

HOUSE BILL NO. 270
INTRODUCED BY M. REINHART

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING FLOOD PLAIN LAWS; CLARIFYING THE DEFINITION OF "FLOOD PLAIN"; ALLOWING PERMITS FOR PERMISSIBLE USES WITHIN A FLOOD PLAIN BUT OUTSIDE A DESIGNATED FLOODWAY TO BE DISCRETIONARY; ELIMINATING THE REQUIREMENT FOR CONSTRUCTING STRUCTURES ON FILL WITHIN THE FLOOD PLAIN; AND AMENDING SECTIONS 76-5-103 AND 76-5-402, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-5-103, MCA, is amended to read:

"76-5-103. Definitions. As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction that is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any flood plain or floodway that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

(2) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Designated flood plain" means a flood plain whose limits have been designated and established by order of the department.

(5) "Designated floodway" means a floodway whose limits have been designated and established by order of the department.

(6) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

(7) "Establish" means construct, place, insert, or excavate.

(8) "Flood" means the water of any watercourse or drainway that is above the bank or outside the channel and banks of the watercourse or drainway.

(9) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year.

(10) "Flood plain" means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" or a "shaded X zone" by the federal emergency management agency.

(11) "Floodway" means the channel of a watercourse or drainway and those portions of the flood plain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

(12) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the flood plain or floodway by a nonhuman cause.

(13) "Owner" means any person who has dominion over, control of, or title to an obstruction.

(14) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

(15) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

(16) (a) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks.

(b) Upon order of the department, the term also includes any particular depression that would not otherwise be within the definition of watercourse."

Section 2. Section 76-5-402, MCA, is amended to read:

"76-5-402. Permissible uses within flood plain but outside floodway. Permits ~~must~~ may be granted for the following uses within that portion of the flood plain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:

(1) any use permitted in the designated floodway;

(2) structures, including but not limited to residential, commercial, and industrial structures, provided that:

(a) the structures meet the minimum standards adopted by the department;

(b) residential structures are constructed ~~on fill such~~ so that the lowest floor elevation, ~~(including basements)~~, is 2 feet above the 100-year flood elevation;

(c) commercial and industrial structures are either constructed ~~on fill~~ as specified in subsection (2)(b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. The floodproofing must be in accordance with the minimum standards adopted by the department."

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