

#### 4.10 FLOOD HAZARD OVERLAY DISTRICT (FH)

##### 4.10.1 Introduction.

The flood hazard areas of the City of Hailey are subject to periodic inundation that may result in loss of life and property, health and safety hazards, disruption of governmental services, public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These flood losses are caused by 1) the cumulative effect of obstructions which affect flood heights and velocities, and 2) the occupancy of flood hazard areas by uses vulnerable to floods.

##### 4.10.2 Purpose.

The City finds that the Flood Hazard Overlay District is extremely hazardous due to the velocity of floodwaters, the potential of erosion and the dangers associated with floating debris. The provisions of this Section 4.10 are intended to 1) protect human life and health; 2) minimize the expense and inconvenience to property owners and the general public associated with flood conditions; 3) insure that the potential buyers are notified that property may be subject to flood hazards; 4) insure that those who occupy the areas of flood hazard assume responsibility for their actions; 5) preserve the natural characteristics of water courses and natural protective barriers that help channel flood water; 6) preserve, protect and enhance the fish, wildlife and riparian plant habitats; and 7) provide a formal procedure for proposed developments and other encroachments in the floodplain or floodway and for stream alterations.

##### 4.10.3 Establishment of the Flood Hazard Overlay District.

- a. The following are hereby adopted by reference as the primary sources for flood hazard analysis as identified by the Federal Insurance Administration:
  1. Flood Insurance Study, City of Hailey, Idaho, prepared by the Federal Emergency Management Agency (FEMA), Federal Insurance Administration, March 17, 1997 (“Flood Insurance Study”).
  2. Flood Insurance Rate Map/Flood Hazard Boundary and Floodway Map, March 17, 1997 (“FEMA Map”).
- b. The Flood Hazard Overlay District is hereby established. The regulations of this District apply to all lands within the jurisdictions of the City of Hailey that lie within floodplain boundaries as determined by the Flood Insurance Study and the FEMA Map.
- c. Floodway and Floodplain Regulations. The Flood Hazard Overlay District is divided into two (2) sub-districts, the floodway sub-district and the floodplain sub-district. The boundaries of these sub-districts are indicated on the FEMA Map.
- d. The precise boundaries of the floodway and floodplain sub-district boundaries may be determined by on-site elevations as interpreted from the adopted Flood Insurance Study. All land within the external boundary of the Floodplain sub-district shall be considered to be within the floodplain and all land within the external boundary of the Floodway sub-district shall be considered to be within the floodway, and governed by the provisions of this District.

#### 4.10.4 Warning and Disclaimer of Liability.

The degree of flood protection required by this Section 4.10 is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This does not imply that areas outside the flood hazard districts or land uses permitted within such districts will be free from flooding or flood damages. There shall not be any liability on the part of the City of Hailey or any officer or employee thereof for any flood damages that result from reliance on the regulations of the Flood Hazard Overlay District or any decision lawfully made hereunder.

Each and every licensed real estate agent, sales person and broker, and each and every private party who offers for sale a parcel of real property and/or structure for sale within the Flood Hazard Overlay District shall provide the prospective purchaser with notice that the real property and/or structure is located within the Flood Hazard Overlay district.

#### 4.10.5 Floodplain Administrator.

##### 4.10.5.1 Designation of Floodplain Administrator.

The Floodplain Administrator, as designated by the Administrator, shall administer and implement this Section 4.10 by granting or denying applicable permit applications in accordance with its provisions. The Floodplain Administrator may transmit one (1) copy of the information described in Sections 4.10.7.1 and 4.10.8.1, below, to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating a proposed project.

##### 4.10.5.2 Duties and Responsibilities of the Floodplain Administrator.

- a. Permit Review.
  1. Review all development permits with the Flood Hazard Development Permit Board to determine that the permit requirements of this Section 4.10 have been satisfied, and to issue any Flood Hazard Development Permits.
  2. Review all development permits with the Flood Hazard Development Permit Board to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies when prior approval is required.
- b. Use of Other Base Flood Data. When Base Flood Elevation data has not been provided in the Flood Insurance Study or FEMA Map, the Floodplain Administrator and the Flood Hazard Development Permit Board shall obtain, review and reasonably utilize any Base Flood Elevation and floodway data available from a Federal, State or other source, in order to administer the regulations of this Section 4.10.
- c. Information to be Obtained and Maintained.
  1. Where Base Flood Elevation data is provided through the Flood Insurance Study or FEMA Map, obtain and record the actual elevation (in relation to the mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.
  2. For all new or substantially improved flood proofed structures, verify and record the actual elevation (in relation to mean sea level), and maintain the flood proofing certification required in Section 4.10.7.
  3. Maintain for public inspection all records pertaining to the provision of this

District.

- d. In certain instances, there may be the need for expert review by a third party of the technical data submitted by the applicant. It shall be at the sole discretion of the Floodplain Administrator to determine whether such review is required. Such technical review shall be paid for by the applicant. The applicant shall pay the City the estimated cost of the expert review prior to further processing of the application by the City. If additional costs are incurred, the applicant shall pay those prior to issuance of a Flood Hazard Development Permit.

4.10.6 Floodway and Floodplain Regulations.

4.10.6.1 Floodway Sub-District Use Regulations.

Uses in the Floodway Sub-District are limited to the following:

- a. Permitted Uses.
  - 1. Open space recreation uses, provided that no structure is constructed or maintained;
  - 2. River Restoration Projects, provided a stream alteration permit is issued; and
  - 3. Any other structure that has received a stream alteration permit.
- b. Prohibited Uses. All other uses are strictly prohibited.

4.10.6.2 Floodplain Sub-District Use Regulations.

Uses in the Floodplain Sub-District are limited to the following:

- a. Permitted Uses.
  - 1. Recreational uses, provided they are not subject to substantial flood damage and will not cause flood losses on other land or to the public, or provided that they can be readily removed from the flood hazard areas prior to the time of flooding; and
  - 2. River Restoration Projects provided a stream alteration permit is issued.
- b. Uses Requiring a Flood Hazard Development Permit.
  - 1. Single Family Dwellings and Accessory Uses.
  - 2. Residential accessory dwelling units in accordance with the requirements of the underlying zoning district and this Section 4.10.
  - 3. Subdivisions.
  - 4. Fill deposited in accordance with the standards set forth herein.
- c. Prohibited Uses.
  - 1. Any use not mentioned herein that is susceptible to flood damage from the One Hundred (100) Year Flood or that could potentially cause flood damage from such a flood to other property.
  - 2. RV' s and ATV' s stored or kept on any property more than 180 consecutive days; any vehicle must be fully licensed and ready for highway use.
- d. Bulk Requirements. For other supplementary location and bulk regulations, see Article VII.
  - 1. Minimum Lot Size – twenty-thousand (20,000) square feet. All land lying within the floodway sub-district shall not be included in determining lot size.
  - 2. Minimum Lot Width – seventy-five (75) feet.

3. Maximum Building Height – thirty (30) feet.
4. Minimum Front Yard Setback – twenty-five (25) feet.
5. Minimum Side and Rear Yard Setback – the setback from the adjacent property line shall be one (1) foot for every two (2) feet of building height for all portions of the building exceeding 20 feet in height, however, no side or rear yard shall be less than ten (10) feet.
6. Riparian Setback. Unless otherwise provided for herein, all permanent buildings and structures in the Flood Hazard Overlay District shall have a one hundred foot (100' ) wide Riparian Setback from the mean high water mark of the Bigwood River. Removal of live vegetation or excavation within the Riparian Setback is prohibited, except for any tree that has been recommended for removal by a certified arborist, in writing, because the tree has been found to potentially endanger the resident(s) of the property on which it is located or any member of the public, or has become hazardous to any street, alley or other public right-of-way or public utility, or because the removal of a tree would substantially improve the health of other trees on the property. Pruning of trees and planting of riparian trees, shrubs and ground cover within the Riparian Setback are allowed, provided however, that all plantings conform to the criteria for evaluation in Section 4.10.7.2(h) of this Ordinance.  
Where the application of the one hundred foot (100' ) Riparian Setback and other applicable setbacks will result in a building site of one thousand (1000) square feet or less, the Riparian Setback may be reduced to such an extent that the building site is one thousand (1000) square feet; provided however, the Riparian Setback shall not be less than fifty feet (50' ).

#### 4.10.6.3 Non-conforming Uses in the Flood Hazard Overlay District.

A structure or the use of a structure or premises which was lawful before the passage or amendment of this Section 4.10 but which is not in conformity with the provisions of this District may be continued subject to the following conditions:

- a. No such use shall be expanded, changed, enlarged or altered in a way which increases its non-conformity.
- b. If any non-conforming use or structure is partially or completely destroyed, it shall not be reconstructed except in conformity with the provisions of this Section 4.10.
- c. Uses which are or become nuisances shall not be entitled to continue as non-conforming uses.
- d. Any alteration, addition or repair to any non-conforming structure which would result in substantially increasing its flood damage potential shall be required to obtain a Flood Hazard Development Permit pursuant to Section 4.10.7 of this Ordinance.

#### 4.10.7 Flood Hazard Development Permit.

##### 4.10.7.1 Procedure.

A Flood Hazard Development Permit shall be obtained before any site alteration, construction or development begins within or upon any area located within the Floodplain Sub-District. All applications for a Flood Hazard Development Permit for a subdivision shall be evaluated and approved or denied by the Commission and Council.

All other Flood Hazard Development Permit applications shall be evaluated and approved or denied by the Flood Hazard Development Permit Board. The Board shall consist of the Floodplain Administrator, the City Engineer and the Building Official. An application for a Flood Hazard Development Permit shall be made on a form furnished by the Floodplain Administrator. Such application shall contain, at a minimum, the following (if applicable):

- a. Plans drawn in duplicate and to scale showing 1) the existing contours with intervals of one foot (1' ) or less of the elevation of the entire property, 2) the proposed contours with intervals of one foot (1' ) or less of the elevation of the entire property, and 3) the location, dimensions and elevations (measured from mean sea level) of the proposed improvements, including buildings, structures, fill, drainage facilities, driveways and streets.
- b. Certification by a registered professional engineer that the flood-proofing methods meet the flood hazard reduction provisions of this Section 4.10.
- c. A description of the extent to which any watercourse would be altered or relocated.
- d. All required and necessary federal and state permits, including studies and mitigation plans for wetlands (*e.g.*, 404 permits).

4.10.7.2 Criteria for Evaluation. The Flood Hazard Development Permit Board, the Commission or the Council, as the case may be, shall evaluate and find adequate evidence to support each of the following criteria:

- a. There will be no danger to life and property due to increased flood heights or velocities or that any materials may be swept on to other lands or downstream to the injury of others.
- b. All subdivision proposals shall have adequate drainage to reduce exposure to flood damage.
- c. Public utilities and facilities are located and constructed to minimize flood damage.
- d. The proposed location represents the safest location on the subject property for the proposed use.
- e. Safe access to the property shall be available in times of a One Hundred (100) Year Flood for ordinary and emergency vehicles.
- f. Inherent natural characteristics of the watercourses will be preserved.
- g. Existing riparian vegetation and wildlife habitat along the stream bank and within the required one hundred foot (100' ) riparian setback shall be preserved.
- h. New landscaping shall include plantings that are low-growing and have dense root systems to stabilize stream banks and to repair any damage previously done to riparian vegetation.
- i. All new construction, manufactured homes as defined and permitted in this Ordinance, accessory buildings, and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement.
- j. All new construction and substantial improvements shall be constructed with materials resistant to flood damage and constructed using methods and practices that minimize flood damage. The lowest portion of a floor system of new construction or substantial improvement of any structure shall be elevated to a level at least one foot (1' ) above the Base Flood Elevation. Any electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall also be designed and elevated at least one foot (1' ) above the Base Flood Elevation.

- k. Any proposed water supply and sanitation system shall prevent disease, contamination and unsanitary conditions.
  - 1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
  - 2. New and replacement water sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
  - 3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- l. Any chemicals or other toxic materials that could cause contamination of surface waters or ground water, or that could be injurious to public health, safety and welfare shall be located at least one foot (1' ) above the Base Flood Elevation and stored in a manner that prevents their release in the event of a flood.
- m. The lowest portion of a floor system of new construction or substantial improvement of any structure shall be elevated to a level at least one foot (1' ) above the Base Flood Elevation. Any Fill shall not exceed the Base Flood Elevation. Any Fill shall not extend more than twenty-five feet (25' ) beyond the limits of any structure erected on a lot or property ("backfill"); provided, however, Fill may extend more than twenty-five feet (25' ) beyond the limits of any structure erected on a lot or property only if the cumulative amount of the Fill does not exceed the amount of backfill allowed by the twenty-five foot (25' ) perimeter. Fully enclosed areas below the lowest floor are prohibited, or 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 (2) openings 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 (1' ) above the proposed grade.
  - 3. Openings may be equipped with screens, louvers or other coverings or devices provided that they permit the automatic entry and exit of floodwater.
- n. Encroachments, including Fill, new construction, substantial improvements and other development shall require certification from a registered professional hydraulic engineer certifying that (a) such encroachments shall not result in any increase in flood levels during the occurrence of a Flood, and (b) the placement of an encroachment will result in no net loss in natural storage area within the Flood Hazard Overlay District.

#### 4.10.7.3 Conditions.

Upon consideration of the criteria in Section 4.10.7.2, above, the Flood Hazard Development Permit Board , the Commission or the Council, as the case may be, may attach such conditions to the permit, as deemed necessary to further the purposes of this District, including but not limited to:

- a. Modification of water disposal and water supply facilities to minimize or eliminate infiltration of flood waters.
- b. Limitations of periods of use and operation.
- c. Imposition of operational controls, sureties and deed restrictions.

- d. Requirements or prohibition of construction of channel modification dikes, levees and other protective measures.
- e. Submission of a plan or document certified by a registered professional engineer stating that the flood-proofing measures comply with this Section 4.10.
- f. Flood-proofing measures for structures such as the following:
  - 1. Installation of watertight doors, bulkheads, shutters, and similar structures
  - 2. Reinforcement of walls to resist water pressures.
  - 3. Use of paints, membrane or mortars to reduce seepage of water through walls.
  - 4. Addition of mass or weight to structures to resist flotation.
  - 5. Installation of pumps to lower water levels in structures.
  - 6. Construction of water supply and waste treatment systems so as to prevent the entrance of flood waters.
  - 7. Installation of pumping facilities or comparable sub-surface drainage systems for buildings to relieve external foundation wall flood pressures.
  - 8. Construction to resist rupture or collapse caused by water pressure or floating debris.
  - 9. Installation of valves or controls on sanitary and storm drains that will permit the drains to be closed to prevent back-up of sewage and storm waters into the building or structures.
  - 10. Location of all electrical equipment, circuits, and installed electrical appliances in a manner which will assure they are not subject to flooding and to provide protection from inundation by the flood waters.
  - 11. Location of any structural storage facilities for chemicals, explosives, buoyant materials, flammable liquids, or other toxic materials which could be hazardous to public health, safety and welfare in a manner which will assure that the facilities are situated at least one foot (1') above the Base Flood Elevation and/or are adequately flood-proofed to prevent flotation of storage containers, or damage to storage containers which could result in the escape of toxic materials into flood waters.
- g. Location of building pads or envelopes.
- h. Installation and maintenance of new landscaping and preservation of existing riparian vegetation.
- i. Issuance of all required and necessary Federal and State permits (*e.g.*, 404 permits).
- j. Any other condition reasonably related to the issuance of a Flood Hazard Development Permit.

4.10.8 City Issued Stream Alteration Permit. No person may excavate in, disturb, fill, build in, upon or across, deposit in, or change the channel of any non-intermittent stream within the Flood Hazard District without a Stream Alteration Permit issued by the Commission. By way of example, stream alteration permits are required for uses or structures within a channel of a non-intermittent stream needed for public necessity (*e.g.*, bridges, water pumps), recreational use (*e.g.*, paths), wildlife habitat improvements (*e.g.* vegetation, nesting structures, pool/riffle improvements), and gravel extraction (*e.g.*, to benefit the health of the river and stream flows).

4.10.8.1 Application. Applications shall be made for a Stream Alteration Permit upon a form furnished by the Floodplain Administrator. Emergency waiver of the written application may be granted only after approval by at least three (3) Planning and Zoning Commission members. Information to be provided by the applicant for any Stream Alteration Permit issued hereunder shall include, but not necessarily be limited to, the following:

- a. Applicant's name, address and phone number.
- b. Name of engineer, if any, who prepared the application.
- c. Property location and legal description.
- d. Name and reach of stream and area of proposed work.
- e. Length of the stream section to be worked on.
- f. Type of work to be done.
- g. Type of equipment to be used.
- h. Starting and completion dates of work.
- i. Vicinity map of the area.
- j. Names and addresses of property owners on both sides of the stream three hundred feet (300' ) upstream and one thousand feet (1000' ) downstream from the proposed work site.
- k. Plans and information at a quarter inch (1/4") scale, accurately and legibly showing:
  - 1. Location and dimension of lot or property.
  - 2. Location of existing or proposed structures and location of previous stream alterations.
  - 3. Typical cross-section of the proposed work.
  - 4. Location of the lot or property in relation to the stream channel, floodway, and floodplain.
  - 5. A valley cross-section of the area to be altered, if requested by the City Engineer, showing the stream channel, floodway limit lines, elevations of land area adjacent to the stream, and the Base Flood Elevation. The City Engineer, and FEMA officials, if requested by the City Engineer, shall review and approve or disapprove the cross-section.
  - 6. Location of any drainage ways or overflow channel through the property affected.
- l. A statement addressing potential beneficial and adverse impacts in the immediate project area (upstream, downstream and across the stream).

4.10.8.2 Public Hearing. Each application shall be reviewed at public hearings before the Commission following adequate public notice.

- a. Notice shall be given by United States Mail insofar as practicable to each property owner whose name appears on the list accompanying the application, giving the date, time and place of the hearing, the action sought, and the identification of the property under consideration. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of notice may be provided in lieu of mailed notice. Sufficient notice shall be deemed to have been provided if the City provides notice through a display advertisement at least four inches (4") by two (2) columns in size in the official newspaper of the City at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.
- b. The Idaho Department of Water Resources shall be notified by the applicant prior to any alteration or relocation of a watercourse, and the Floodplain Administrator shall submit evidence of such notification to the Federal Insurance Administration.
- c. In any public hearing on a Stream Alteration Permit application, the presiding officer may order the hearing to be continued up to thirty (30) days without further notice.

4.10.8.3 Commission Evaluation. A completed application will be heard by the Commission at a public hearing within a maximum of thirty (30) days following its receipt. The Commission shall review the particular facts and circumstances of each proposed stream alteration and make its determination.

4.10.8.3.1 Standards. No Stream Alteration Permit shall be issued unless the Commission finds adequate evidence that the following mandatory requirements have been met:

- a. The applicant has been granted all necessary permits from the Army Corps of Engineers and from the Idaho Department of Water Resources, if applicable.
- b. The stream alteration desired will not involve placing an encroachment, structure, fill, deposit, obstruction, storage of materials, or storage of equipment in the floodway unless certification by a registered engineer is provided demonstrating that such alteration will not result in any increase in flood levels during the occurrence of a One Hundred (100) Year Flood.
- c. The stream alteration desired will not materially increase the boundaries of the Floodplain and Floodway Sub-Districts.
- d. No property of another person will be adversely affected by the proposed stream alteration whether such property is adjacent to, upstream or downstream from the proposed stream alteration.
- e. The stream alteration does not jeopardize the City's participation in the National Flood Insurance Program.

4.10.8.4 Conditions. The Commission may attach conditions to any Stream Alteration Permit, including, but not limited to the following:

- a. Requiring work to be done at times of lowest water.
- b. Requiring work to be done by appropriate construction equipment.
- c. Requiring the project to be built to Idaho Department of Water Resources, Army Corps of Engineers or City of Hailey specifications and standards.
- d. Requiring that a registered engineer certify, in writing, that the work has been completed according to the City requirements and stipulations.
- e. Requiring any modification in the extent or design of the proposed work in order to meet the mandatory conditions imposed by this Section 4.10.
- f. Requiring preservation of existing vegetation, re-vegetation or placement of fish or wildlife enhancement features.
- g. Posting of sufficient security to insure the completion of the work.
- h. Requiring review or approval of the application by other agencies or governmental units.
- i. Requiring the work to be done at a certain height or location.
- j. Requiring reclamation of eroded stream banks in the floodway.
- k. Requiring overflow channels to remain open.
- l. Restricting the future location of building envelopes.
- m. Requiring modifications of the project so as not to raise the level of the Base Flood Elevation and not to encroach upon the floodway.
- n. Requiring maintenance within the altered or relocation portion of said watercourse so that the flood carrying capacity is not diminished.
- o. Issuance of all required and necessary Federal and State permits (*e.g.*, 404 permits).
- p. Any other condition reasonably related to the issuance of a Stream Alteration Permit.

4.10.9 Violation. Any person, entity or organization which performs or causes or permits to be performed any work or activity in violation of this Section 4.10 or who performs any work in

excess of the authority granted by the issuance of a Flood Hazard Development Permit or a Stream Alteration Permit hereunder or who violates any condition or stipulation placed upon the issuance of a Flood Hazard Development Permit or a Stream Alteration Permit shall be guilty of a misdemeanor and upon conviction thereof may be sentenced to serve six (6) months in jail or pay a fine of three hundred dollars (\$300.00) or both. Each day or portion thereof during which any work performed in violation of this Article continues in existence shall constitute a separate and distinct violation of these provisions. All enforcement provisions of Article XV of this Ordinance shall be applicable to any violation of this Article.