Montana’s Natural Streambed and Land Preservation Act
310 Basics

- Law
- Administrative Rules of Montana
- Local Rules
Purpose of the Law

• Protection of streams and land adjacent to them
• Preservation of streams in their natural or existing state
• Minimization of soil erosion except as necessary and appropriate after consideration of all factors
Purpose of the Law

- Needs of irrigation and agricultural uses
- Need to protect the use of water for beneficial purposes
APPLICABILITY

Law applies to:

• Perennial-flowing streams
• Perennial streams affected by dewatering or drought
• Immediate banks
  – Above high water mark to a point where a project doesn’t physically alter a stream
What types of projects require a 310 Permit?
Channel Changes/Dredging
Bridges
New Diversions and diversion maintenance
Stream Bank Protection Projects
Fords
Trenching in Pipelines
Boat Ramps / Docks
Application Process

- A complete 310 application includes a plan and/or drawing
- Also required is a site map
- Incomplete applications may be rejected
- Applications are reviewed and accepted at the monthly district meetings or by an approved staff member
- An on-site inspection may be required
JOINT APPLICATION FOR PROPOSED WORK IN MONTANA'S STREAMS, WETLANDS, FLOODPLAINS, AND OTHER WATER BODIES

Use this form to apply for one or all local, state, or federal permits listed below. The applicant is the responsible party for the project and the point of contact unless otherwise designated. "Information for Applicant" includes agency contacts and instructions for completing this application. To avoid delays, submit all required information, including a project site map and drawings. Incomplete applications will result in the delay of the application process. Other laws may apply.

The applicant is responsible for obtaining all necessary permits and landowner permission before beginning work.

<table>
<thead>
<tr>
<th>PERMIT</th>
<th>AGENCY</th>
<th>FEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>310 Permit</td>
<td>Local Conservation District</td>
<td>No fee</td>
</tr>
<tr>
<td>SPA 124 Permit</td>
<td>Department of Fish, Wildlife and Parks</td>
<td>No fee</td>
</tr>
<tr>
<td>Floodplain Permit</td>
<td>Local Floodplain Administrator</td>
<td>Varies by city/county</td>
</tr>
<tr>
<td>Section 404 Permit, Section 10 Permit</td>
<td>U.S. Army Corps of Engineers</td>
<td>Varies ($0 - $100)</td>
</tr>
<tr>
<td>318 Authorization</td>
<td>Department of Environmental Quality</td>
<td>$250 ($18); $400 - $20,000 ($101)</td>
</tr>
<tr>
<td>401 Certification</td>
<td>Department of Natural Resources and Conservation, Trust Lands Management Division</td>
<td>License $25; Easement $50, plus annual fee</td>
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</tbody>
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A. APPLICANT INFORMATION

NAME OF APPLICANT (person responsible for project):

Has the landowner consented to this project?  □ Yes  □ No

Mailing Address:

Physical Address: __________________________  Day Phone: _______  Evening Phone: __________  E-Mail: __________

NAME OF LANDOWNER (if different from applicant):

Mailing Address:

Physical Address: __________________________  Day Phone: _______  Evening Phone: __________  E-Mail: __________

NAME OF CONTRACTOR/AGENT (if one is used):

Mailing Address:

Physical Address: __________________________  Day Phone: _______  Evening Phone: __________  E-Mail: __________

B. PROJECT SITE INFORMATION

NAME OF STREAM or WATER BODY at project location: __________________________ Nearest Town: __________________

Address/Location: __________________________  Geocode (if available): __________________________

1/4 1/4 1/4, Section ______, Township ______, Range ______, County ______

Longitude _______  Latitude _______

The state owns the beds of certain state navigable waterways. Is this a state navigable waterway? Yes or No.

If yes, send copy of this application to appropriate DNRC land office — see Information for Applicant.
PROCESS

• CD Receives Application
• Initially Reviews and Accepts or Rejects
• Time Frame Starts When Accepted
• Notify FWP
  – FWP has 5 days to say if they want an inspection
  – Though their participation is required, it is advisory only to the Board of Supervisors
Site Inspection Process

- On-site review team consists of
  - District representative
  - Montana Fish, Wildlife and Parks representative
  - Landowner or landowner’s representative
- Waiver of participation in the on-site inspection
- Members submit report (recommendations) for review at the next district meeting
PROCESS

• Law requires supervisors to determine:
  – The purpose of the project
  – If the project is reasonable
    • Law sets forth criteria to determine reasonableness
    • Information gathered on application
    • Team member reports has checklists
PROCESS

- 15-day waiting period after supervisors decision (permit)
- A team member may ask for arbitration if they disagree with board's decision. They may also choose to take any disagreement to district court.
Review of Timeline Considerations

From date of accepting an application:

• The CD has 10 days to notify FW&P
• 5 days for FWP to respond
• 20 days to inspect
• 30 days to make a decision
Decision Process

- Within 60 days of application acceptance, the district will:
  - Approve
  - Modify
  - Deny

- 60 day period can be extended to collect further information.
Considerations

Effects:

- On *soil erosion* and *sedimentation*, considering the methods available to complete the project and the nature and economics of the various alternatives

- On *flooding or erosion problems upstream or downstream*

- On *stream channel alteration*

- On *stream flow, turbidity*, and *water quality* caused by materials used or by removal of ground cover
Considerations, continued

- On *fish and aquatic habitat*
- *Reasonable alternatives to reduce disturbance or better accomplish the purpose*
What is emergency activity?

- As defined in 310 law, emergency means:
  - Unforeseen event or combination of circumstances that calls for immediate action to safeguard life, including human or animal, or property, including growing crops, without giving time for the deliberate exercise of judgment or discretion under the act.
EMERGENCIES

• Landowner or operator must notify Conservation District within 15 days
• If no action required, then nothing further
• If project needs more work
  – Applicant must fill out application to mitigate
  – Normal 310 process starts
STATE OF MONTANA

NATURAL STREAMBED AND LAND PRESERVATION ACT

NOTICE OF EMERGENCY

(This is not a permit application)

When emergency action has been taken to safeguard life, property, or crops the following information must be received by the conservation district within 15 days of the activity.

1. Name of Applicant___________________________________________________________________
   Address ____________________________________ Telephone No. ____________________________
   City/State/Zip _________________________ Location of Activity__________________________
   Stream name ____________________________________ County _______________________________
   Location ______¼ ______¼ ______¼ ______¼ Section ______Township ______ Range ___

3. Date emergency action was taken ______________________________________

4. Explanation of emergency causing the need for the actions described above
   (attach additional sheets if necessary)

5. Description of emergency action taken
Emergency Process

What is the process?

Applicant obtains a Form 275, fills it out and returns it to the Conservation District within 15 days following the activity.

Within 5 days of Supervisors determining activity to be a “project”, a copy is forwarded to FWP.

Within 20 days of receipt of the notice of emergency, an on-site inspection is held.

Each team member may give recommendations. The board reviews the inspection report and makes a decision. Applicant is notified within 60 days.
Emergency Decisions

TO BE COMPLETED BY CONSERVATION DISTRICT

1. Date notice of emergency received

2. Does the action taken meet the definition of a project?

2a. If no, date person notified

2b. If yes, date notice sent to Department

3. Team inspection requested. (Must request on site inspection within 20 days of notice.)

   Date

4. Date of inspection

5. Action taken
   Approved (no further action required by applicant)
   Modified (applicant must submit form 270 within 90 days to mitigate damages from emergency action)
   Denied (applicant must submit form 270 within 90 days to remove project)
   Project does not meet definition of an emergency
VIOLATIONS/COMPLAINTS

A *Violation* of the Act occurs when:

a) A project is initiated without written consent of the Board of Supervisors;

b) An entity performs activities outside the scope of written consent of Supervisors;

c) A person violates emergency procedures or places junk vehicles in the stream.
COMPLAINTS

What is a complaint?

• May be written, or simply phoned in. May or may not be anonymous

• Any person may file a complaint alleging violation of the Act.

• Supervisors or their designated representative shall investigate the complaint to collect evidence such as photos, interviews and correspondence.
• WHAT IS THE PROCESS?

• Notification by mail, certified mail or telephone that a complaint has been received and to arrange an inspection of the site. This notification usually includes “cease and desist” wording.

• The alleged violator will be notified within 15 days of the decision if it is determined that no violation has occurred.

• If attempts at voluntary compliance have been unsuccessful, the evidence gathered and all supporting documents will be submitted to the county attorney for enforcement.

• The county attorney is authorized to enforce the act and may prosecute if action of the individual require.
Partner Agencies

• Fish Wildlife and Parks
• Army Corps of Engineers
• Flood Plain Administrators
• DNRC Navigable Rivers
• DEQ

Communication between partners, especially in regard to inspections, is helpful.
For forms and more information: