

**KOOTENAI COUNTY
FLOOD DAMAGE PREVENTION ORDINANCE NO. 441
CASE NO. OA-145-10**

AN ORDINANCE OF KOOTENAI COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, RELATING TO FLOOD DAMAGE PREVENTION PROVIDING FOR TITLE, AUTHORITY, APPLICABILITY, PURPOSE, METHODS OF REDUCING FLOOD LOSSES, AND BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD; PROVIDING DEFINITIONS OF TERMS; PROVIDING FOR FLOOD HAZARD REDUCTION VIA REGULATION OF DEVELOPMENT IN AND ALTERATION OF FLOODPLAINS AND FLOODWAYS; PROVIDING FOR ENFORCEMENT AND ADMINISTRATION; PROVIDING PROCEDURES FOR VARIANCES AND APPEALS; PROVIDING FOR AMENDMENTS; REPEALING ALL PREVIOUSLY ENACTED ORDINANCES RELATED TO FLOOD DAMAGE PREVENTION, INCLUDING, BUT NOT LIMITED TO, ORDINANCE NOS. 285, 311, 333, AND 381; PROVIDING FOR SEVERABILITY; PROVIDING THAT ADOPTION OF THIS ORDINANCE SHALL HAVE NO EFFECT ON PROSECUTIONS MADE UNDER ANY PREVIOUSLY EFFECTIVE ORDINANCE; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED by the Board of County Commissioners of Kootenai County, Idaho, as follows:

SECTION 1. That Title 11, Chapter 1, Kootenai County Code, shall be, and is hereby repealed.

SECTION 2. That Title 11, Kootenai County Code, be, and the same is hereby amended by the addition thereto of a **NEW CHAPTER**, to be known and designated as Title 11, Chapter 1, Kootenai County Code, and to read as follows:

11-1-1: GENERAL PROVISIONS:

- A. Title. This chapter shall be known as the "KOOTENAI COUNTY FLOOD DAMAGE PREVENTION ORDINANCE."
- B. Authority. In addition to the general authorities set forth in section 1-1-2 of this code, these regulations are authorized pursuant to Idaho Code §§46-1020 through 46-1024.
- C. Applicability.
 - 1. The provisions of this chapter shall apply to all of the unincorporated area of Kootenai County.
 - 2. Basis for Area of Special Flood Hazard. The Special Flood Hazard Areas identified by FEMA in its Flood Insurance Study (FIS) for Kootenai County, Idaho, and Incorporated Areas, dated May 3, 2010, with accompanying Flood Insurance Rate Maps (FIRM) and/or Digital Flood Insurance Rate Maps (DFIRM), and other supporting data, are

hereby adopted by reference and declared to be a part of this chapter. The FIS and the FIRM are on file at the Kootenai County Building and Planning Department. Additional areas of special flood hazard may be designated in accordance with the procedures set forth in subsection 11-1-4(B)(3) of this chapter.

D. Statement of Purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. To protect human life and health;
2. To minimize expenditure of public money and costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
7. To ensure that potential buyers are notified that property is in an area of special flood hazard;
8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and
9. To meet Federal requirements so Kootenai County may participate in the National Flood Insurance Program.

E. Methods of Reducing Flood Losses. In order to accomplish its purposes, this chapter includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
4. Controlling filling, grading, dredging, and other development which may increase flood damage;
5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazard in other areas; and

6. Requiring adherence to the Kootenai County Site Disturbance Ordinance, Title 11, Chapter 2 of this code, for erosion and sediment control and storm water management.

11-1-2: DEFINITIONS OF TERMS: Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. Words in the present tense include the future tense; words in the singular number include the plural, and words in the plural number include the singular. The word "shall" is mandatory and not discretionary, and the word "may" is permissive.

ACCESSORY LIVING UNIT. A building or portion(s) of a building, located on the same lot, but separate from the principal dwelling with at least 220 square feet of habitable space, with plumbing for a sink, toilet or bathing facilities and which does not meet the definition of a storage unit.

ADMINISTRATOR. The Director is hereby designated as being responsible for processing and coordinating the provisions of this Chapter.

APPEAL. A request for a review of the Administrator's interpretation of any provision of this chapter.

AREA OF SPECIAL FLOOD HAZARD. This is the 100-year floodplain subject to a one-percent or greater chance of flooding any given year. The boundaries of the Area of Special Flood Hazard shall include all areas designated as Zone A or AE on the FIRM, and shall also include all areas designated in accordance with the procedures set forth in subsection 11-1-4(B)(3) of this chapter based on the greatest flood of record and/or the best available data available from FEMA or other authoritative sources.

BASE FLOOD. Also referred to as the "100-year flood." This is the flood having a one percent chance of being equaled or exceeded in any given year. Designation on maps always includes the letters A or V.

BASE FLOOD ELEVATION. Height of floodwaters during discharge of the base flood as indicated on the FIRM, or as designated in accordance with the procedures set forth in section 11-1-4(B)(3) of this chapter based on the greatest flood of record and/or the best available data available from FEMA or other authoritative sources, whichever is higher. The base flood elevation is measured in feet using the North American Vertical Datum of 1988 (NAVD88).

BASEMENT. Any area of a structure, including a crawl space, having a floor, finished or unfinished, below grade (ground level) on all sides. National Flood Insurance Program (NFIP) regulations do not permit a building in an area of special flood hazard to have a basement below the base flood elevation.

BOARD. The Board of County Commissioners of Kootenai County, Idaho.

CRAWL SPACE. The area inside an enclosed foundation area between the top of the grade and the lowest horizontal structural member. Crawl space height in areas of special flood hazard cannot be more than four (4) feet and a crawl space cannot be below grade on all four sides.

DEQ. The Idaho Department of Environmental Quality.

DEPARTMENT. The Kootenai County Building and Planning Department.

DEVELOPMENT. Any manmade change to improved or unimproved property, including but not limited to structures, mining, dredging, filling, grading, paving, excavation, drilling operations, and permanent storage of equipment or materials located within the area of special flood hazard.

DIRECTOR. The Director of the Kootenai County Building and Planning Department, or his or her designee.

ELEVATION CERTIFICATE. A form supplied by FEMA which is used to document important elevation information for buildings within areas of special flood hazard.

ENCLOSED FOUNDATION AREA. Any area consisting of three or more solid foundation walls that create an enclosed area below the lowest floor.

FEMA. The Federal Emergency Management Agency.

FLOOD OR FLOODING. General and temporary condition of partial or complete inundation of normally dry areas from:

- A. The overflow of inland water, and/or
- B. The unusual and rapid accumulation of runoff or surface waters from any source.

FLOOD INSURANCE RATE MAP (FIRM). The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazard and the risk premium zones applicable to the County. This term also includes Digital Flood Insurance Rate Maps (DFIRM).

FLOOD INSURANCE STUDY (FIS). The Flood Insurance Study for Kootenai County, Idaho, and Incorporated Areas, dated May 3, 2010, with accompanying Flood Insurance Rate Maps (FIRM) and/or Digital Flood Insurance Rate Maps (DFIRM), and other supporting data. The FIS includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

FLOOD PROTECTION ELEVATION. An elevation corresponding to the elevation of the base flood (one hundred year flood) plus any increased floor elevation attributable to floodway encroachment, plus any required freeboard. In Kootenai County, the Flood Protection Elevation shall be the base flood plus three (3) feet.

FLOOD RESISTANT MATERIALS. Any building materials capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage. Flood resistant materials are outlined in FEMA publication FIA-TB-2.

FLOODWAY. The channel of a river or stream and those portions of the floodplain adjoining the channel required to discharge and store the floodwater or flood flows associated with the regulatory flood.

GRADE. Ground level.

LOWEST FLOOR. The lowest floor of the lowest enclosed area (including basement) used for living purposes, which includes working, storage, cooking and eating, or recreation, or any combination thereof. This includes any floor that could be converted to such a use including a basement or crawl space. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a structure's lowest floor. A crawl space is not considered a building's lowest floor, provided that such enclosure is less than four (4) feet in height, and is at or above grade (ground level) on at least one side. The height of the lowest floor helps determine the flood insurance premium for a building, home or business.

LOWEST HORIZONTAL STRUCTURAL MEMBER. The lowest horizontal structural member shall be considered to be the bottom of the lowest floor joist of the lowest floor, the bottom of the concrete slab for slab on grade structures, or similar structural floor member, whichever is lowest.

MANUFACTURED HOME. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" includes both "manufactured homes" and "mobile homes" as defined by the U.S. Department of Housing and Urban Development, but does not include "park model" trailers, recreational vehicles, or other similar vehicles.

NATURAL GRADE. The natural state of the land before any manmade alterations, including but not limited to, dredging, filling, excavation, or drilling operations.

NEW CONSTRUCTION. For purpose of this chapter, new construction means any improvement to any property, including, but not limited to, new structures and improvements to existing structures.

NO-RISE CERTIFICATION. A certification by a licensed engineer that a project will not cause a set increase (0.00 feet) in flood heights.

NONRESIDENTIAL STRUCTURE. Any structure which is not used for residential purposes or which is not considered accessory to a residential use (garage, barn, etc.). Examples of nonresidential structures include, but are not limited to, commercial, industrial, and community buildings.

PHD. Panhandle Health District No. 1.

PUBLIC WATER SYSTEM. A water system serving 10 or more residences or 25 or more people, more than 60 days per year.

RECREATIONAL VEHICLE. A vehicle which is:

- A. Built on a single chassis;
- B. 400 square feet or less when measured at the largest horizontal projection;
- C. Designed to be self-propelled or permanently towable 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 FLOOD. Is a flood determined to be representative of large floods known to have occurred in Idaho and which may be expected to occur on a particular stream because of like characteristics. The regulatory flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the watershed. In inland areas, the flood frequency of the regulatory flood is once in every one hundred (100) years; this means that in any given year there is a one percent (1%) chance that a regulatory flood may occur or be exceeded.

RESIDENTIAL ACCESSORY STRUCTURE. Separate structures which are accessory to and detached from a residential structure, including but not limited to, a garage, barn, or storage shed. Residential accessory structures do not include accessory living units.

RESIDENTIAL STRUCTURE. Any building that contains living facilities, including provisions for sleeping, eating, cooking and sanitation. This definition includes accessory living units.

SANITARY SEWAGE DISPOSAL SYSTEM. The components that make up a sewage system, including septic tanks, pumps, lines, and drain fields.

START OF CONSTRUCTION. Includes substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

STRUCTURE. A walled and roofed building, including a gas or liquid storage tank that is principally above ground.

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 of its market value before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term also includes structures which have incurred “substantial damage,” regardless of the type or cost of the actual repair work performed. The market value of the structure shall be either (1) the market value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring.

Market value of the existing structure shall be considered to be the most current value of the structure as determined by the Office of the Kootenai County Assessor, or in a certified appraisal from a licensed appraiser. The value of the proposed work shall be determined using the Department’s valuation as figured in establishing building permit fees. Improvements completed within the previous 5-year period shall be counted cumulatively.

This term does not, however, include either:

- A. Any project for improvement of a structure to comply with the existing codes; and/or
- B. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places, providing the alteration will not preclude the structure’s continued designation as a historic structure.

VARIANCE. A grant of relief from a requirement of this chapter.

11-1-3: PROVISIONS FOR FLOOD HAZARD REDUCTION: For lots created after September 14, 1999, no construction is permitted in areas of special flood hazard, except construction pursuant to subsection (B)(9) of this section (Alteration and Maintenance of Watercourses). For lots legally created and recorded prior to September 14, 1999, the following standards apply:

A. General Standards.

1. Building sites shall be reasonably safe from flooding.
2. New construction and improvements to existing structures shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure.
3. Building materials shall be resistant to flood damage. Below base flood elevation, materials must meet FEMA requirements for “Flood Resistant Materials.” Information on flood resistant materials is outlined in FEMA publication FIA-TB-2.
4. Construction shall use methods and practices that minimize or eliminate flood damages.

5. Electrical, heating, ventilation, plumbing, air conditioning equipment, above ground storage tanks and other service facilities shall not be located below the base flood elevation.
6. Design and implementation of utility systems required for development are subject to approval.
7. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system. If any portion of a public water system is in an area of special flood hazard, an Emergency Flood Response Plan must be developed and provided to DEQ, Kootenai County and PHD. This plan must be implemented in the event that flood waters threaten to contaminate the water system, and must include:
 - a. written instructions to the operator addressing circumstances necessitating shutdown of the water system,
 - b. instructions for disinfecting and testing the system prior to start-up, and
 - c. a protocol for notifying DEQ, the PHD and all users when the water system is at risk of being contaminated.
8. New community or individual sanitary sewage disposal systems shall be located outside areas of special flood hazard.
9. If there is no alternative to locating a replacement sanitary sewage disposal system within an area of special flood hazard, the system shall be designed and located to minimize or eliminate both the infiltration of flood waters into the system, and discharge from the system into flood waters. The determination that there is no alternative will be made by Kootenai County with input from PHD and/or DEQ.
10. Prior to issuance of County permits all required Federal and State permits must be received.
11. New development shall not increase flood heights.

B. Specific Standards.

1. *Residential Structures.* For lots created and recorded after September 14, 1999, no construction is permitted within the Area of Special Flood Hazard. On lots legally created and recorded prior to September 14, 1999, new and replacement residential structures, accessory living units, and all improvements to residential structures, regardless of whether they meet the definition of a "substantial improvement," shall have the top of the lowest floor, including the floor of an attached garage or basement, elevated to the Flood Protection Elevation.

Substantial improvements to residential structures shall be required to elevate the new improvement and the existing structure so that the top of the lowest floor, including the floor of an attached garage or basement, is at a minimum to the Flood Protection Elevation.

Solid perimeter foundation walls are allowable only if the lowest horizontal structural member is four (4) feet or less above interior grade. Enclosed foundation areas below the lowest floor that are subject to flooding are prohibited, except crawl spaces less than four (4) feet in height, that are not below grade on all sides, and which are designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. At least one side of the crawl space must be at grade (e.g. the same grade inside and outside the foundation) to allow for drainage of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- a. A minimum of two openings on different sides of each enclosed area, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- b. The bottom of all openings shall be no higher than one foot above lowest adjacent grade.
- c. Fill may be used to elevate the grade next to foundation walls providing the fill meets the requirements of subsection (B)(7) of this section.
- d. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

If the lowest horizontal structural member is more than four (4) feet above grade, the residential structure shall not be built on solid foundation walls, but shall be constructed on piers, posts, or piles. With the exception of structural piers, posts or piles, the space below the lowest floor must be free of obstruction. Single layer open wood lattice work or light mesh insect screening is permissible below the lowest floor. Exceptions to the pier, post, or pile construction are as follows:

- e. Solid foundations under masonry chimneys are permissible.
- f. Solid perimeter foundation walls may be permitted for an enclosed access way to the structure. Such access ways must meet the same requirements for openings as crawl spaces.
- g. Solid foundation walls that do not create an enclosed foundation area (one or two walls) are acceptable provided that the walls are engineered and constructed to withstand the hydrodynamic pressure of water velocity and debris and ice flow.

Where base flood elevation data is not available either through the Flood Insurance Study or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. In such locations, the top of the lowest floor of structures must be elevated at least four (4) feet above the highest adjacent natural grade.

2. *Residential Accessory Structures.* For lots created and recorded after September 14, 1999, no construction is permitted within the Area of Special Flood Hazard. On lots legally created and recorded prior to September 14, 1999:
 - a. Separate structures which are accessory to a residential use (e.g. garage, barn) are not required to be elevated as outlined in subsection (B)(1) of this section. Residential accessory structures do not include Accessory Living Units.
 - b. Crawl spaces or other enclosed foundation areas cannot be below grade on all sides. At least one side must be at grade to allow for drainage of floodwaters.
 - c. Such structures shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or must meet or exceed the following minimum criteria:
 - (1) A minimum of two openings on different sides of the enclosed area, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (2) The bottom of all openings shall be no higher than one foot above lowest adjacent grade.
 - (3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - d. As part of any addition to an existing residential accessory structure, the existing structure must meet the requirements for openings as outlined above.
3. *Nonresidential Structures.* For lots created and recorded after September 14, 1999, no construction is permitted within the Area of Special Flood Hazard. On lots legally created and recorded prior to September 14, 1999, new and replacement non-residential structures, and all improvements to non-residential structures, regardless of whether they meet the definition of a "substantial improvement," shall have the top of the lowest floor, including the floor of an attached garage or basement, elevated a minimum of three (3) feet above the base flood elevation.

Substantial improvements to non-residential structures shall be required to elevate the new improvement and the existing structure so that the top of the lowest floor, including the floor of an attached garage or basement, is a minimum of three (3) feet above the base flood elevation.

Solid perimeter foundation walls are allowable only if the lowest horizontal structural member is four (4) feet or less above interior grade. Enclosed foundation areas below the lowest floor that are subject to flooding are prohibited, except crawl spaces less than four (4) feet in height, that are not below grade on all sides, and which are designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. At least one side of the crawl space must be at grade (e.g. the same grade inside and outside the foundation) to allow for drainage of floodwaters.

Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- a. A minimum of two openings on different sides of each enclosed area, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- b. The bottom of all openings shall be no higher than one foot above lowest adjacent grade.
- c. Fill may be used to elevate the grade next to foundation walls providing the fill meets the requirements of subsection (B)(7) of this section.
- d. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

If the lowest horizontal structural member is more than four (4) feet above grade, the structure shall not be built on solid foundation walls, but shall be constructed on piers, posts, or piles. With the exception of structural piers, posts or piles, the space below the lowest floor must be free of obstruction. Single layer open wood lattice work or light mesh insect screening is permissible below the lowest floor. Exceptions to the pier, post, or pile construction are as follows:

- e. Solid foundations under masonry chimneys are permissible.
- f. Solid perimeter foundation walls may be permitted for an enclosed access way to the structure. Such access ways must meet the same requirements for openings as crawl spaces.
- g. Solid foundation walls that do not create an enclosed foundation area (one or two walls) are acceptable provided that the walls are engineered and constructed to withstand the hydrodynamic pressure of water velocity and debris and ice flow.

Where base flood elevation data is not available either through the Flood Insurance Study or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. In such locations, the top of the lowest floor of structures must be elevated at least four (4) feet above the highest adjacent natural grade.

4. *Manufactured Homes.* All manufactured homes to be placed or substantially improved within A Zones on the FIRM shall be elevated on a permanent foundation in compliance with subsections (A) and (B)(1) of this section.
5. *Recreational Vehicles.* Recreational vehicles shall not be used as dwellings, shall meet the requirements of the Kootenai County Zoning Ordinance, Title 9 of this code, and, in addition, when placed on sites within A Zones on the community's FIRM shall be:

- a. On site for fewer than 120 consecutive days within one year; and
 - b. Fully licensed and ready for highway use, be on its wheels or jacking system, be attached to the site only by quick disconnect type utilities and security devices, and have no attached additions.
6. *Land Division, Mobile Home Parks, and Planned Unit Developments.* All lots created after September 14, 1999 shall have a building site that is a minimum of 4000 square feet in size and accessible by a driveway which meets the minimum standards of the Kootenai County Zoning Ordinance, Title 9 of this code, all located outside of any Area of Special Flood Hazard. Such building sites shall not be created by placing fill within the Flood Hazard Area.

If platted, the face of the plat shall indicate the location of any Area of Special Flood Hazard within the boundaries of the plat and a note shall be placed on the plat restricting development to areas outside the designated Area of Special Flood Hazard. Such areas shall be preserved as open space and left in their natural condition.

In addition, the following provisions shall be met:

- a. All projects shall be consistent with the need to minimize flood damage, and shall be reasonably safe from flooding.
- b. All projects shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage. If any portion of a public water system is in an area of special flood hazard, an Emergency Flood Response Plan must be developed and provided to DEQ, Kootenai County and PHD. This plan must be implemented in the event that flood waters threaten to contaminate the water system, and must include:
 - (1) written instructions to the operator addressing circumstances necessitating shutdown of the water system,
 - (2) instructions for disinfecting and testing the system prior to start-up, and
 - (3) a protocol for notifying DEQ, PHD and all users when the water system is at risk of being contaminated.
- c. All projects shall have adequate drainage provided to reduce exposure to flood damage.
- d. Where base flood elevation data is not available either through the Flood Insurance Study or from another authoritative source, it shall be generated by the developer's engineer for projects which contain at least 5 lots or 5 acres (whichever is less).
- e. All projects shall include a maintenance plan that includes the cleaning and maintenance of culverts, ditches, and drainage swales to reduce the risk of flood damage. Maintenance activities must be carried out in accordance with all Federal, State, and local regulations and all required permits must be obtained.

- f. For each project, if a public entity will not be responsible for maintenance, a maintenance entity, such as a homeowners association or utility corporation, shall be established. If maintenance requirements are not met, the County may contract to have the maintenance done at the expense of the responsible party(s). The County may also take enforcement measures as provided by law.

7. *Placement of Fill in Areas of Special Flood Hazard.*

- a. Fill used to elevate structures or any other fill must be placed and compacted in accordance with the requirements of the International Building Code and of the Kootenai County Site Disturbance Ordinance, Title 11, Chapter 2 of this code. Such fill must be compacted for at least 15 feet beyond the limits of any structure placed on it, and;
 - b. After placement and compaction, fill must be protected from erosion and scour by rip rap or sod forming grass or equivalent vegetation.
8. *Floodways.* Located within areas of special flood hazard are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential. Therefore, encroachments including, but not limited to fill, new construction, substantial improvements and other development are prohibited. Exceptions to this prohibition shall be as follows:

- a. (1) Access roads to cross the floodway where there are no alternative access ways which do not encroach on the floodway provided that a No-rise Certification has been submitted, demonstrating through hydrologic and hydraulic analyses prepared by a qualified professional engineer licensed by the State of Idaho in accordance with standard engineering practice (with supporting technical data) that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- b. (2) New construction for the replacement or substantial improvement of an existing residential or commercial structure and accessory buildings in conjunction with an existing residential or commercial use provided the following criteria are met:
 - (1) A No-rise Certification has been submitted, demonstrating through hydrologic and hydraulic analyses prepared by a qualified professional engineer licensed by the State of Idaho in accordance with standard engineering practice (with supporting technical data) that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge. If so certified, all fill, new construction for the replacement of existing residential or commercial structures, accessory buildings in conjunction with existing residential or commercial uses and substantial improvements must comply with all other provisions for flood hazard reduction;
 - (2) All foundations for new construction and substantial improvement shall be designed by a qualified engineer licensed by the State of Idaho and constructed to withstand the hydrodynamic and hydrostatic pressures during the discharge of the

base flood. If flood velocities are excessive (greater than four (4) feet per second) foundation systems other than solid foundation walls are required so that obstructions to damaging flows are minimized;

On existing lots of record where sufficient lot area is available, all fill, new construction and substantial improvement shall occur outside of the floodway.

9. *Alteration and Maintenance of Watercourses.* Stream and channel maintenance in areas of special flood hazard may be necessary, for example, when rock and other debris restrict the flow of floodwaters. The cleaning of this debris and the creation of sediment pools will be carried out in accordance with all applicable Federal, State, and local regulations and all necessary permits shall be obtained with copies provided to Kootenai County.

The following are required before an alteration of any watercourse:

- a. Notify adjacent property owners within one-half (½) mile upstream and downstream from the project boundaries, any affected cities, and the Idaho Department of Water Resources prior to any alteration, maintenance, or relocation of a watercourse, and submit evidence of such notification, along with any required permits, to the Federal Insurance Administrator and Kootenai County.
- b. Require that maintenance be provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

The provisions of this paragraph do not apply to the routine removal of debris or navigational hazards.

10. *Other Activities.* Any construction or development activity within Areas of Special Flood Hazard other than those specifically permitted by this ordinance shall be prohibited unless all of the following criteria are met:
 - a. The activity shall not result in any decrease in flood storage capacity during discharge of the base flood.
 - b. The activity shall not impair the natural and beneficial functions of the floodplain.

11-1-4: ENFORCEMENT AND ADMINISTRATION:

- A. *Permit Required.* As required by other Kootenai County ordinances, a building or site disturbance permit shall be obtained before construction or development begins within any area of special flood hazard. In addition to any information required by other county ordinances, the applicant shall provide sufficient information to conclusively demonstrate compliance with the provisions of this chapter. At a minimum, this shall include the following:

1. Fully completed, pre and post construction elevation certificates for each structure;
 2. Certification by a registered professional engineer that any structural fill has been appropriately compacted;
 3. A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development; and
 4. Any additional information required by the Administrator.
- B. Designation and Duties of the Administrator. The Administrator shall administer and implement the provisions of this chapter by granting or denying permit applications in accordance with its provisions. Duties of the Administrator or his or her duly appointed representative shall include, but not be limited to:
1. *Permit Review.*
 - a. Review all development permits to determine that the permit requirements of this chapter have been satisfied.
 - b. Review all development permits to determine that all necessary permits have been obtained from the federal, state, or local governmental agencies from which prior approval is required.
 - c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of section 11-1-3(B)(8) of this chapter are met.
 2. *Information to be Obtained and Maintained.*
 - a. For all construction in areas of special flood hazard, the Administrator shall require and maintain fully completed pre and post construction elevation certificates.
 - b. Maintain for public inspection all records pertaining to the provisions of this chapter.
 3. *Interpretation and Use of Other Data.* In the interpretation and application of this chapter, all provisions shall be:
 - a. Considered as minimum requirements;
 - b. Liberally construed in favor of the governing body; and
 - c. Deemed neither to limit nor repeal any other powers granted under State statutes.

The Administrator shall also make interpretations, where needed, as to exact location of the boundaries of the areas of special flood hazards and floodways (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), and shall consider new information provided by FEMA or other authoritative sources. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal any such interpretations.

C. Hazards. Whenever the Administrator determines that an existing fill, stream, ditch, culvert, or other situation on private property has become a hazard to life and limb, endangers other property, or adversely affects the safety, use, or stability of a public or private access or drainageway, the Administrator may require the property owner(s) to eliminate the hazard. The Administrator shall give notice in writing to the owner or other person(s) or agent(s) in control of the property. Within the period specified in the notice, the owner(s) or their agent(s) shall have the hazard corrected.

If the required corrections have not been completed by the specified date, the County may contract to have the work completed at the owner's expense. The County may also take additional enforcement measures as provided by law.

11-1-5: WARNING AND DISCLAIMER OF LIABILITY: The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside areas of special flood hazard, or uses permitted within such areas, will be free from flooding or flood damage. This chapter shall not create liability on the part of Kootenai County, any officer or employee thereof, or the Federal Insurance Administration for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

11-1-6: ABROGATION AND GREATER RESTRICTIONS: This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

11-1-7: PENALTIES FOR NONCOMPLIANCE: No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be punished in accordance with section 1-4-1 of this code for each violation, and in addition shall pay all costs and expenses involved in the case. Each day the violation exists shall constitute a separate offense. Nothing herein contained shall prevent Kootenai County from taking such other lawful action as is necessary to prevent or remedy any violation.

11-1-8: VARIANCES AND APPEALS:

A variance is a grant of relief from a requirement of this chapter.

An appeal is a request for review of a decision made in the administration or enforcement of this chapter. The appeal process allows the applicant to present their request to the Hearing Examiner and the Board, who may alter a decision made regarding provisions of this chapter.

A. Application Requirements. The following items constitute a complete application:

1. Completed application form signed by the property owner;
2. Fees;
3. Photos of the site, including the area that pertains to the variance or appeal (if applicable);
4. Vicinity map;
5. A narrative that includes:
 - a. a written explanation of the variance or appeal that is requested;
 - b. the applicable sections of this chapter, and
 - c. for variances, an explanation of how the request meets the approval standards and conditions outlined in this section.
6. A site plan for the property, drawn to scale, showing a north arrow, property lines, structures, driveways, surface water, retaining walls, easements, rights-of-way, wells, sewage systems, slopes, stormwater systems and other items as may be required by the County. The maximum allowable size of the site plan is 11" x 17".

B. Procedure for Requesting a Variance or Appeal.

1. Pre-application conference with a Department planner.
2. Applicant submits complete application and fees.
3. The Department submits application and attachments to applicable agencies for review and letter of comment. Agencies have 30 days to submit comments.
4. Application is reviewed by staff and scheduled for public hearing.
5. The Department planner provides the Applicant with a notice of hearing and adjacent property owner mailing instructions. The Department publishes the notice in the local newspaper at least 15 days prior to the hearing.
6. The Department planner prepares a staff report and posts the hearing notice at the site at least 7 days prior to hearing.
7. At the hearing, the Applicant presents the request and demonstrates that it meets all requirements.
8. All hearings on variance applications and appeals, whether before the Hearing Examiner or Board, shall be conducted in accordance with all applicable provisions of Idaho Code and of Title 2, Chapter 1 of this code.
9. The Hearing Examiner recommends approval or denial, or may table the request for additional information, further study or hearing. If the request is not tabled, the Hearing Examiner must make a recommendation within 2 weeks of the hearing. If the request is tabled, action (approval, denial, hearing scheduled) must be taken within 6 weeks of the hearing, unless otherwise approved in writing by the Applicant. The Hearing Examiner may recommend conditions of approval.

10. After receiving the Hearing Examiner's recommendation, the Board of County Commissioners receive the Hearing Examiner's recommendation and must take one of the following actions:

- a. Approve the request;
- b. Deny the request;
- c. Table the request; or
- d. Hold its own public hearing and then make a decision.

If the request is tabled a decision must be made within 6 weeks of the Hearing Examiner's recommendation unless otherwise approved in writing by the Applicant. If the request is not tabled, or a hearing scheduled, a decision must be made within 4 weeks of the recommendation. The Board may include conditions of approval.

11. The County issues an Order of Decision, which is signed by the Board.

C. Approval Standards and Conditions for Variances. There are no absolute criteria for granting variances to the provisions of this chapter. A variance shall not be considered not a right or special privilege, but may be granted only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. The issuance of variances is for flood plain management purposes only; the granting of a variance will not reduce flood insurance premiums, which are determined by statute according to actuarial risk.

1. The granting of variances is generally limited to new construction and substantial improvements on lots of one-half acre or less, contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.
2. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, upon determination that the proposed work will not preclude the structure's continued designation as an historic structure, and that the variance is the minimum necessary to preserve the historic character and design of the structure.
3. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

- c. A determination that the granting of a variance will not result in increased flood heights, will not harm other properties, will not result in additional threats to public safety or result in extraordinary public expense, and will not create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances;
 - d. A determination that adequate measures will be taken to minimize flood damage.
6. In reviewing applications, the Hearing Examiner and Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
- a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The compatibility of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
7. Any applicant to whom a variance is granted shall be given written notice, signed by the chairman of the Board, that:
- a. the issuance of a variance is for flood plain management purposes only and that it will not affect flood insurance premium rates that are determined by statute according to actuarial risk,
 - b. the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage,
 - c. that such construction below the base flood level increases risks to life and property, and
 - d. that the County is not liable for any flood damages that result.
- Such notification must be maintained with the record of the variance action.

8. In approving a variance, the Hearing Examiner or Board may attach conditions to further the purposes of this chapter. Violation of such conditions, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and shall render the variance null and void.
9. The County shall maintain the records of all variance and appeal actions, including justification for their issuance, and report any variances issued in its annual report to the Federal Insurance Administrator.

11-1-9: AMENDMENTS: Amendments to this chapter may be proposed at any time by the Administrator, the Planning Commission, the Board, or the general public.

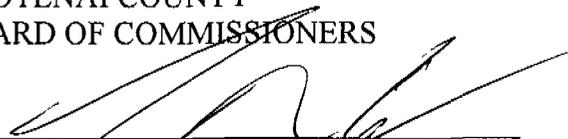
SECTION 3. This Ordinance shall repeal all previously enacted ordinances pertaining to flood damage prevention whether codified or uncoded, including but not limited to Ordinance Nos. 285, 311, 333, and 381.

SECTION 4. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance which shall remain in full force and effect; and to this end the provisions of this Ordinance are hereby declared to be severable.

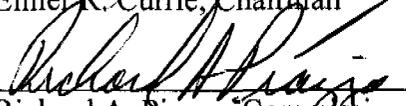
SECTION 5. This Ordinance shall take effect and be in full force upon its passage, approval, and publication in one (1) issue of the *Coeur d'Alene Press*.

DATED this 15th day of April 2010

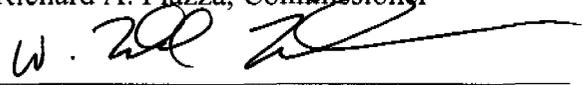
KOOTENAI COUNTY
BOARD OF COMMISSIONERS



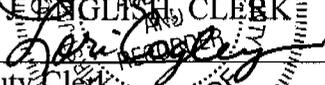
Elmer R. Currie, Chairman



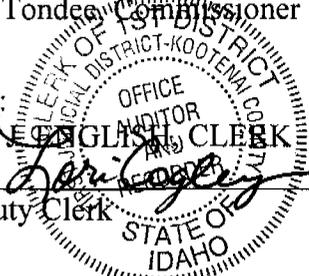
Richard A. Piazza, Commissioner



W. Todd Tondea, Commissioner

ATTEST:
DANIEL J. ENGLISH, CLERK
BY: 

Deputy Clerk



Publication Date: April 21, 2010