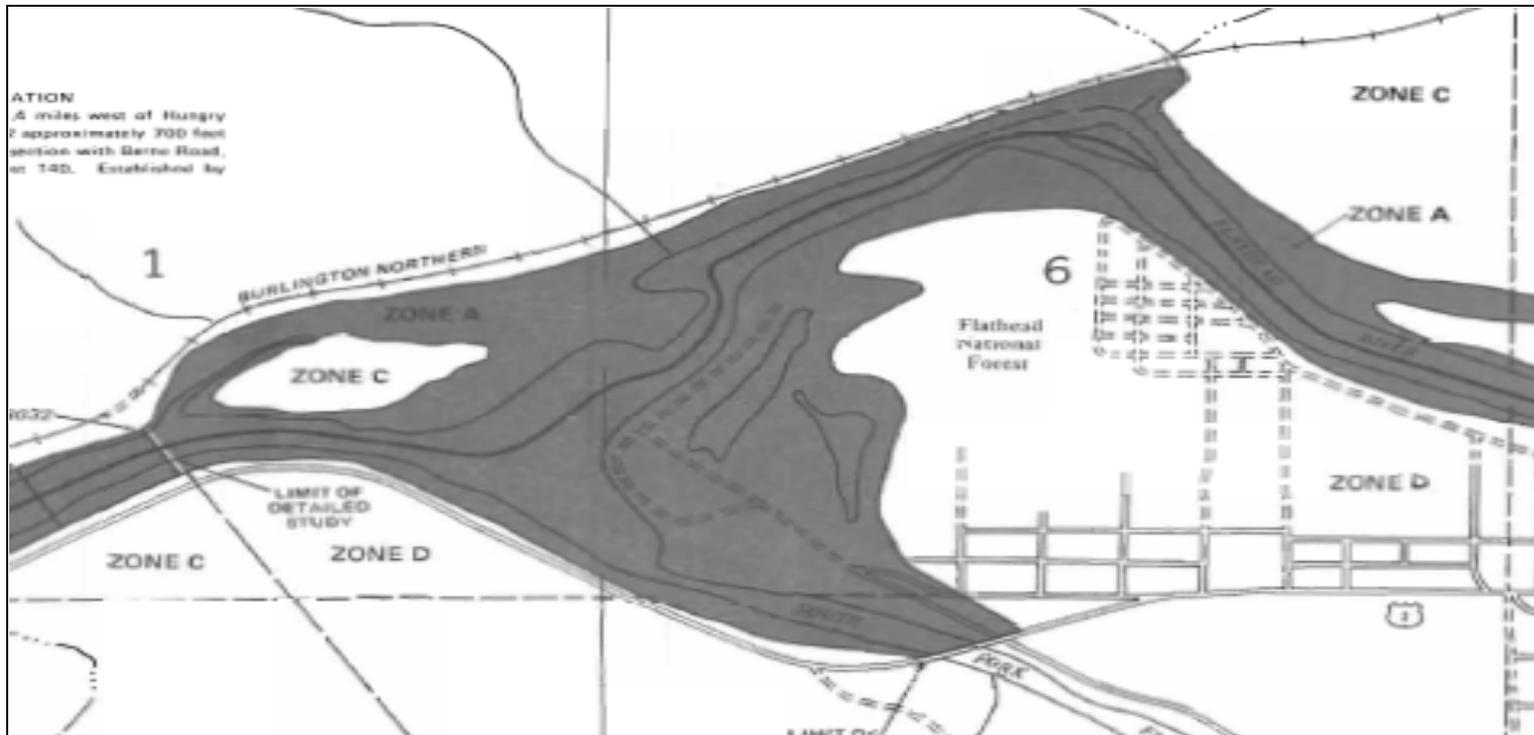
Flood Insurance Rate Map (FIRM) and Digital Flood Insurance Rate Map (DFIRM):

A map created by the NFIP for floodplain management and insurance purposes, that identifies special hazard areas and risk premium zones.



Adhering to Floodplain Parameters: Mapping

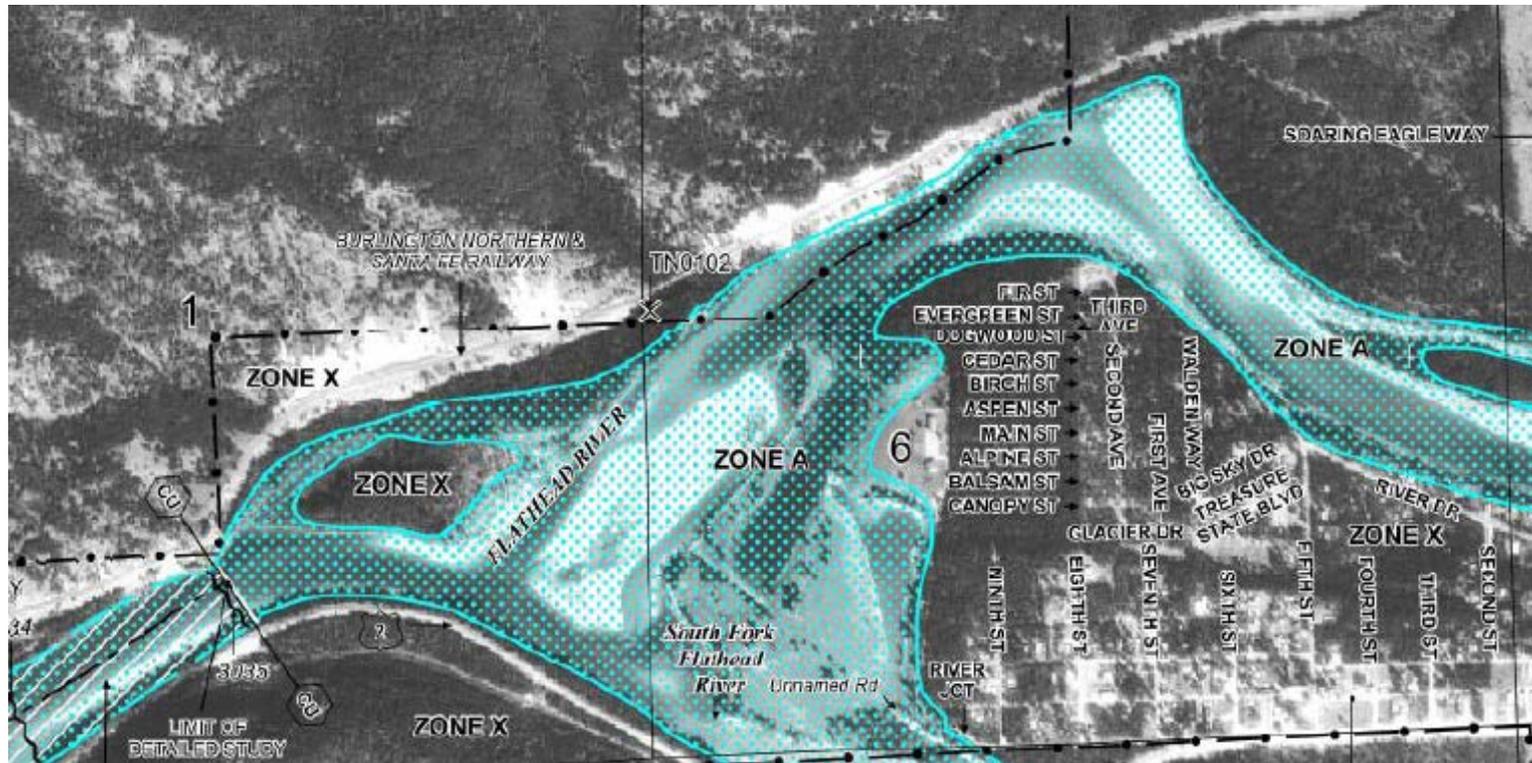
Flood Insurance Rate Map (FIRM)



Flood insurance and local ordinances adhere to the effective FIRMS

Adhering to Floodplain Parameters: Mapping

Digital Flood Insurance Rate Map (DFIRM):



Adhering to Floodplain Parameters: Mapping

Digital Flood Insurance Rate Map (DFIRM):

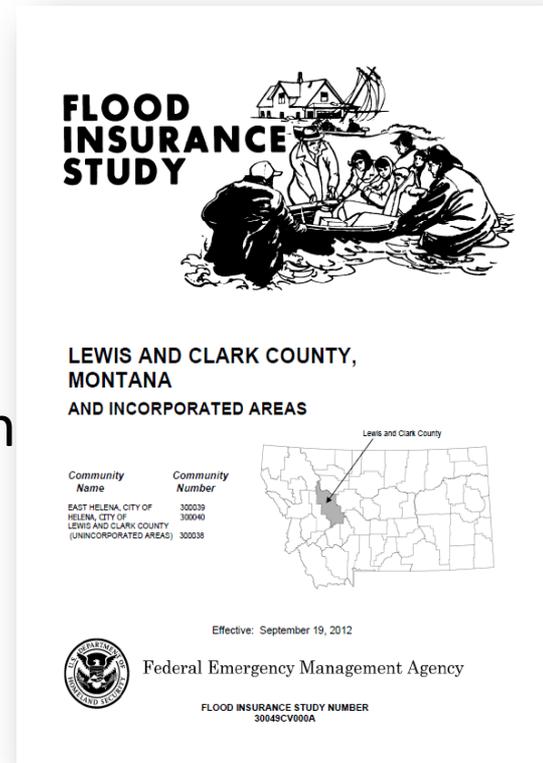
- Better product
- Easier to access specific property information
- Maps are to be used as a guide
- True determination if a property is in or out is based on the BFE



Adhering to Floodplain Parameters: Mapping

Flood Insurance Study (FIS):

- FIS is compilation & presentation of flood risk data for specific watercourses & lakes within a community.
- The FIS report and associated maps delineate the SFHA, designate flood risk zones, and establish BFE's.
- The FIS serves as the basis for rating flood insurance, regulating floodplain development, history of flood events for the community, and managing local floodplain programs.

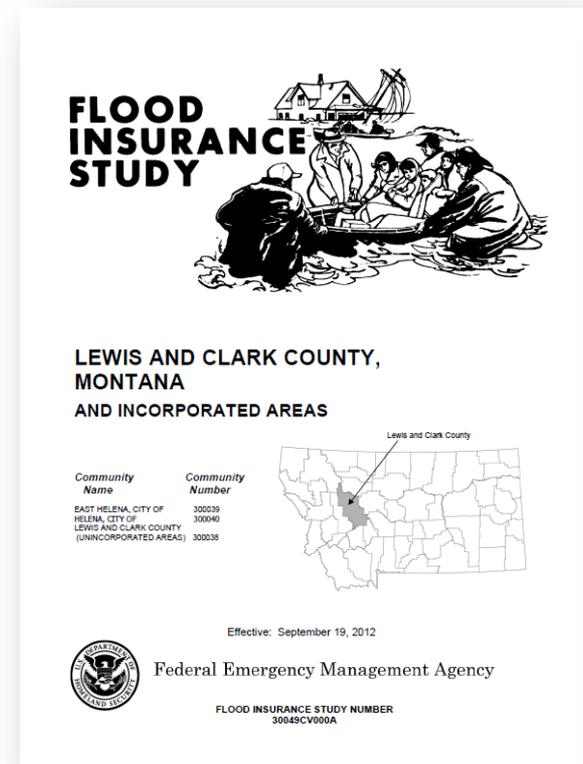


Adhering to Floodplain Parameters: Mapping

Flood Insurance Study (FIS):

The FIS report has:

- The Flood Insurance Study Report
- The FIRM or DFIRM's



Adhering to Floodplain Parameters: Mapping

FEMA Flood Zone Designations

- **Flood zones are geographic areas that FEMA has defined according to varying levels of flood risk.**
- **Zones are depicted on a community's FIRM or DFIRM**
- **Each zone reflects the severity or type of flooding in the area**
- **Important to understand development requirements and restrictions AND insurance implications**

Adhering to Floodplain Parameters: Mapping

FEMA Flood Zone Designations

Lewis and Clark County has an assortment of the following zones:

Adhering to Floodplain Parameters: Mapping

FEMA Flood Zone Designations

MODERATE TO LOW RISK AREAS – In NFIP participating communities, flood insurance is available to all property owners and renters.

ZONE	DESCRIPTION
B and X (shaded)	Area of moderate flood hazard, usually between the limits of the 100 year and 500 year floods; also used to designate base floodplains of lesser hazards
C and X (unshaded)	Area of minimal flood hazard, usually depicted on FIRMs as above the 500 year flood level

Adhering to Floodplain Parameters: Mapping

FEMA Flood Zone Designations

- No Regulations
- May want to encourage building higher if located in low elevation area, near unmapped water, or if there are shallow aquifer concerns.

ZONE	DESCRIPTION
B and X (shaded)	Area of moderate flood hazard, usually between the limits of the 100 year and 500 year floods; also used to designate base floodplains of lesser hazards
C and X (unshaded)	Area of minimal flood hazard, usually depicted on FIRMs as above the 500 year flood level

Adhering to Floodplain Parameters: Mapping

FEMA Flood Zone Designations

HIGH RISK AREAS – in NFIP participating communities, mandatory flood insurance purchase requirements , and floodway and flood fringe regulations and development standards apply.

ZONE	DESCRIPTION
A	Areas with a 1% annual chance of flooding and a 26% chance of flooding over the life of a 30 year mortgage. No depths or BFEs are shown within these zones.
AE	The base floodplain where base flood elevations are provided.
A1-30	Known as numbered A Zones. This is the base floodplain where the FIRM shows a BFE (old format, AE is used instead on new format FIRMs)

Adhering to Floodplain Parameters: Mapping

FEMA Flood Zone Designations

HIGH RISK AREAS – in NFIP participating communities, mandatory flood insurance purchase requirements and flood fringe regulations and development standards apply.

ZONE	DESCRIPTION
AH	Areas with a 1% annual chance of shallow flooding (ponding), average depth ranging from 1-3 feet. These areas have a 26% chance of flooding over the life of a 30 year mortgage. Base flood elevations derived from detailed analyses shown at selected intervals.
AO	River/stream flood hazard areas, and areas with a 1% or greater chance of shallow flooding each year (sheet flow), with an average depth ranging from 1 to 3 feet. These areas have a 26% chance of flooding over the life of a 30 year mortgage. Average flood depths derived from detailed analyses are shown within these zones.

Adhering to Floodplain Parameters: Mapping

FEMA Flood Zone Designations

HIGH RISK AREAS – in NFIP participating communities, flood insurance purchase requirements apply when lender requests to protect investment.

ZONE	DESCRIPTION
D	Areas with possible but undetermined flood hazards. No flood hazard analysis has been conducted. Flood insurance rates are commensurate with the uncertainty of the flood risk.

- **Can't get out of Zone D through LOMC process**
- **Insurance premiums may be higher than Zone A**

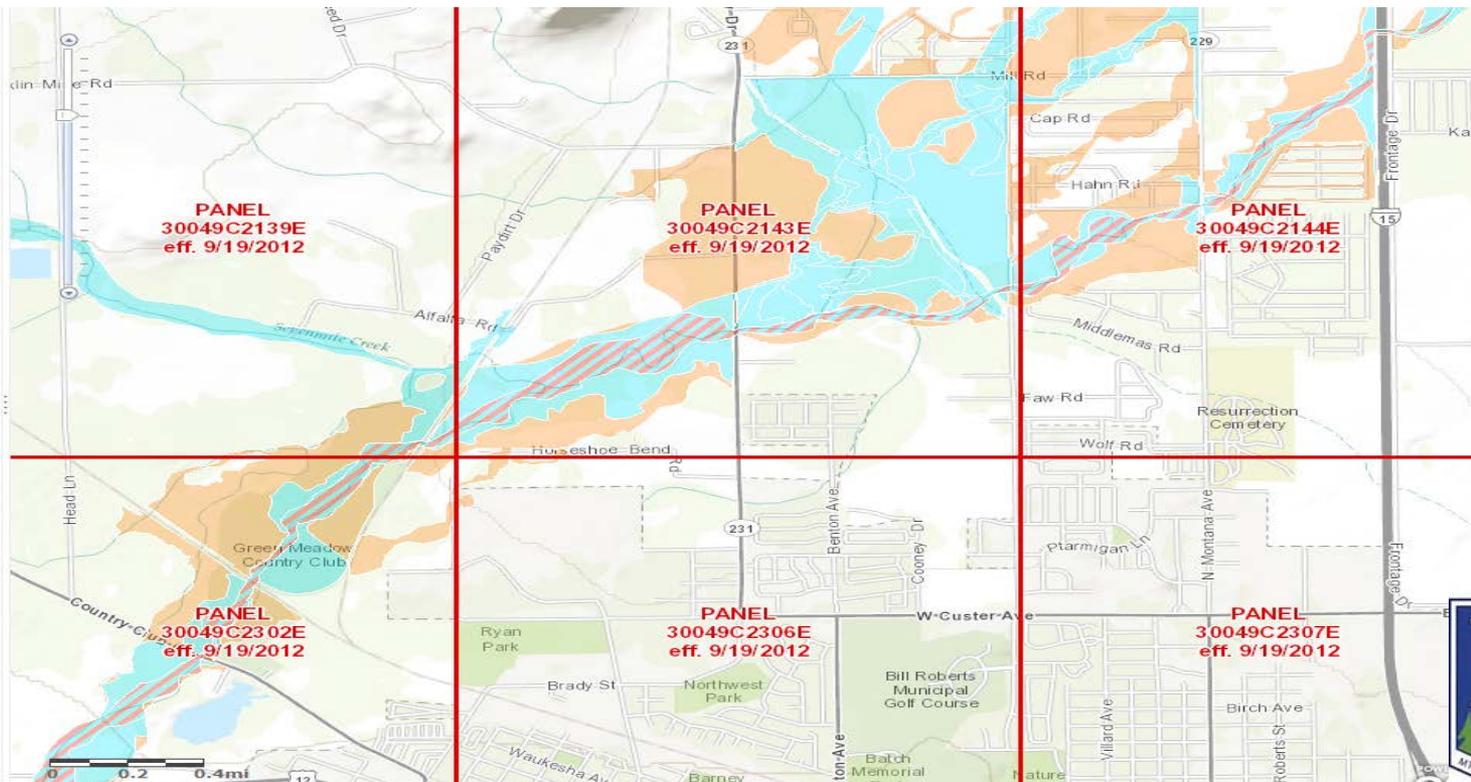
Adhering to Floodplain Parameters: Mapping

FEMA Flood Zone Designations



Adhering to Floodplain Parameters: Mapping

Lewis and Clark County: Where do you find Flood Hazard information



Adhering to Floodplain Parameters: Mapping

Lewis and Clark County: Where do you find Flood Hazard information

Local Floodplain Administrator: Paul Spengler, 406-447-2885



The screenshot shows the Lewis & Clark County, Montana website. At the top, there is a search bar and a navigation menu with buttons for HOME, DEPARTMENTS, GOVERNMENT, COMMUNITY, VISITORS, and SERVICES. Below the navigation is a section titled "Geographic Information Services" which includes a "Special Achievement by GIS 2012 Winner" award, an "esri Community Maps Contributor" logo, and a map of the county. To the left of the GIS section is a sidebar with "Information Technology" links: Maps For Sale, Helena & County Atlas, Download Data, Completed Maps, Interactive Map Sites, Aerial Photography, GIS Links, Emergency Response, and Web Services. To the right of the GIS section is "Contact Information" for the IT&S Director and GIS Coordinator, and "Interactive Mapping Sites" with a link to the Helena and County Atlas. A disclaimer is visible at the bottom left of the page.

Lewis and Clark County GIS

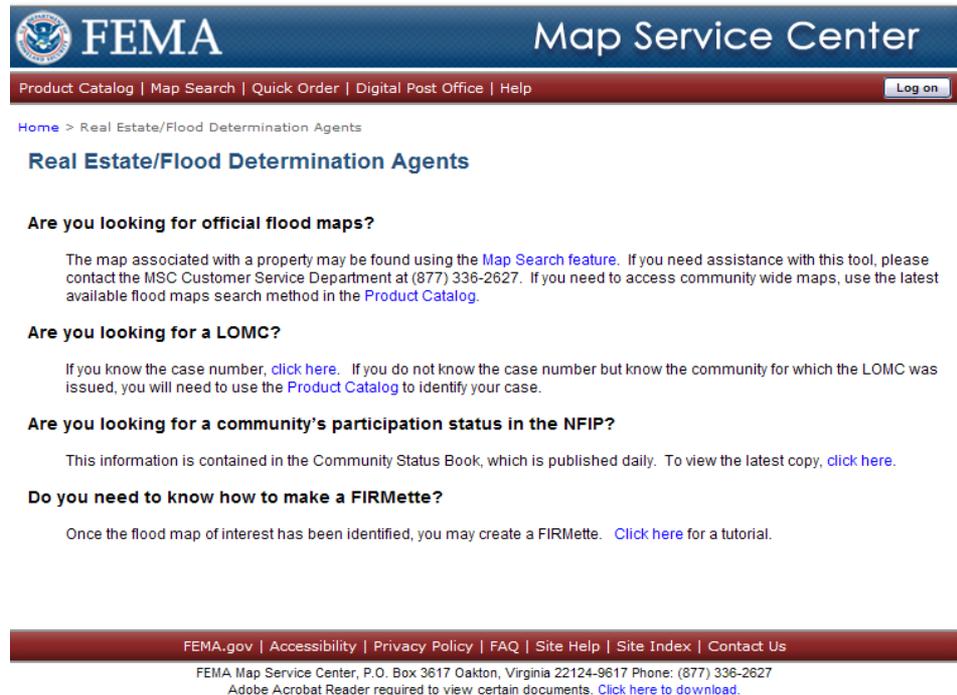
<http://www.lccountymt.gov/it/gis-maps.html>



Adhering to Floodplain Parameters: Mapping

Lewis and Clark County: Flood Zones

FEMA's Map Service Center
www.msc.fema.gov



The screenshot shows the FEMA Map Service Center website. At the top, there is a blue header with the FEMA logo on the left and the text "FEMA" and "Map Service Center" on the right. Below the header is a navigation bar with links for "Product Catalog", "Map Search", "Quick Order", "Digital Post Office", and "Help", along with a "Log on" button. The main content area is titled "Real Estate/Flood Determination Agents" and contains several sections with questions and answers:

- Are you looking for official flood maps?**
The map associated with a property may be found using the [Map Search feature](#). If you need assistance with this tool, please contact the MSC Customer Service Department at (877) 336-2627. If you need to access community wide maps, use the latest available flood maps search method in the [Product Catalog](#).
- Are you looking for a LOMC?**
If you know the case number, [click here](#). If you do not know the case number but know the community for which the LOMC was issued, you will need to use the [Product Catalog](#) to identify your case.
- Are you looking for a community's participation status in the NFIP?**
This information is contained in the Community Status Book, which is published daily. To view the latest copy, [click here](#).
- Do you need to know how to make a FIRMette?**
Once the flood map of interest has been identified, you may create a FIRMette. [Click here](#) for a tutorial.

At the bottom of the page, there is a dark red footer with links for "FEMA.gov", "Accessibility", "Privacy Policy", "FAQ", "Site Help", "Site Index", and "Contact Us". Below the footer, there is a small text block: "FEMA Map Service Center, P.O. Box 3617 Oakton, Virginia 22124-9617 Phone: (877) 336-2627 Adobe Acrobat Reader required to view certain documents. [Click here to download](#)."



Options for Property Owner: Mapping

FEMA Letters of Map Change

Through a process called a Letter of Map Change (LOMC), a property owner, developer, or other entity may submit a record of site specific information to FEMA requesting an official change in flood risk.

Possible option to get out of mandatory insurance requirements if there is a higher BFE.



Options for Property Owner: Mapping

What are LOMCs?



Letter of Map Amendment: LOMA

- **Small scale changes**
- **Letter from FEMA – the map is “modified” by the letter; a new map panel is NOT produced**
- **Effective on the date sent**
- **Requires a surveyor**
- **Used to remove a structure/property from the SFHA, and thus remove mandatory purchase of flood insurance**

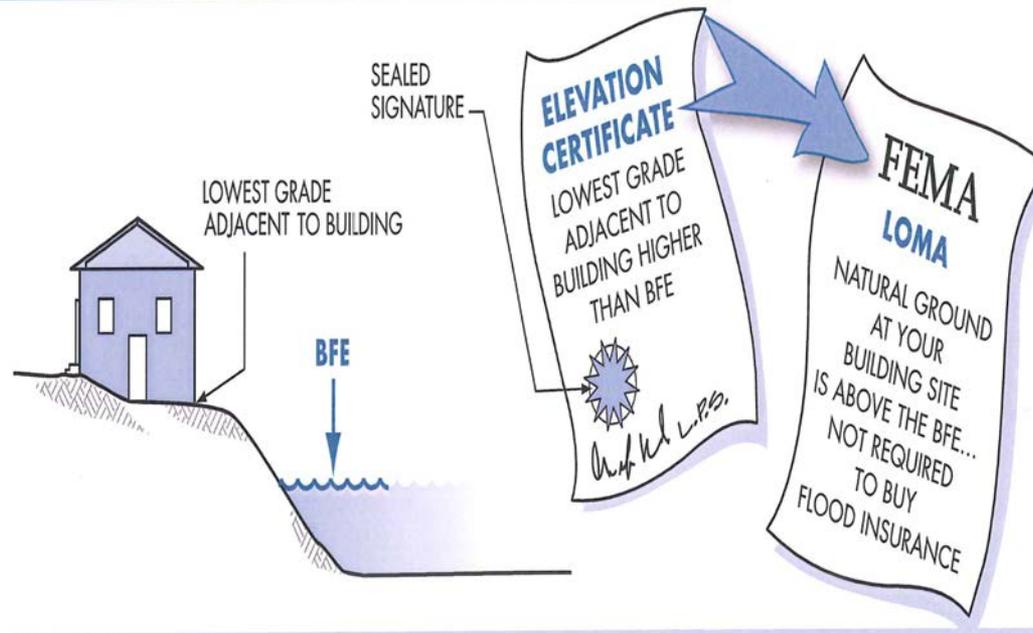
Options for Property Owner: Mapping

What are LOMCs?



Letter of Map Amendment: LOMA

Is Your Building Site Higher than the BFE?



Options for Property Owner: Mapping

What are LOMCs?



Letter of Map Revision based on Fill: LOMR-F

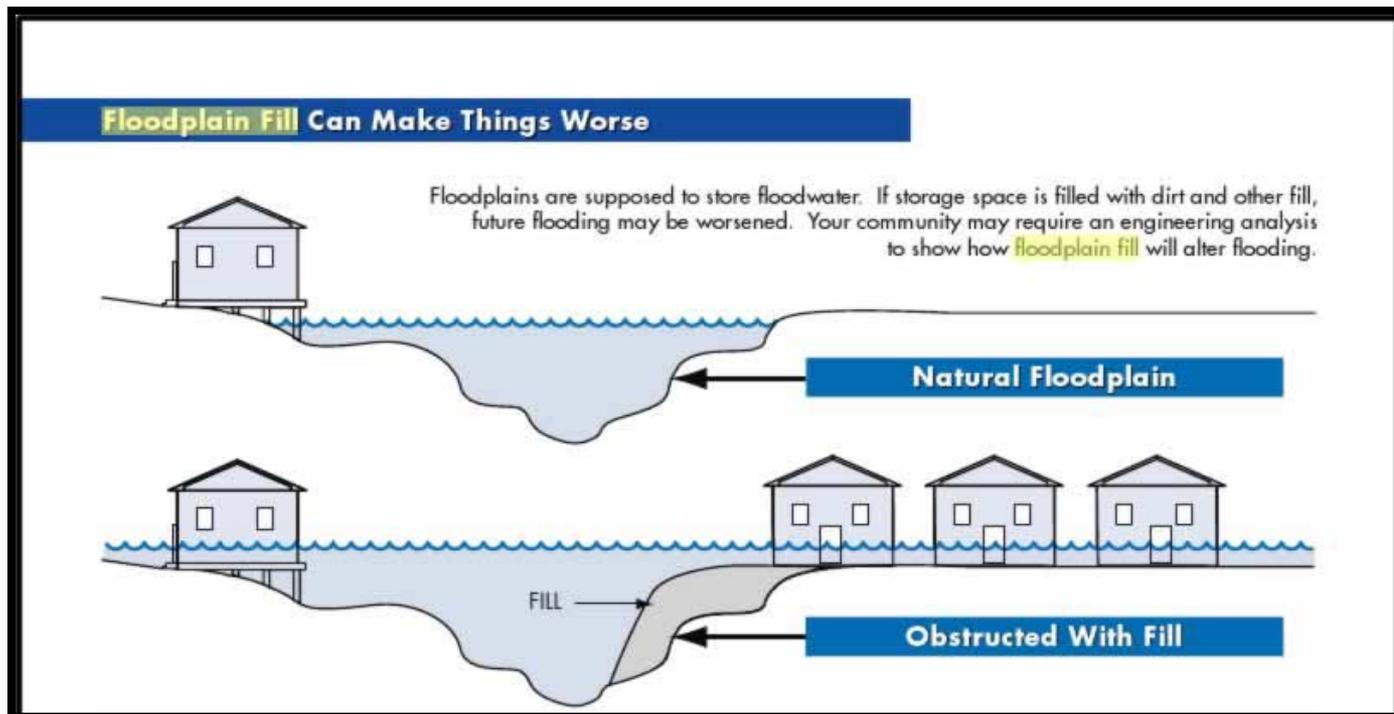
- Small scale changes where fill has been placed to elevate land to at/above BFE
- Letter from FEMA – the map is “modified” by the letter; a new map panel is NOT produced
- Effective on the date sent
- Requires a surveyor & floodplain permit for fill & structure
- Used to remove a structure/property from the SFHA, and thus remove mandatory purchase of flood insurance

Options for Property Owner: Mapping

What are LOMCs?



Letter of Map Revision based on Fill: LOMR-F



Options for Property Owner: Mapping

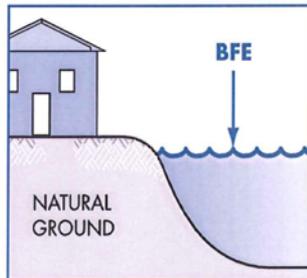
What are LOMCs?



Letter of Map Revision based on Fill: LOMR-F

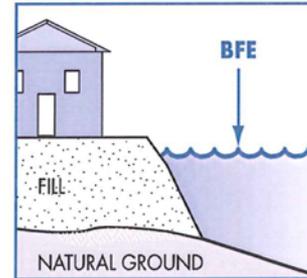
Flood Map Revisions: LOMAs and LOMR-Fs

The most accurate information available is used to make flood maps, including topographic base maps and detailed engineering methods or methods of approximation. FEMA issues map revisions if technical data are submitted to support the changes.



Letter of Map Amendment (LOMA) is an official amendment to an effective FIRM that may be issued when a property owner provides additional technical information from a licensed professional surveyor, such as

ground elevation relative to the BFE. Lenders may waive the flood insurance requirement if the LOMA removes a building site from the SFHA because natural ground at the site is above the BFE.



Letter of Map Revision Based on Fill (LOMR-F) is an official revision to an effective FIRM that is issued to document FEMA's determination that a structure or parcel

of land has been elevated by fill above the BFE, and therefore is no longer in the SFHA. Lenders may waive the insurance requirement if the LOMR-F removes a building site from the SFHA.

Adhering to Floodplain Parameters: Mapping

What are LOMCs?



Letter of Map Revision: LOMR

- Large changes, such as structural changes (bridge/culvert replacement), channelization, etc.
- Letter from FEMA –map is “modified” by the letter;
- Effective date identified in determination letter
- Requires a PE to perform detailed H&H analysis
- Used to remove a structure/property from the SFHA, and thus remove mandatory purchase of flood insurance

Adhering to Floodplain Parameters: Mapping

What are LOMCs?

Letter of Map Revision: LOMR

Used to:

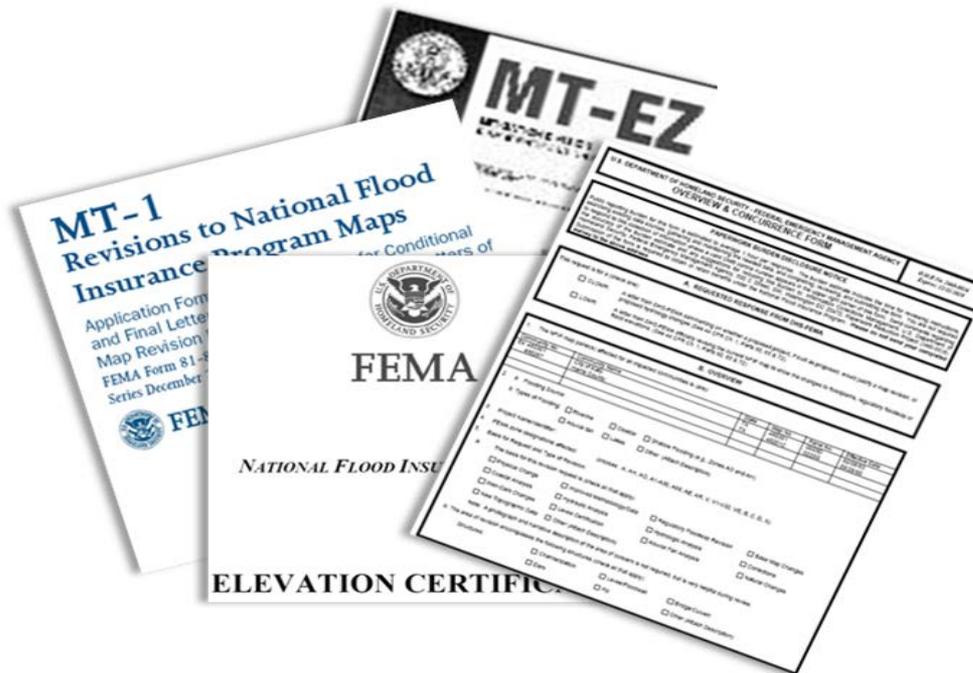
- Request a change to the BFE of SFHA
- Request a change to the regulatory floodway boundary delineation
- Request a change involving property and/or structures that have been elevated by fill placed within the regulatory floodway



Adhering to Floodplain Parameters: Mapping

What are LOMCs?

Letter of Map Revision: LOMR



Adhering to Floodplain Parameters: Mapping



What are **CONDITIONAL LOMCs**?

FEMA's comment on a proposed project – used to ensure compliance or project the change in mapped flood risk

- **CLOMA – Conditional Letter of Map Amendment**
- **CLOMR-F – Conditional Letter of Map Revision Based on Fill**
- **CLOMR – Conditional Letter of Map Revision**

Adhering to Floodplain Parameters: Mapping



What are **CONDITIONAL LOMCs**?

Conditional LOMCs do not remove the mandatory purchase of flood insurance requirement.

- **A CLOMOC is FEMA's comment on the proposed plan**
- **Does not revise or amend the map**
- **Pre-construction**

Adhering to Floodplain Parameters: Mapping

Contacts:

- FEMA Map Service Center Website (MSC)
www.msc.fema.gov
- FEMA Publications – 1-800-480-2520
- FEMA FIRM and FIS Ordering – 1-800-358-9616
- General Mapping and LOMC Questions – 1-877-FEMA-MAP
- www.fema.gov

Adhering to Floodplain Parameters:

**Demand for waterfront property:
Will continue to rise.**

**There will always be a demand and availability continues
to be limited.**



Adhering to Floodplain Parameters:

**Lake cabin, purchased 1960:
\$2000-\$5000.**

Same property, 2013: NOT SO CHEAP.



Adhering to Floodplain Parameters:

So does a floodplain designation on a property de-value the site?



Adhering to Floodplain Parameters:

Naturally people are drawn to water – it may cost more. Reality is, not much water front property is left undeveloped.



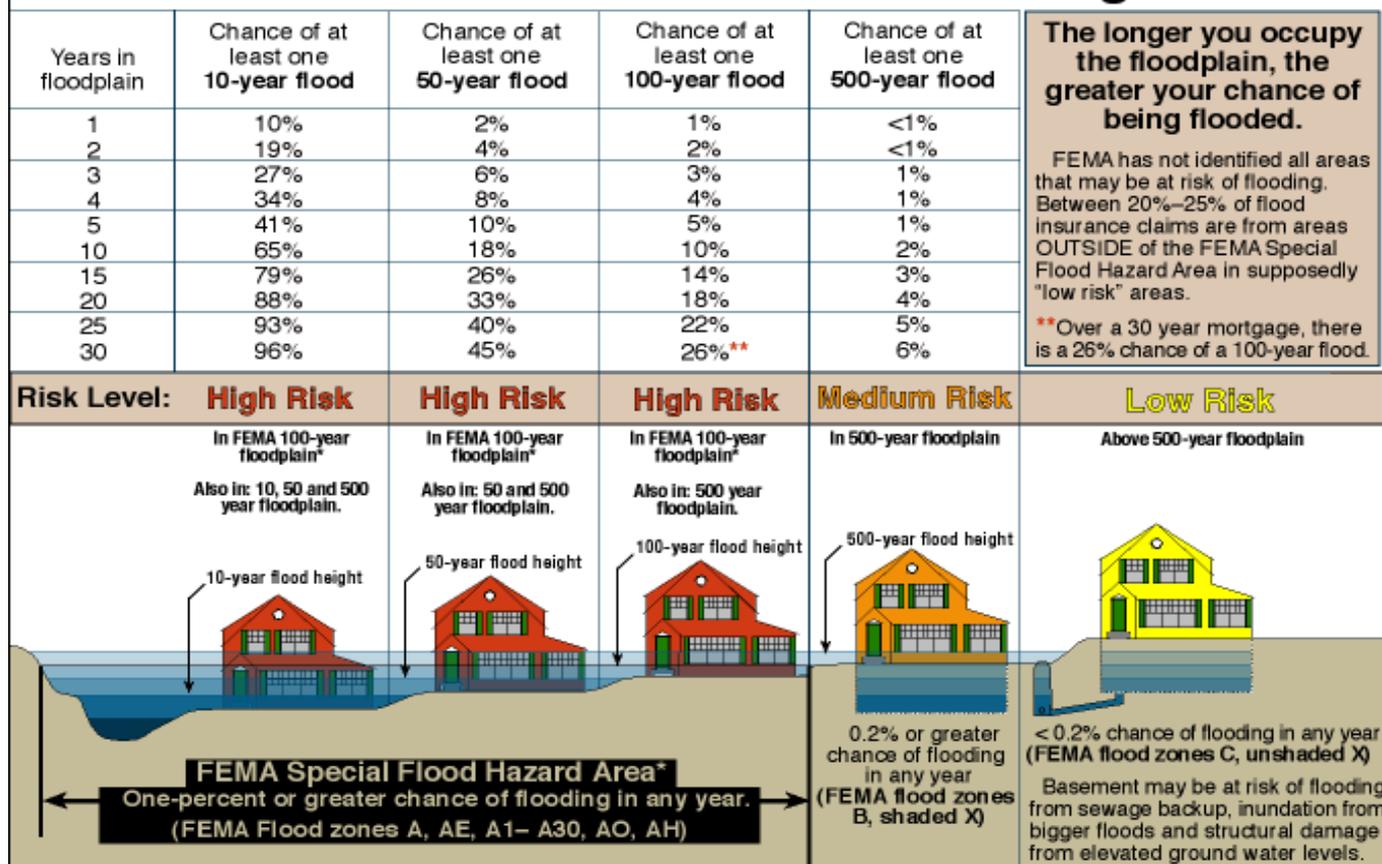
Adhering to Floodplain Parameters: Insurance



**Let's have some discussion
on the following NON four
letter word:
INSURANCE**

Adhering to Floodplain Parameters: Insurance

What is the Likelihood of Flooding?



Adhering to Floodplain Parameters: Insurance

About the National Flood Insurance Program (NFIP): Coverage



Building vs. Contents Coverage: What's Covered

Flood insurance protects two types of insurable property: building and contents

Adhering to Floodplain Parameters: Insurance

About the National Flood Insurance Program (NFIP): Coverage

Building Coverage: What's Covered



- The insured building and its foundation
 - Electrical and plumbing system
 - Central air, furnaces, water heaters
- Refrigerators, cooking stoves, dishwashers
- Permanently installed carpet over unfinished flooring

Adhering to Floodplain Parameters: Insurance

About the National Flood Insurance Program (NFIP): Coverage

Contents Coverage



- Clothing, furniture, electronic equipment
 - curtains
 - Portable and window air conditioners
 - Portable microwaves and dishwashers
- Carpeting not already included in property coverage
 - Washers and dryers

Adhering to Floodplain Parameters: Insurance

About the National Flood Insurance Program (NFIP): When Insurance is Required

Residents of High Risk Areas



Homes and buildings in high risk flood areas with mortgages from federally regulated or insured lenders are required to have flood insurance.

Adhering to Floodplain Parameters: Insurance

About the National Flood Insurance Program (NFIP): When Insurance is Required



Residents of Moderate to Low Risk Areas

Homes and businesses in moderate to low risk areas with mortgages from federally regulated or insured lenders are typically **NOT** required to have flood insurance.

Adhering to Floodplain Parameters: Insurance

**About the National Flood Insurance
Program (NFIP): When Insurance is
Required**

HOWEVER



**Flood insurance is highly
recommended.**

Adhering to Floodplain Parameters: Insurance

**About the National Flood Insurance
Program (NFIP): When Insurance is
Required**



AND

**A lender can require flood
insurance even if it is not
federally required.**

Adhering to Floodplain Parameters: Insurance

General Flood Insurance Rating Concepts

- Build **outside** the floodplain and flood insurance is inexpensive (until a flood loss occurs or an area is remapped)
- Build **in** or **near** the floodplain and **elevate** the “living” or “finished floor” several feet **above the BFE** and insurance will be relatively cheap.



Adhering to Floodplain Parameters: Insurance



General Flood Insurance Rating Concepts

- Structures **in** the floodplain with a finished or enclosed floor **below the BFE** – premiums will be very expensive.
- If flood openings are missing or insufficient and/or machinery/utilities are **below the BFE**, insurance will cost A LOT more.

Adhering to Floodplain Parameters: Insurance



Flood Insurance Reform Act of 2012: Impact of Changes to the NFIP

**Congress passed this Act which calls on
FEMA and other agencies to make a
number of significant changes to the
management of the NFIP.**

**Some changes have already occurred and
others will be phased in.**

Adhering to Floodplain Parameters: Insurance

Flood Insurance Reform Act of 2012: Impact of Changes to the NFIP



Key provisions:

- *raise rates to reflect true flood risk**
- *make the program more financially stable**
- *change how FIRM updates impact policyholders**

Adhering to Floodplain Parameters: Insurance

Flood Insurance Reform Act of 2012: Impact of Changes to the NFIP

Background: Pre-existing homes and businesses could remain as they were.

Owners of these properties were able to obtain insurance at lower, subsidized rates that did not accurately reflect the real risk.

As risk has been updated over the years, many homes and businesses in areas of revised risk were also allowed discounted insurance rates.

“Grandfathering” approach prevented rate increases for existing properties when the flood risk in these areas increased.

Adhering to Floodplain Parameters: Insurance

Flood Insurance Reform Act of 2012: Impact of Changes to the NFIP

Present: Flood risks continue and costs and consequences of flooding are increasing dramatically.



July 2012 – Congress passed legislation to make the NFIP more sustainable and financially sound over the long term.

Adhering to Floodplain Parameters: Insurance



Flood Insurance Reform Act of 2012: Impact of Changes to the NFIP

What This Means:

- **New law eliminates some artificially low rates and discounts which are no longer sustainable**
 - **Flood insurance rates will reflect full risk**
- **Flood insurance rates will rise on some policies**

Adhering to Floodplain Parameters: Insurance

Flood Insurance Reform Act of 2012: Impact of Changes to the NFIP



What Can Trigger Rate Changes:

- Buying or selling a property
- Allowing a flood insurance policy to lapse

Adhering to Floodplain Parameters: Insurance

Flood Insurance Reform Act of 2012: Impact of Changes to the NFIP



What Is Changing:

- Owners of **non-primary/secondary residences** in a SFHA will see a 25% annual increase until rate reflects true risk (Jan. 1, 2013)
- Owners of **property which has experienced severe or repeated flooding** will see a 25% annual increase until rate reflects true risk (Oct.1, 2013)

Adhering to Floodplain Parameters: Insurance

Flood Insurance Reform Act of 2012: Impact of Changes to the NFIP

What Is Changing:

- Owners of **business properties in a SFHA** will see a 25% annual increase until rate reflects true risk (Oct. 1, 2013)



Adhering to Floodplain Parameters: Insurance

Flood Insurance Reform Act of 2012: Impact of Changes to the NFIP



What Is Changing:

- Owners of **primary residences** in SFHA will be able to keep their subsidized rates unless or until:
 - **The property is sold**
 - **The flood insurance policy is allowed to lapse**
 - **Suffer severe, repeated flood losses,**
 - **Or a new policy is purchased**

Adhering to Floodplain Parameters: Insurance

Why You Should Be Familiar With BW 12



- **Previous clients could come back and state that they were never informed they were in a floodplain**

Adhering to Floodplain Parameters: Insurance

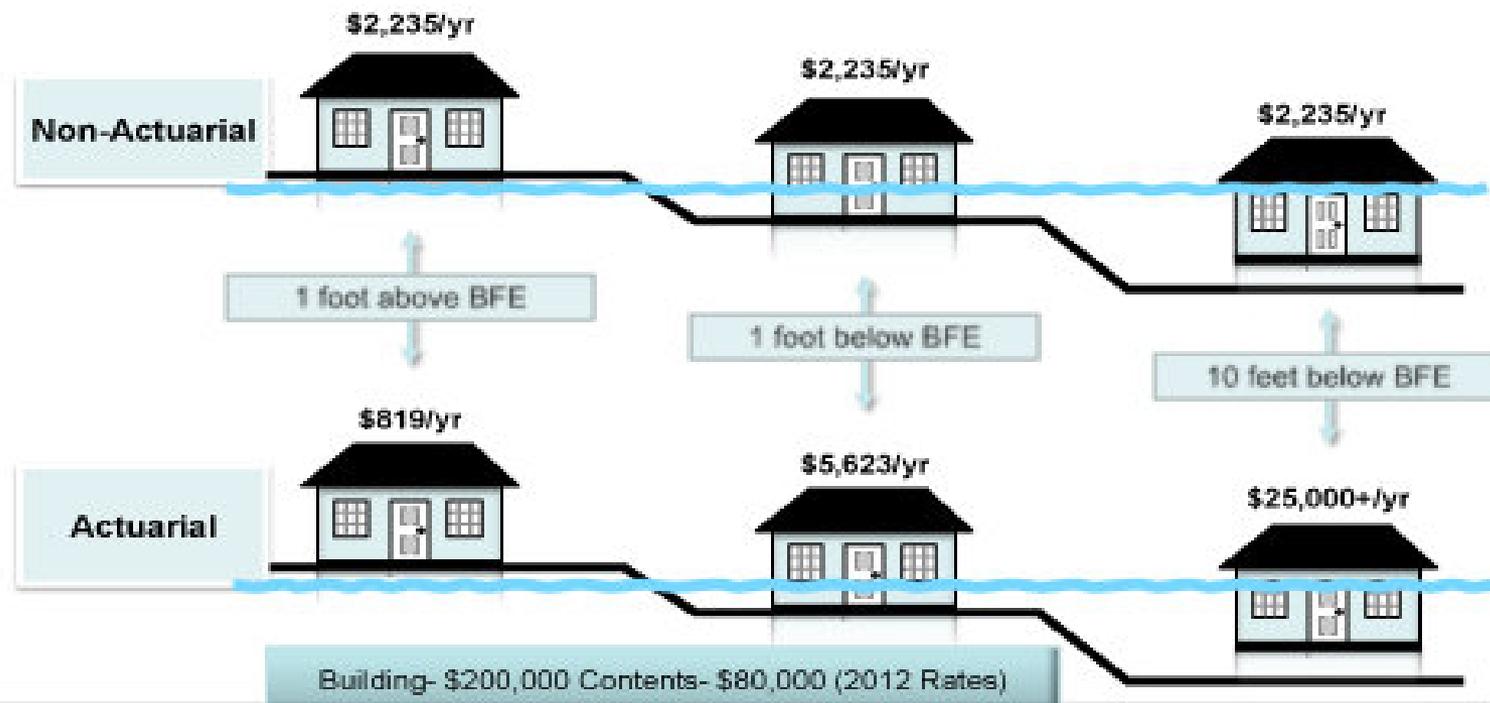
Decreasing Cost through Construction Standards



Adhering to Floodplain Parameters: Insurance

NFIP Rating Examples: The Impact of Loss of Subsidies

Rate comparisons



Adhering to Floodplain Parameters: Insurance

**PREMIUM AT 4 FEET BELOW
BASE FLOOD ELEVATION**

**\$9,500/year
\$95,000/10 years**



BFE

**PREMIUM AT
BASE FLOOD ELEVATION**

**\$1,410/year
\$14,100/10 years**



BFE

**PREMIUM AT 3 FEET ABOVE
BASE FLOOD ELEVATION**

**\$427/year
\$4,270/10 years**



BFE

Adhering to Floodplain Parameters: Insurance



Call toll free: **1-888-379-9531** or **have us call you**

Search FloodSmart.gov 001

- HOME
- FLOODING & FLOOD RISKS
- ABOUT THE NATIONAL FLOOD INSURANCE PROGRAM
- RESIDENTIAL COVERAGE
- COMMERCIAL COVERAGE
- PREPARATION & RECOVERY
- RESOURCES
 - > Agent Site
 - > Agent Locator
 - > Community Rating System
 - > Community Resources
 - > File Your Claim
 - > Frequently Asked Questions
 - > Glossary
 - > Flood Facts
 - > Media Resources
 - > Toolkits
 - > Email Updates

How will the New Flood Maps Affect Your Flood Risk?

Flood risk changes from year-to-year. Enter your zip code to see if there have been any recent map changes in your area.

SEARCH YOUR AREA



Spring Flooding Levee Simulator **New Flood Maps** Video Testimonials

LATEST NEWS

Changes are coming to the NFIP. Visit the [Rising Waters Flood Insurance Reform Act of 2012 webpage](#) to learn how the changes might affect you.

Find out more about the Preferred Risk Policy Eligibility Extension. [Learn More](#)

Typically, there is a 30-day waiting period on new flood insurance policies.



GET COVERAGE FOR AS LOW AS \$129 PER YEAR

Find out about our Preferred Risk Policy for homes in moderate-to-low risk areas.

LEARN MORE



WHAT COULD FLOODING COST ME?

This interactive tool shows the cost of a flood to your home, inch-by-inch.

LEARN MORE

One-Step Flood Risk Profile

HOW CAN I GET COVERED?

- Rate your risk
- Estimate your premiums
- Find an agent

Address:

City:

State:

Zip code:

Residential? Yes No

- Primary Residence
- Non-Primary Residence

GO! Privacy Policy

The Cost Of Flooding

Embed This

6 inch flood

	Stereo - etc.	\$80
	Washer/Dryer	\$80
	Accent Furniture & Accessories	\$250
	Loss of Personal Items	\$350

Total Losses **\$20,150**
1,000 Square Foot Home

See 2,000 Square Feet

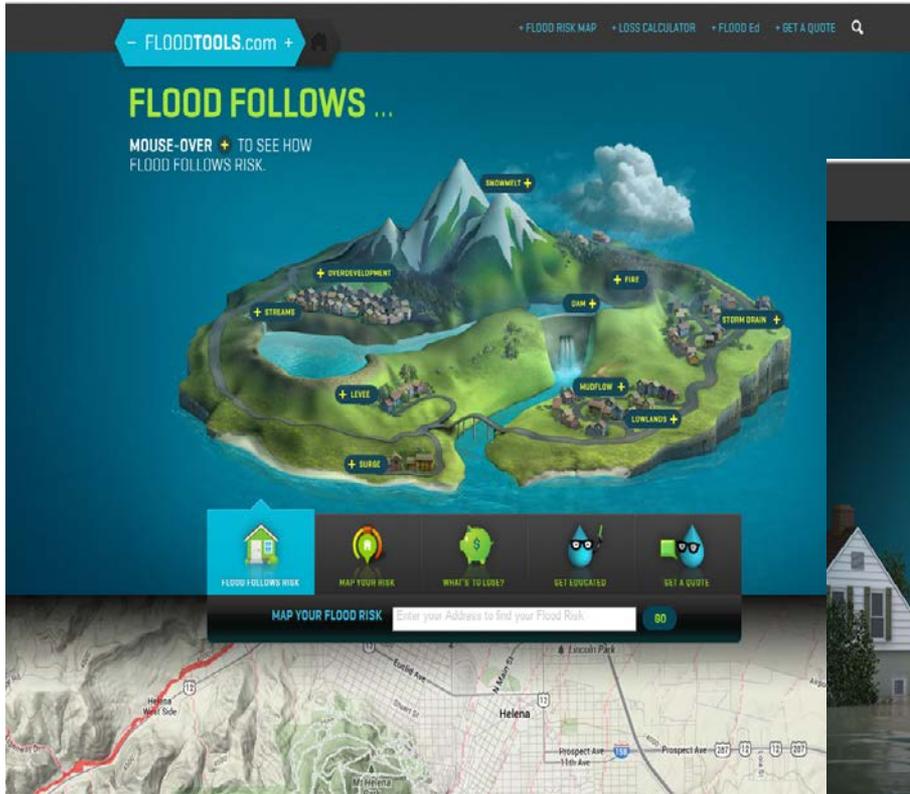
FIND AN AGENT

Estimates are for illustrative purposes only and should not be used to estimate any actual flood loss. A flood certified insurance adjuster making a room-by-room item-by-item, detailed estimate of covered flood damage is the only estimating method approved by and acceptable to the National Flood Insurance Program. These estimated costs are based on an average U.S. home of 1,000 and 2,000 square feet, built on a slab and with typical household items. Costs vary from State to State and home to home.



www.floodsmart.gov

Adhering to Floodplain Parameters: Insurance



www.floodtools.com

Adhering to Floodplain Parameters: Insurance

Community Rating System (CRS) Program

- Reduce/avoid flood damage to insurable property
- Strengthen/support the insurance aspects of the NFIP
- Foster comprehensive floodplain management



Adhering to Floodplain Parameters: Mitigation

**Community wide mitigation steps can assist
in lowering costs.**

**Rebuilding higher will lower risk and could
reduce premiums.**



**There are opportunities for state grants
which can distribute funds to help with
mitigation and rebuilding.**

Adhering to Floodplain Parameters: Mitigation

Three Ways to Help With Higher Premium Costs:

1. **New construction: build higher and meet local regulations**
2. **CRS Program – Lewis & Clark County is an 8 class**
3. **Mitigation**



Adhering to Floodplain Parameters: Mitigation

**MT Disaster & Emergency Services (DES)
Montana State Hazard Mitigation:**

<http://montanadma.org/montana-state-hazard-mitigation>

<http://letsmitigatemontana.com/>



Adhering to Floodplain Parameters: Mitigation



Adhering to Floodplain Parameters: Mitigation



Rossiter Elementary, 2011



Adhering to Floodplain Parameters: Mitigation



Helena Valley, 2011



Adhering to Floodplain Parameters: Mitigation



East Helena, 2011



Adhering to Floodplain Parameters: Mitigation



East Helena, 2011



Let's enable a better legacy and satisfied clients for the future.



Floodplain Property: Educating Your Clients on Both Sides of the Coin



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Local Ordinances

Communities participating in the National Flood Insurance Program (NFIP) are required to have current local floodplain management ordinances – includes State and FEMA minimum procedural and development standards.



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Local Ordinances

History

- **1968—Federal legislation establishes the NFIP**
- **1976—44 CFR 60.3 NFIP Minimum Standards**
- **1971 and amended in 1973 – Montana Flood Plain and Floodway Management Act**
- **1989 – Chapter 15, Montana Administrative Rules**



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Local Ordinances

- **Local ordinances require local notice and adoption**
- **DNRC must approve the local floodplain management ordinance before local adoption – 30 day review**



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Local Ordinances

- **FEMA Region VIII must approve before adoption – 30 day review**
- **Local ordinances are required to be updated within 6 months of a State or FEMA revision or update to the SFHA.**



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Local Ordinances

In general, an ordinance is a local law or statute that includes:

- **Administrative and enforcement procedures for implementation**
- **Specific requirements, regulations, and/or standards to support its intended purpose**
- **Local ordinances are tied to FEMA maps to ensure consistency**



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Local Ordinances

- An NFIP participating community can choose to adopt an ordinance that will meet the minimum requirements; OR
- Adopt an ordinance that will exceed these minimum requirements



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Local Ordinances

- **Why Does Montana Have Higher Standards?**



Disaster related damages are increasing unnecessarily

Protection of property rights

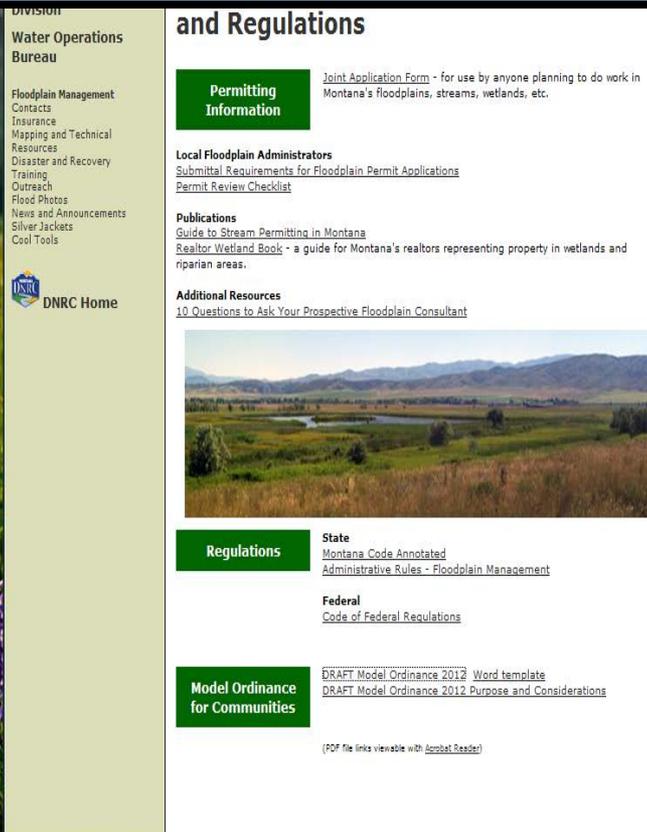
Floodplain Property: Educating Your Clients on Both Sides of the Coin: Local Ordinances

- **Why Does Montana Have Higher Standards?**



Some current approaches deal primarily with how to build in hazardous locations vs. how to minimize future damages

Floodplain Property: Educating Your Clients on Both Sides of the Coin: Local Ordinances



The screenshot displays the Montana Department of Natural Resources & Conservation (DNRC) website. The left sidebar includes the following navigation menu:

- DIVISION
- Water Operations Bureau
- Floodplain Management
- Contacts
- Insurance
- Mapping and Technical Resources
- Disaster and Recovery
- Training
- Outreach
- Flood Photos
- News and Announcements
- Silver Jackets
- Cool Tools

The main content area is titled "and Regulations" and features several sections:

- Permitting Information**: Includes a link for [Joint Application Form](#) - for use by anyone planning to do work in Montana's floodplains, streams, wetlands, etc.
- Local Floodplain Administrators**: Includes links for [Submittal Requirements for Floodplain Permit Applications](#) and [Permit Review Checklist](#).
- Publications**: Includes links for [Guide to Stream Permitting in Montana](#) and [Realtor Wetland Book](#) - a guide for Montana's realtors representing property in wetlands and riparian areas.
- Additional Resources**: Includes a link for [10 Questions to Ask Your Prospective Floodplain Consultant](#).
- Regulations**: Includes links for [State Montana Code Annotated](#) and [Administrative Rules - Floodplain Management](#).
- Model Ordinance for Communities**: Includes links for [DRAFT Model Ordinance 2012 Word template](#) and [DRAFT Model Ordinance 2012 Purpose and Considerations](#).

A small note at the bottom states: "(PDF file links viewable with [Acrobat Reader](#))".

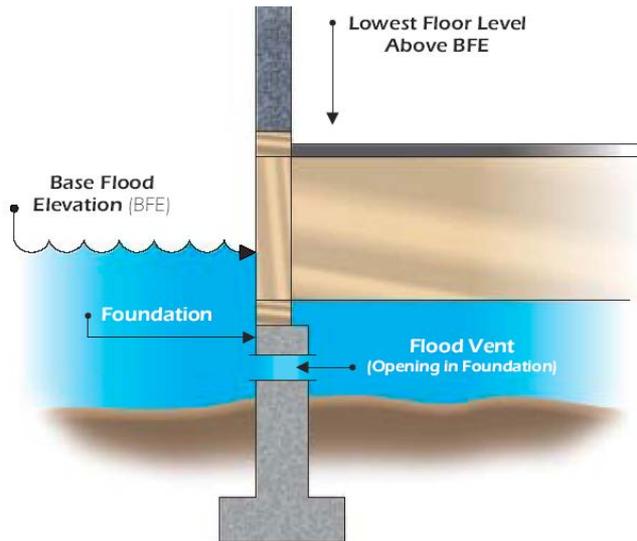
•DNRC Draft Model Floodplain Ordinance:

www.mtfloodplain.mt.gov



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Elevation Regulations

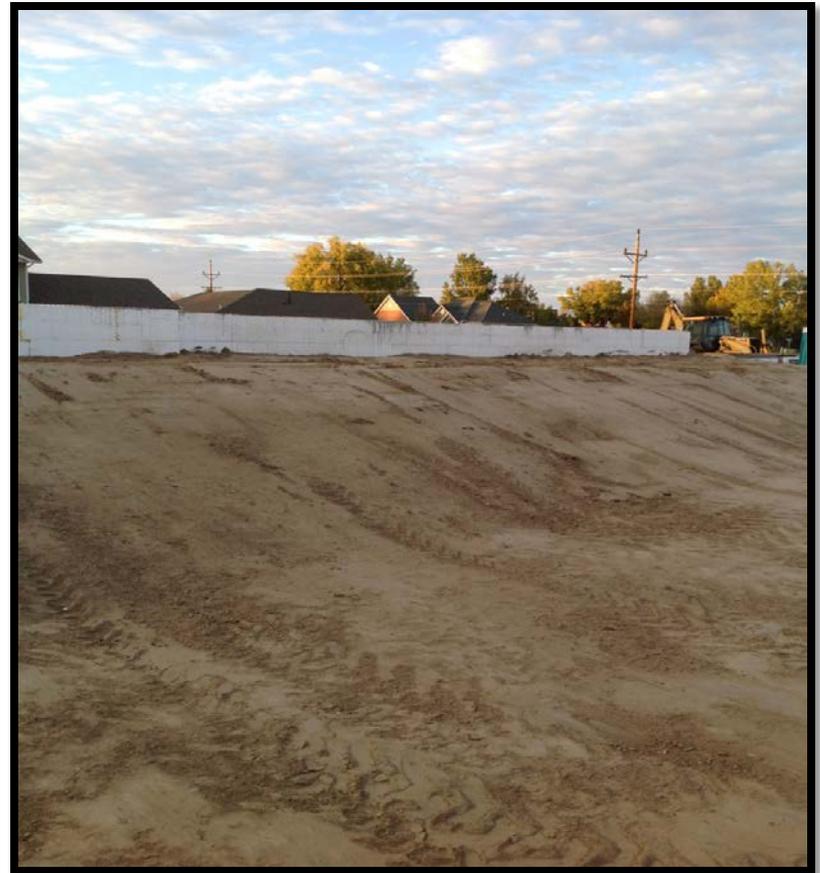
FREEBOARD:



- The NFIP minimum standards require buildings to be elevated to the BFE
- A freeboard standard requires a building to be elevated to 1, 2, or 3 feet or more above the BFE
- Administrative Rules of Montana (36.15.702) requires 2 feet of freeboard



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Elevating and Freeboard



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Elevating and Freeboard



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Elevating and Freeboard



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Elevating and Freeboard



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Elevating and Freeboard



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Elevation Certificates

FEMA Elevation Certificate



U.S. DEPARTMENT OF HOMELAND SECURITY FEDERAL EMERGENCY MANAGEMENT AGENCY National Flood Insurance Program		ELEVATION CERTIFICATE IMPORTANT: Follow the instructions on pages 1-9.		OMB No. 1660-0008 Expiration Date: July 31, 2015	
SECTION A – PROPERTY INFORMATION				FOR INSURANCE COMPANY USE	
A1. Building Owner's Name				Policy Number:	
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or (R), Route and Box No.				Company MISC Number	
City				State	
				ZIP Code	
A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.)					
A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.)					
A5. Latitude/Longitude: Lat. _____ Long. _____				Horizontal Datum: <input type="checkbox"/> NAD 1927 <input type="checkbox"/> NAD 1983	
A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.					
A7. Building Diagram Number _____					
A8. For a building with a crawlspace or enclosure(s):			A9. For a building with an attached garage:		
a) Square footage of crawlspace or enclosure(s) _____ sq ft			a) Square footage of attached garage _____ sq ft		
b) No. of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade _____			b) Number of permanent flood openings in the attached garage within 1.0 foot above adjacent grade _____		
c) Total net area of flood openings in A8b _____ sq in			c) Total net area of flood openings in A9b _____ sq in		
d) Engineered flood openings? <input type="checkbox"/> Yes <input type="checkbox"/> No			d) Engineered flood openings? <input type="checkbox"/> Yes <input type="checkbox"/> No		
SECTION B – FLOOD INSURANCE RATE MAP (FIRM) INFORMATION					
B1. NFP Community Name & Community Number		B2. County Name		B3. State	
B4. Map/Panel Number	B5. Suffix	B6. FIRM Index Date	B7. FIRM Panel Effective/Revised Date	B8. Flood Zone(s)	B9. Base Flood Elevation(s) (Zone No. use base flood depth)
B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9: <input type="checkbox"/> FIS Profile <input type="checkbox"/> FIRM <input type="checkbox"/> Community Determined <input type="checkbox"/> Other/Source _____					
B11. Indicate elevation datum used for BFE in Item B9: <input type="checkbox"/> NAVD 1929 <input type="checkbox"/> NAVD 1988 <input type="checkbox"/> Other/Source _____					
B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? <input type="checkbox"/> Yes <input type="checkbox"/> No Designation Date: ____/____/____ <input type="checkbox"/> CBRS <input type="checkbox"/> OPA					
SECTION C – BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)					
C1. Building elevations are based on: <input type="checkbox"/> Construction Drawings* <input type="checkbox"/> Building Under Construction* <input type="checkbox"/> Finished Construction *A new Elevation Certificate will be required when construction of the building is complete.					
C2. Elevations – Zones A1-A30, AE, AH, A (with BE), VE, V1-V30, V (with BE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO. Complete Items C2a-h below according to the building diagram specified in Item A7. In Puerto Rico only, enter meters. Benchmark Used: _____ Vertical Datum: _____					
Indicate elevation datum used for the elevations in Items a) through h) below: <input type="checkbox"/> NAVD 1929 <input type="checkbox"/> NAVD 1988 <input type="checkbox"/> Other/Source: _____ Datum used for building elevations must be the same as that used for the BFE. Check the measurement used.					
a) Top of bottom floor (including basement, crawlspace, or enclosure floor) _____ <input type="checkbox"/> feet <input type="checkbox"/> meters					
b) Top of the next higher floor _____ <input type="checkbox"/> feet <input type="checkbox"/> meters					
c) Bottom of the lowest horizontal structural member (V Zones only) _____ <input type="checkbox"/> feet <input type="checkbox"/> meters					
d) Attached garage (top of slab) _____ <input type="checkbox"/> feet <input type="checkbox"/> meters					
e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment and location in Comments) _____ <input type="checkbox"/> feet <input type="checkbox"/> meters					
f) Lowest adjacent (finished) grade next to building (LAG) _____ <input type="checkbox"/> feet <input type="checkbox"/> meters					
g) Highest adjacent (finished) grade next to building (HAG) _____ <input type="checkbox"/> feet <input type="checkbox"/> meters					
h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support _____ <input type="checkbox"/> feet <input type="checkbox"/> meters					
SECTION D – SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION					
This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to prepare the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S.C. Code Section 1001.					
<input type="checkbox"/> Check here if comments are provided on back of form. Were latitude and longitude in Section A provided by a licensed land surveyor? <input type="checkbox"/> Yes <input type="checkbox"/> No					
Certifier's Name		License Number		PLACE SEAL HERE	
Title		Company Name			
Address		City			
Signature		Date			
		State		ZIP Code	
		Telephone			

FEMA Form 086-G-33 (7/12) See reverse side for continuation. Replaces all previous editions.

Floodplain Property: Educating Your Clients on Both Sides of the Coin: Elevation Certificates

FEMA Elevation Certificate: What is it For?

- Important administrative tool of the NFIP
- Used by communities to document and verify building compliance with the community's local floodplain management ordinance



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Elevation Certificates

FEMA Elevation Certificate: What is it For?

- Used to determine the proper flood insurance rate
- Used to support map amendments and revisions



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Elevation Certificates

Who Certifies Building Elevations?

In order to be properly rated for flood insurance, a State-licensed professional is required to certify the elevation information on the Elevation Certificate

- Surveyor
- Engineer
- Architect



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Elevation Certificates

Who Needs an Elevation Certificate?

- Anyone who will apply for insurance on a building located in or adjacent to a SFHA
- Anyone proposing to construct a new structure, or substantially improve an existing structure, within a SFHA
- Needed for Letter of Map Change application



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Permitting Requirements

A floodplain permit is required for new construction or development within designated floodplains.

All required local, state, and federal permits must be approved before a floodplain application is considered complete.



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Permitting Requirements

The completed application form with original signatures should be routed to each applicable agency. The application should be signed by the applicant, the person responsible for the project, and the landowner.



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Permitting Requirements

Development activities are tied to the local community ordinance.

Per the NFIP, “development” is defined as any human-caused change to improved or unimproved real estate including but not limited to: buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Permitting Requirements

The Joint Application for Proposed Work in Streams, Lakes, & Wetlands in Montana – What is it?

One or more permits may be required for work on or near a Montana waterway.

Conservation Districts and other agencies developed a joint form intended to reduce the number of forms that must be completed and submitted to obtain necessary permits.



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Permitting Requirements

The Joint Application for Proposed Work in Streams, Lakes, & Wetlands in Montana –
What is it?

Available online:

<http://dnrc.mt.gov/Permits/StreamPermitting/JointApplication.asp>



Floodplain Property: Educating Your Clients on Both Sides of the Coin: Permitting Requirements

§ Conservation Districts – 310 permits

§ MT Fish, Wildlife, and Parks – SP 124 permits

§ Community Floodplain Administrators – floodplain development permits

§ US Army Corps of Engineers – Section 404/Section 10 permits

§ MT Department of Environmental Quality – 318 (turbidity) Authorizations



Know Your Role: Protect Yourself as a Realtor



Know Your Role: Protect Yourself as a Realtor

Why does this matter to Realtors?



Know Your Role: Protect Yourself as a Realtor

Potential Clients Need You to Be Informed – this profession has so many challenges as is; circumvent future problems by being equipped to educate your clients and avoid disclosure liability



Private property rights are at the forefront in Montana – development in the floodplain comes with a higher level of personal responsibility.



Know Your Role: Protect Yourself as a Realtor

From the National Association of REALTORS[®] website: applicable in that clients will expect you to dispel their misconceptions

Surprising Facts About Flood Insurance

1. Hurricanes, not floods, are the number one natural disaster and cause the biggest economic losses in the state.



Floods are the #1 natural disaster in the United States.



Know Your Role: Protect Yourself as a Realtor

From the National Association of REALTORS[®] website:
applicable in that clients will expect you to dispel their
misconceptions

Surprising Facts About Flood Insurance

2. Everyone who lives in a flood zone has to buy flood
insurance.



Know Your Role: Protect Yourself as a Realtor

From the National Association of REALTORS[®] website:
applicable in that clients will expect you to dispel their
misconceptions

Surprising Facts About Flood Insurance

3. Flood insurance is always expensive.



Know Your Role: Protect Yourself as a Realtor

From the National Association of REALTORS[®] website: applicable in that clients will expect you to dispel their misconceptions

Surprising Facts About Flood Insurance

4. Taxpayers are footing the bill for federal flood insurance.

- The NFIP doesn't spend any tax dollars
- The government sets the premium rates high enough to cover flood insurance claims and operating expenses in an average historical loss year.
- The program can borrow money from the US Treasury when losses are heavy, but has to pay back those loans with interest



Know Your Role: Protect Yourself as a Realtor

From the National Association of REALTORS[®] website: applicable in that clients will expect you to dispel their misconceptions

Surprising Facts About Flood Insurance

5. Companies sell flood insurance, so the government doesn't need to.

- Private flood insurance is very expensive and only a handful of companies offer excess flood insurance to homeowners with property valued at more than \$250,000
- The NFIP is the only program offering low and middle income homeowners flood insurance



Know Your Role: Protect Yourself as a Realtor

From the National Association of REALTORS[®] website: applicable in that clients will expect you to dispel their misconceptions

Surprising Facts About Flood Insurance

6. People who own beachfront property use flood insurance most
 - The majority of properties insured through the NFIP are inland – many beach areas are off limits to the NFIP because the Coastal Barrier Resources Act band federal support of beachfront properties



Know Your Role: Protect Yourself as a Realtor

From the National Association of REALTORS[®] website: applicable in that clients will expect you to dispel their misconceptions

Surprising Facts About Flood Insurance

Nearly 20% of flood insurance claims come from moderate-to-low risk areas.

7. The flood insurance program subsidizes beach front homeowners
- Midwestern states are at the top of the list of states with the most number of years in which claims exceeded premiums: Illinois, Iowa, Michigan, Ohio, and North Dakota to name a few



Flooding In Montana: What's the Big Deal?



Prickly Pear
Creek, 2011

Lewis and Clark
County



Flooding In Montana: What's the Big Deal?



Lewis and Clark
County, 2011

Ten Mile Creek



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Montana Law
Enforcement
Academy

Flooding In Montana: What's the Big Deal?

Lewis and Clark County, 2011

Public Works Damage: \$330,000

**Homes and Personal Property:
\$263,000**

174 Flooded Basements

Over 100,000 Sand Bags



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Flooding In Montana: What's the Big Deal?



**Gallatin County,
2008**

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**Gallatin County,
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Flooding In Montana: What's the Big Deal?



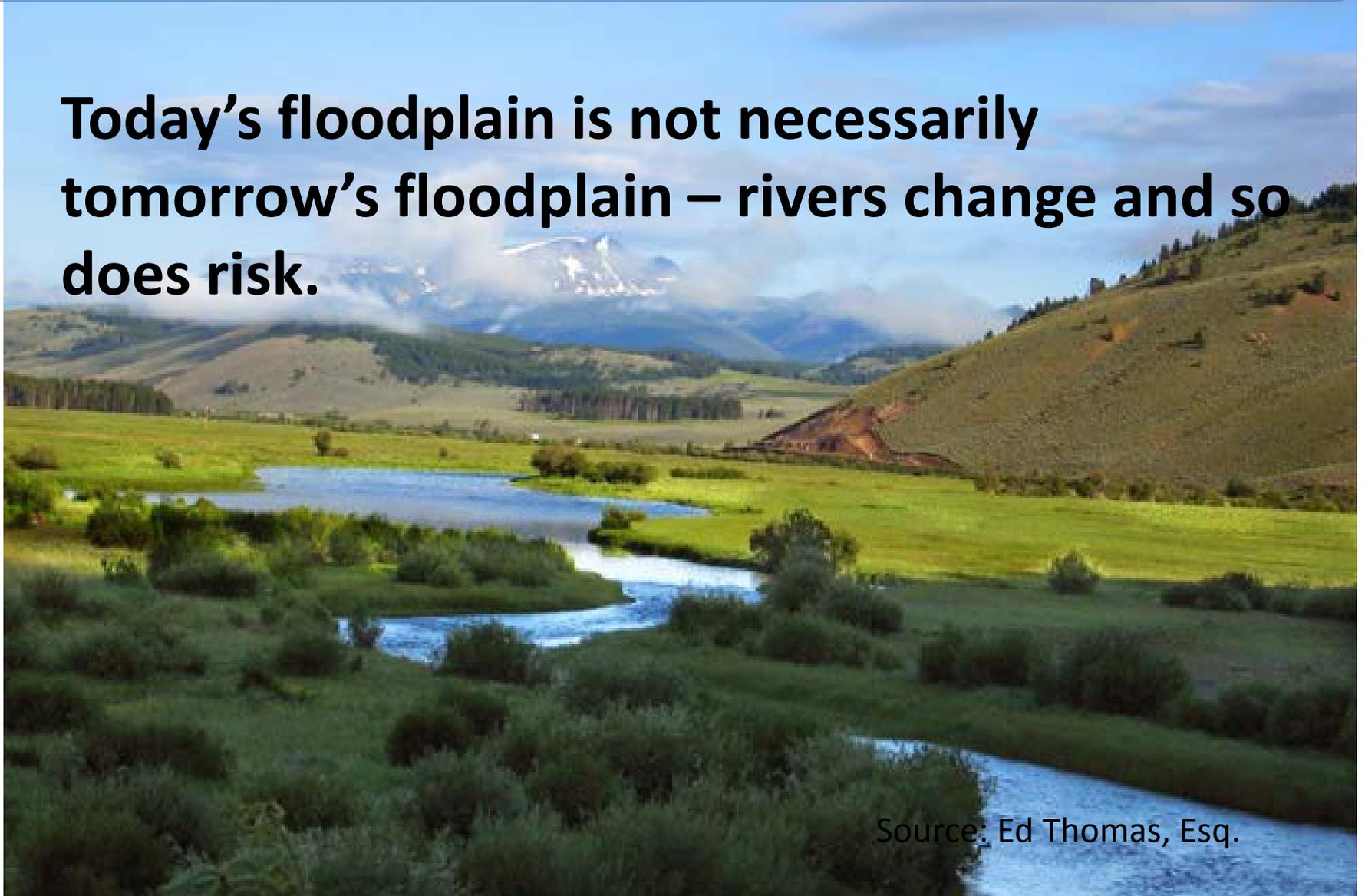
Flooding In Montana: What's the Big Deal?

**NO ADVERSE IMPACT
(NAI): Preserving Water
Resources and
Protecting Property
Rights**



Flooding In Montana: What's the Big Deal?

Today's floodplain is not necessarily tomorrow's floodplain – rivers change and so does risk.



Source: Ed Thomas, Esq.

No Adverse Impact Floodplain Management:

An approach that ensures the action of any property owner, public or private, does not adversely impact the property and rights of others.





No Adverse Impact

- **Concept/policy/strategy that broadens the focus from the built environment to include how changes to the built environment potentially impact other properties.**
- **NAI broadens property rights by protecting the property rights of those that would be adversely impacted by the actions of others.**

Following the Principle of NAI:

RESULTS IN:

- Protection of the Property Rights of ALL
- Legally, Prevention of Harm is Treated Very Differently than Making the Community a Better Place
- Prevention of Harm to the Public is Accorded Enormous Deference by the Courts



Floods and Litigation

- When a property is damaged by the action of others, who pays?
- This is a fundamental question of Law.



Source: Ed Thomas, Esq.

Floods and Litigation

Four ways to Rebuild Following Damage:

1. **SELF HELP:** Loans-Savings-Charity-Neighbors
2. **INSURANCE:** Disaster relief is usually a combination of insurance and self help
3. **MITIGATION**
4. **LITIGATION**



Source: Ed Thomas, Esq.

Floods and Litigation

Fernley, Nevada

“Class action lawsuit updated in Fernley flood case”

- **“The lawsuit names the Truckee-Carson Irrigation District, Lyon County, the City of Fernley, and companies that built and sold homes in the area flooded when a storm swollen irrigation canal ruptured.”**



Nevada Appeal, 1/26/2008

Source: Ed Thomas, Esq.

Floods and Litigation

Lincoln, Nebraska

Developer, engineer, and **realtor** settle with homeowners; City at first held liable; then wins in Nebraska Supreme Court– City “owed no duty to homeowners”



Photo: Lincoln Star
Journal



Source: Ed Thomas, Esq.

Floods and Litigation

- **Property Rights: Yes**
- **Landowner does NOT have all rights under the law**
 - **No RIGHT to be a Nuisance**
 - **No RIGHT to Violate the Property Rights of Others**
 - **No RIGHT to trespass**
 - **No RIGHT to be negligent**
 - **No RIGHT to Violate surface water law, floodplain management regulations, or riparian laws**
 - **No RIGHT to violate “Public Trust”**

Source: Ed Thomas, Esq.



Floods and Litigation

- Public entities do not have the Right to do just anything either!
- No RIGHT to use Public Office for anything other than serving the public
 - No RIGHT to abuse the public
- No RIGHT to use regulation to steal from a landowner



Floods and Litigation

Governmental Rights and Duties to Manage Development

- Right to regulate to prevent harm
- Affirmative duty to regulate to prevent harm



Source: Ed Thomas, Esq.

Floods and Litigation

Take Away Message:

1. Many areas can flood
2. Uninsured victims will likely sue, if they can find someone to blame (they will find someone)
3. Fair harm prevention regulation helps everyone



Floods and Litigation

Message for those involved in Community Development.

Fundamental rules of development, per
Federal Law, envision housing and
development which is:

- Decent
- Safe
- Sanitary
- Affordable

Source: Ed Thomas, Esq.



Floods and Litigation

Flooded Development Fails that Vision



- Indecent
- Unsafe
- Unsanitary
- Unaffordable – by flood victims, their communities, the State, and by the taxpayers of this country

Source: Ed Thomas, Esq.

Questions?

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