

# Montana

## FLOODPLAIN ADMINISTRATOR DUTIES

### *BEFORE* THE FLOOD

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***Fall to mid-April*** – the Floodplain Administrator should use this time to prepare for potential spring flooding during the *non-disaster season* by understanding Substantial Damage responsibilities in the event of flooding due to snowmelt, wildfire burn areas, ice jams, or a rain-on-snow event similar to the flooding disaster in 2011. Highlights of what you need to know.

**Floodplain Ordinance.** Review your community’s floodplain ordinance for Substantial Damage (SD) definition and other applicable ordinance requirements (such as permitting, appeals, or disaster recovery). Be aware that:

- SD does not require a Major Presidential Disaster Declaration to be required/enforced.
- SD only applies to buildings in the Special Flood Hazard Area (SFHA).
- SD can be caused by any source – flood, wind, structure fire, wildfire, tornado, earthquake, ice floes or icebergs, etc.
- SD can apply to any building in the SFHA – regardless of insurance coverage, occupancy type, or privately or publicly owned.
- SD applies to all occupancy types (residential – single family, 2-4 family buildings, condos, townhouses, and other residential uses, and non-residential).
  - In Montana, treat Mixed-Use buildings/properties as residential for floodplain permitting and enforcement. (Model ordinance – definitions)
- **In Montana, Substantial Damage also applies to buildings/properties in the SFHA removed from Mandatory Purchase (of flood insurance) through the LOMA/LOMR-F process.**
- Ensure your ordinance addresses how a property owner can appeal a Substantial Damage Determination issued by the Floodplain Administrator (FPA). If it does not, or it’s not clear, now is the time to get that clarified, especially if it takes 1-3 months to pass/amend an ordinance in your community.
- *Refer to your community ordinance; link to Montana state model ordinance:*  
[http://dnrc.mt.gov/divisions/water/operations/floodplain-managemen/permitting-and-regulations/model\\_regulations\\_2014\\_rev2017.pdf](http://dnrc.mt.gov/divisions/water/operations/floodplain-managemen/permitting-and-regulations/model_regulations_2014_rev2017.pdf)

**Floodplain Emergency Notification.** In Montana, any emergency actions for flood fighting purposes taken in the Special Flood Hazard Area requires the landowner (private or community owned) to complete a Floodplain Emergency (Action) Notification within 5 days of the emergency action. This form is required to be used by a landowner or their representative to notify the Floodplain Administrator of projects undertaken during an emergency to safeguard life or structures. A person or entity who has undertaken an emergency action may be required to modify or remove the project in order to meet the permit requirements.

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---

- ***The notification requirement applies to private landowners to protect their property and community owned property including emergency actions requested, initiated, or taken on behalf of the community, for the safety or protection of lives and property of the community as a whole. These actions may be taken by other entities such as the County, State, or a Federal Agency like the U.S. Army Corps of Engineers.***
  - Federal agencies like the U.S. Army Corps of Engineers generally have to be requested to perform floodfighting actions protecting the community and a Memorandum of Agreement/Understanding is developed outlining what work will be done. The community will need to determine before the flood who is responsible for completing the Floodplain Emergency (Action) Notification in addition to following up with a floodplain development permit.
- Note that the *Sample Floodplain Emergency (Action) Notification* **does not** address the time limit for removal of the emergency action (such as sandbagging) or that the materials (such as sand and sandbags) must be removed from the SFHA within a certain time period from the end of the event (that might be July or August when water levels drop to normal stage - i.e.; below flood stage).
  - If emergency actions are taken to provide protection due to imminent flooding, ensure the Floodplain Emergency (Action) Notification states there are **temporary** actions taken for the current flood event.
  - The community may choose to issue develop a Sand/Sandbagging notice stating that materials placed in the Special Flood Hazard Areas must be removed and properly disposed of within a certain time period (such as 30 days) after the flood event or a floodplain development permit will be required. The notice/brochure can be placed at manned or unmanned sandbagging stations
- Will community waive the fee for floodplain permits related to emergency actions for property owners?
- If the emergency actions are more permanent in nature and/or are not removed within 30 days following the flood event, a floodplain permit is needed. A community cannot use the variance process to exempt the emergency action from a floodplain permit or for meeting the floodplain program requirements (it does not meet the minimum thresholds for a variance). The need for a Letter of Map Revision (LOMR) should also be evaluated and documented (and may apply in Approximate A zones).
- *Sample form of Floodplain Emergency Notification:*  
[http://dnrc.mt.gov/divisions/water/operations/docs/floodplain/permitting/emergency\\_notification.pdf](http://dnrc.mt.gov/divisions/water/operations/docs/floodplain/permitting/emergency_notification.pdf)

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**Floodplain Maps.** Before the flood, review floodplain maps and tour floodplain areas to familiarize yourself (and maybe notice unpermitted activity!) with buildings/properties/areas/ subdivisions in the SFHA.

- Find electronic versions of your maps at the FEMA Map Service Center (<https://msc.fema.gov/portal/>) and the National Flood Hazard Layer (<https://www.fema.gov/national-flood-hazard-layer-nfhl>) for those communities whose maps have been modernized.

**Montana Cadastral website.** Before the flood, consult the *Montana Cadastral* website ([www.cadastral.mt.gov](http://www.cadastral.mt.gov)) to review existing building stock in the SFHA – take particular note of age of building and foundation type.

- Ideally, write down addresses or name of subdivisions that are located in the Special Flood Hazard Area. Especially for subdivisions, write a quick summary of the occupancy and type of foundation(s) prevalent and general age of structures. This will save you time and headache during a large-scale event such as a flood.

**Emergency Manager Coordination.** Before the flood, coordinate with local Emergency Manager regarding local floodplain ordinance requirements (such as the need for initial inspections during or immediately following the event).

- Be prepared to show the floodplain maps, identify pertinent sections of the floodplain ordinance, and discuss need/requirements for Floodplain Emergency (Action) Notification and Sand/Sandbagging Notice. Highlight that the Floodplain Emergency (Action) Notification requirement also applies to community based actions.
- What resources will the FPA need – boat or high clearance vehicle, credentials to enter restricted areas, etc. to visually determine need for Substantial Damage Determinations for buildings in the Special Flood Hazard Area.
- Can/will sand and sandbags be available to residents?
  - Be aware that NFIP policyholders can claim up to \$1,000 for sandbagging and other emergency measures **if** the flood has been declared by community officials (like the Emergency Manager) to be imminent.
- Coordinate with EM and Environmental Health department regarding how (potentially) SD building can be tagged prior to residents returning for SD evaluation and possible temporary occupancy of SD building.

# Montana

## FLOODPLAIN ADMINISTRATOR DUTIES

### *BEFORE* THE FLOOD

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**Property Owner Notification.** Before the flood, determine how property owners will be notified of (potential) Substantial Damage and permitting requirements based on visual inspection.

- **If property owner refuses to allow the building to be inspected for Substantial Damage,** then the property owner needs to provide (signed) proof with a Licensed General Contractor estimate of the damage along with either the tax assessment value or appraised value (before the event) by a Licensed Real Estate Appraiser of the structure only. The calculation cannot include the value of the land. *If no inspection and no proof, then consider the building to be Substantially Damaged and administer/enforce accordingly.*
- Possible time gap here – there will likely be a difference in timing of property owner notification of potential SD and occupancy and/or repairs to building. There is definitely a time gap between formal SD determination by the FPA and subsequent property owner notification and occupancy and/or repairs made during this period. The Floodplain Administrator and community officials should address this (hint: develop policy/procedure for Temporary Occupancy of (Potentially) Substantially Damaged Structures).
- Sample property owner notification form:  
[http://dnrc.mt.gov/divisions/water/operations/docs/floodplain/disaster/substantial\\_damage-substantial\\_improvement\\_document.pdf](http://dnrc.mt.gov/divisions/water/operations/docs/floodplain/disaster/substantial_damage-substantial_improvement_document.pdf)

### **Temporary Occupancy of Substantially Damaged Structures after a Disaster.**

- A community can choose to issue temporary occupancy permit (a floodplain permit can reference building permit, as applicable), but the community should have such a policy and procedure in place before the disaster. Now would be the time to discuss with community leaders.
- FEMA has produced a Fact Sheet to help Floodplain Administrators and Building Code Officials. <https://www.fema.gov/media-library-data/1478021282803-37a87989fbd0dbdde0a4ef90f6d5720b/FSTempOccupancySubstantiallyDamagedStructuresAfterDisaster508.pdf>. Buildings determined to be Substantially Damaged are required by the floodplain ordinance to be elevated. This is a requirement for a community participating in the NFIP to enforce. The temporary occupancy permit would need to clearly state the building is/potentially determined to be Substantially Damaged, and any/all repairs or restoration efforts apply towards the Substantial Damage Determination and cannot be permanent in nature. The permit (whether a stand-alone floodplain permit or in conjunction with a building permit) will be REQUIRED to identify the temporary occupancy permit expiration and whether (or how many) extensions of the temporary occupancy permit are allowed.

If there is no building department in your community and you are unsure how you can require/enforce a temporary occupancy permit, you need to reach out to DNRC or FEMA for assistance, in addition to consulting with your community attorney (and elected officials).

# Montana

## FLOODPLAIN ADMINISTRATOR DUTIES

### *BEFORE* THE FLOOD

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**Community Outreach**. Before the flood, know how your community will utilize media (newspaper/radio/TV), social media, community meetings, or community website to:

- ◆ promote awareness of flood risk (it's not strictly confined to SFHA shown on FEMA map),
- ◆ availability of flood insurance (30-day wait), and
- ◆ Floodplain Emergency Action Notification and floodplain development permit requirements.

Messages that should be shared with the community and its residents include:

- Areas in Montana following the historic 2017 *wildfire* season should be especially vigilant and promote awareness/insurance since FEMA maps may not capture the areas now prone to flooding/mudflows as a result of denuding of the land from wildfires.  
*This risk may be present for several years until vegetation re-establishes itself.*
- For properties in the Special Flood Hazard Area that are older construction and/or newer buildings brought into the SFHA as a result of a new map, the risk of flooding is considered high. ***Without mitigation measures such as elevating, the best thing a property owner can do is to buy insurance to protect their financial investment.*** Flood insurance, like any insurance, protects a policyholder from a catastrophic financial loss. Key to the benefits of carrying NFIP flood insurance is to know the following:
  - If damages occur as a result of flooding, as long as 2 acres of land or 2 properties are inundated by floodwaters or mudflow, then a policyholder can make a claim.
  - A Major Disaster Declaration by the President is not necessary to file a claim.
  - Flood insurance is available to anyone – property owner, renter, business, or not-for-profit – in a NFIP participating community.
    - If a building is located outside the Special Flood Hazard Areas, most policies are inexpensive.
  - For most policies – there is a 30-day wait for the policy to become effective. If flood damages occur during the 30-day wait, the policyholder is not eligible to make a claim.
  - A flood insurance policyholder is still eligible to request assistance following a disaster declaration if Individual Assistance is part of the declaration.
    - When Individual Assistance is available, the average amount of the grant (tax free; no need to pay back) is \$7,500.
    - Most money for repair or replacement of damaged buildings/contents is from the Small Business Administration low-interest disaster loans – not from FEMA's Individual Assistance Program.
  - For those buildings in the Special Flood Hazard Area and experience flooding, the Floodplain Administrator may need to determine if your building is Substantially Damaged. Until notification by the Floodplain Administrator, any repairs should be temporary in nature and will count towards the Substantial Damage Determination.

# Montana

## FLOODPLAIN ADMINISTRATOR DUTIES

### *BEFORE* THE FLOOD

---

- Alert community about time gap between property owner notification of potential SD and occupancy and/or repairs to building, and what property owner needs to know.
- The Small Business Administration (SBA) can provide low-interest loans with or without a Major disaster declaration.
  - **SBA requires flood insurance, regardless of flood zone, if the damages are a result of flooding (i.e. overland sheet flooding, flooding as a result of snowmelt, mudflows from wildfire burn areas).**
  - The SBA loan is in addition to any other loan payments you may have, including your home mortgage. A flood insurance policy can protect you and cover most damages without a second loan.

**Documentation.** Documentation of the event through photos and data collection is not just important for the floodplain administrator for program administration and enforcement, but also for historical purposes through understanding how the event impacted the community. This information can be utilized to allow the community and its residents to build resiliency and reduce adverse impacts from future events. Coordination with the community Emergency Manager may be needed and is encouraged.

- Know what information should be collected:
  - Measuring High Water Marks.
  - Pictures – even from a cell a phone!
  - Social Media Picture Collections (Twitter, Facebook, Instagram, etc.)
  - Traditional Media – newspapers, TV news clips, etc.
  - Aerial Photos.
  - USGS Rapid Deployment Gages (RDGs) peak flow information, if implemented.
- **Before the flood, find out what the community resources are available to collect and document the impacts of the flood event.**
  - **Are there agreements with local surveyors and engineers/companies for collection of high water marks?**
    - **Sometimes the U.S. Army Corps of Engineers or the USGS can help collect this information, but typically only in large to very large flood events.**
  - **What Department is typically in charge of collecting information – Road Department, Planners, or Emergency Manager?**
  - **Where is the data housed – is there a process for submitting and/or a repository?**
- Know that the community should strive to capture information from when the water was at its highest or most damage occurred.
  - Is there a form to tag all collections with location, time, date, and who provided/took the data/photos? Especially important for social media submissions.
  - Is there an agreement in place with the County Emergency Manager or MT DES for resource requests if the community capability is exceeded for data collection?