

**ADOPTED RULES**

**For the  
FLATHEAD CONSERVATION DISTRICT  
to  
Implement the Natural Streambed and Land  
Preservation Act of 1975  
Chapter No. 463, Montana Session Laws 1975;  
Title 75, Chapter 7, MCA  
Senate HB 310, 1975 Legislature**

**Amended by 1977 Legislature  
Amended by 1979 Legislature  
Amended by 1987 Legislature  
Amended by 1995 Legislature  
Amended by 2003 Legislature**

**Compiled by  
Flathead Conservation District  
and  
Montana Department of Natural Resources & Conservation  
in consultation with  
Montana Association of Conservation Districts  
1625 Eleventh Avenue  
P.O. Box 201601  
Helena, Montana 59620-1601**

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## **CHAPTER 1**

### **RULE 1. TITLE**

- (1) These rules may be cited as the Flathead Conservation District rules for implementation of the Natural Streambed and Land Preservation Act of 1975, as amended, commonly referred to as the 310 law.

### **RULE 2. POLICY**

- (1) It is the policy of the Flathead Conservation District that the natural rivers and streams, and the lands and property immediately adjacent to them, within Flathead County are to be protected and preserved to be available in their natural or existing state, and to prohibit unauthorized projects, and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved.
- (2) Further, it is the policy of the Flathead Conservation District to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by the constitution and laws of the State of Montana.
- (3) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Natural Streambed and Land Preservation Act of 1975. In recognition of the legislature's intent, it is the district's intent that the requirements of this Act and implementing rules provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

### **RULE 3. PURPOSE**

- (1) The purpose of these rules is to provide guidance to all concerned parties regarding the administration of The Natural Streambed and Land Preservation Act in the Flathead Conservation District and to specify procedures for compliance with the policy contained in Rule 2.

### **RULE 4. DEFINITIONS**

Unless the context otherwise requires, the following definitions are applicable to these rules:

- (1) "Act" means The Natural Streambed and Land Preservation Act.
- (2) "Activity" or "activities" means a proposed physical alteration or modification to a natural perennial-flowing stream or river, its bed, or its immediate banks.
- (3) "Applicant" means any person presenting notice of a project to the supervisors.

- (4) "Application" means a notice of proposed project on a form provided under Rule 7, Forms, and containing all of the required information.
- (5) "Bed" means the channel occupied by a stream.
- (6) "Channel" means the area of a stream measured from mean high water mark to mean high water mark.
- (7) "Department" means the Montana Department of Fish, Wildlife & Parks.
- (8) "District" means:
  - (a) a conservation district under Title 76, Chapter 15, MCA, in which the project will take place;
  - (b) a grass conservation district under Title 76, Chapter 16, MCA where a conservation district does not exist; or
  - (c) the board of county commissioners in a county where a district does not exist.
- (9) "Directly affected person" means a person who by means of an affidavit establishes that as a result of the proposed action the person's property or water rights will more likely than not be impacted by soil erosion, sedimentation, flooding, or channel alteration, or the stream flow, turbidity or water quality will more likely than not be altered at or near the person's property or diversion point, or that the fish or aquatic habitat in the stream in which the person has a management interest will more likely than not be altered by the project. For purposes of this definition, person includes a government entity.
- (10) "Emergency" means an unforeseen event or combination of circumstances that call 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.
- (11) "Immediate banks" means the area above the mean high water mark and directly adjacent to the stream, which when physically altered or modified has the potential to affect the state of a stream.
- (12) "Extreme Drought" means a prolonged period of less than normal precipitation such that the lack of water causes a hydrologic imbalance as designated by the National Oceanic and Atmospheric Administration as, at least, abnormally dry.
- (13) "Livestock grazing activities" means grazing animals.
- (14) "Mean high water mark" means the line that water impresses on the land for sufficient periods to cause physical characteristics that distinguish the area below the line from above it. Characteristics of the area below the line include, when appropriate, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural value.

- (15) "Natural perennial-flowing stream" means a stream, which in the absence of diversion, impoundment, appropriation, or extreme drought, flows continuously at all seasons of the year and during dry as well as wet years.
- (16) "Permit" means the written consent of the supervisors authorizing a proposed project.
- (17) "Person" means any individual, corporation, firm, partnership, association, or other legal entity, not covered under 87-5-502, MCA.
- (18) "Physical alteration or modification" means human-caused actions resulting in the placement, removal, or disturbance of materials of any nature or character.
- (19) "Plan of Operation" or "annual maintenance plan" means an annual plan for a project of recurring nature that, if approved by the supervisors, authorizes a specific activity for a period not to exceed 10 years.
- (20) "Project" means an activity that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks.
  - (a) Project does not include:
    - (i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.
    - (ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102, MCA.
    - (iii) livestock grazing activities.
- (21) "Stream" means any natural perennial-flowing stream, or river, its bed, and immediate banks, and its channels and includes the entire stream from its mouth to its source even if portions go dry periodically. The term does not include a stream or river that has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102, MCA.
- (22) "Supervisors" means a board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.
- (23) "Team" means one representative of the supervisors, one representative of the department, and the applicant or the applicant's representative.
- (24) "Written consent of the supervisors" means a written decision of the supervisors approving a project and specifying activities authorized to be performed in completing the project.

## **RULE 5. APPLICABILITY**

- (1) The district will make determinations on the applicability of these rules, the Act, and the streams covered under the Act.
- (2) These rules apply to projects on a natural perennial-flowing stream, or portions thereof, including its bed, immediate banks, and channels, unless the stream has been designated as not having significant aquatic and riparian attributes in need of protection. The district considers a stream to flow perennially if it dries up periodically due to man-made causes, or extreme drought.
- (3) A person who is directly affected by the supervisors' determination of the applicability, interpretation or implementation of the law, these rules, a written consent, or a designation of stream, or a portion of a stream, may request a declaratory ruling under Rule 20, Declaratory Ruling. A person may not request a declaratory ruling under Rule 20 for a final action of the supervisors' approval, modification, or denial of a proposed project or an emergency action.
- (4) These rules do not apply to ditches, intermittent streams, or wetlands not associated with the bed or immediate banks of a stream.
- (5) In order for a stream to be covered under the Act, it must:
  - (a) be a natural waterway.
    - (i) Natural rivers or streams that have been rechanneled for road construction, flood control, irrigation, or other public works are considered natural waterways.
    - (ii) Natural rivers or streams that are used as part of an irrigation deliver system as allowed under 85-2-411, MCA, are considered a natural waterway, but only if those natural streams had perennial flow prior to diverting water through them.
    - (iii) Artificial or man-made waterways that have been constructed for the purposes of conveying water for any purpose are not considered a natural waterway.
    - (iv) Flood channels, high water channels, and side channels of natural, perennial-flowing streams are considered part of a stream if water naturally enters the channels during high water or normal flow.
  - (b) contain continuous natural flows.
    - (i) Water diverted into a natural channel for the withdrawal or diversion downstream shall not be considered part of the natural flow of a stream;
    - (ii) Water feeding a natural channel from any ground water source, tributary, springs, or other natural source, may be considered part of the natural flow.
    - (iii) Water stored in a reservoir that maintains or raises the flow of a stream shall be considered natural flow.
    - (iv) Streams that dry up because of diversion, impoundments, appropriation, or extreme drought shall be considered to have continuous natural flows.

- (6) The district may use, but is not limited to, the following information to make its determinations:
  - (a) USGS 7.5 minute quadrangle maps;
  - (b) Water Resource Surveys;
  - (c) Water rights records;
  - (d) Landowner and resident interviews;
  - (e) Hydrology reports;
  - (f) On-site evaluations to gather information on geomorphology, vegetation, insects; past human activity;
  - (g) Historical information;
  - (h) Aerial photos;
  - (i) Stream flow data; or
  - (j) Any other relevant information.
- (7) The district, either on its own motion, or if petitioned to review the designation of a stream, will use the factors set forth in this rule to make a determination.
- (8) Persons dissatisfied with the supervisors' determination may petition with district to make a declaratory ruling, as outlined in Rule 20, Declaratory Ruling.

**RULE 6. AQUATIC AND RIPARIAN ATTRIBUTES - EXCLUSIONS**

- (1) This rule describes the process for excluding natural perennial-flowing streams from district jurisdiction where there is no need for protection under 75-7-102, MCA. The process for determining whether a stream is a natural perennial-flowing stream is described in Rule 5, Applicability.
- (2) Upon the district's motion or upon request of a person, the district may adopt a rule to exclude a stream or portion thereof from its jurisdiction upon finding that a perennial-flowing stream does not have significant aquatic or riparian attributes in need of protection or preservation.
  - (a) In order to make a determination, the district shall hold a public meeting as outlined in Rule 11, Public Participation, to gather information relative to the aquatic or riparian attributes of a stream.
  - (b) If after a public meeting, the district determines that a stream has no aquatic or riparian attributes, the district may adopt its rule excluding the stream, or portion thereof, from its jurisdiction.

## **RULE 7. FORMS**

- (1) The district and the applicant shall use the following forms.
  - (a) Form 270 – Notice of Proposed Project is the application form to be submitted by the applicant to the supervisors for project review. The Joint Application for Proposed Work on Streams, Wetlands, Floodplains, and Other Water Bodies is considered Form 270.
  - (b) Form 270a – Stream Work Authorization and Permission will be required to be completed if anyone except the landowner is responsible for work on the project.
  - (c) Form 271 – Arbitration Agreement to be used by team members who are requesting to resolve disputes through arbitration.
  - (d) Form 272 – Team Member Report for team members to submit project recommendations to the supervisors.
  - (e) Form 273 – Supervisors’ Decision, or permit, to convey district’s decision to the applicant and team members.
  - (f) Form 274 – Official Complaint Form for a person to notify the district of an activity taking place without written consent of the supervisors.
  - (g) Form 275 – Emergency Report for a person to notify the district of projects undertaken during an emergency to safeguard life, property, or growing crops.

## **RULE 8. PROJECT REVIEW**

- (1) A person planning to engage in a project that will physically alter or modify a stream or river, its bed or immediate banks, must receive a permit prior to undertaking the project. To receive a permit, a person must follow the application process.
- (2) The district shall review all projects to ensure they are achieved in a manner consistent with the policy set forth in the Act. The district in making its decision to deny, approve, or modify an application, shall determine the purpose of the project and whether the applicant is using a reasonable means of accomplishing the project. The application review and decision process is outlined in 75-7-112, and these rules.

## **RULE 9. APPLICATION PROCESS**

- (1) The applicant is responsible for providing sufficient information for the supervisors to make a reasonable determination to approve, modify, or deny the application. Incomplete applications may not be accepted. To be complete, the information submitted must be credible and all of the necessary parts of the form filled in with the required information. Information to be provided by the applicant, must include, but is not limited to:

- (a) The location of the project;
  - (b) The purpose of the project;
  - (c) A detailed description of how the project will be accomplished;
  - (d) Project plans and drawings;
  - (e) Maps of the project site;
  - (f) Proposed dates of project development or construction;
  - (g) Length of time to complete the project; and
  - (h) If required by the district, engineering plans.
- (2) The supervisors may require an applicant to provide additional information for projects that appear, from a review of the application, to have the potential to impact the flow characteristics of the stream.
- (a) The following additional information may be required if requested by the district:
    - (i) Names and addresses of landowners that may be potentially impacted by the proposed project;
    - (ii) A description of the potential impacts to the stream from the project wherever they may reasonably be expected to occur;
    - (iii) Design drawings(s) that clearly depict the plan, profile, and typical cross-section views of the proposed activity;
    - (iv) Engineering designs;
    - (v) Project alternatives considered; and
    - (vi) Any other information needed to make an informed decision.
  - (b) If required, the information required in subsections (2)(a)(i) and (ii) must be developed with the assistance of a person with experience in identifying potential impacts to stream flow characteristics. The information required in subsection (2)(a)(iii) must be developed with the assistance of a person with experience in the design or construction of projects. Information required in subsections (2)(a)(i) through (iii) must be accompanied by a certified statement from the person who assisted with the development of the information documenting the person's engineering education and/or qualifications to provide assistance under (2)(a)(iv) must be provided.
- (3) Notice of Proposed Project/Permit Application
- (a) The notice of proposed project (permit application) shall be made on Form 270. The application may be either hand delivered or it may be mailed to the supervisors at the district office.
    - (i) Form 270 will be officially accepted by the district at its regularly scheduled board meeting if the application is complete and is for an activity that will alter or modify a stream. The time frame specified in these rules begins upon acceptance of the application.
  - (b) Plans of Operation. If a person is submitting an application for an activity that is conducted annually, such as maintenance of a bridge, culvert, or irrigation structure, the applicant may submit a plan of operation to the district. The district may approve the

annual activity for a period of up to 10 years as described in Rule 10, Decision. Plans of operation that have been approved are subject to annual inspection by the district. In addition to indicating on Form 270 that the activity will be done on an annual basis, the applicant will provide the following information to the conservation district:

- (a) The reason for on-going activity and why it is necessary;
  - (b) Time of year -- the dates for which the activity will start and be completed each year, including the number of days the activity will take place;
  - (c) Where the activity will take place;
  - (d) How often the activity will take place;
  - (e) An explanation, in detail, of how the activity will take place; and
  - (f) An explanation of how the applicant will keep soil erosion and sedimentation to a minimum.
- (c) The district or the district's representative shall, within 10 working days of accepting an application, send a copy of the application to the Department.
- (d) Where a single land use activity, such as a timber sale, involves multiple locations of a single overall project, such as the placement of several culverts, application for all proposed stream alterations in conjunction with land use activity may be made on a single application. The application shall include a map and legal description of all the multiple locations of the projects.
- (e) If, at any time during the review process, the supervisors determine that the proposal is not a project or that these rules are otherwise inapplicable to the activity, the applicant will be notified in writing that written consent of the supervisors is not necessary.
- (4) Formation of a Team
- (a) The department shall, within 5 working days of receipt of the application, inform the supervisors whether the Department requests an on-site inspection by a team.
  - (b) The supervisors shall call a team together within 20 days of receipt of the request of the department for an on-site inspection. A member of the team shall notify the supervisors, in writing within 5 working days after a notice of inspection if the team member waives participation in the inspection.
    - (i) If the Department does not request an on-site inspection within the time specified in the subsection, the supervisors may approve, modify, or deny the project.
  - (c) Each member of the team shall recommend, within 30 days of the date of inspection approval, modification, or denial of the project to the supervisors, using the Team Member Report (Form 272).
    - (i) The applicant may waive participation in this recommendation. A non-response is considered a waiver.

- (d) The supervisors may extend, at the request of any team member, the time limits provided in this rule, when, in their determination, the time provided is not sufficient to carry out the purposes of the Act and these rules. The time extension may not exceed one year from the date of acceptance of the application. The applicant must be notified of the initial time extension within 60 days of the date of acceptance of the application and must be notified within 7 working days of the supervisors' action granting the extension.

## **RULE 10. DECISION**

- (1) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members within 60 days of the date of application, of their decision. A permit shall be provided on the Supervisors' Decision Form 273.
- (2) The team, in making its recommendation, and the supervisors, in denying, approving, or modifying a project, shall determine:
  - (a) the purpose of the project; and
  - (b) whether the project is a reasonable means of accomplishing the purpose of the proposed project. To determine if the project is reasonable, the following must be considered:
    - (i) the effects of soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives;
    - (ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the proposed project;
    - (iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream;
    - (iv) the effects on stream channel alteration;
    - (v) the effects on stream flow, turbidity, and water quality caused by materials used or by removal of ground cover; and,
    - (vi) the effect on fish and aquatic habitat.
- (3) If the supervisors determine that a proposed project or part of a proposed project should be modified, they may condition their approval upon the modification.
- (4) The supervisors may not approve or modify a proposed project unless the supervisors determine that the purpose of the proposed project will be accomplished by reasonable means.

- (5) Decisions to approve, modify, or deny an application must be made by a concurrence of a majority of the supervisors.
- (6) The applicant must notify the supervisors in writing within 15 days of receipt of the permit if the applicant wishes to proceed with the project in accordance with the permit. No work may begin on a project before the end of the fifteen-day waiting period unless all team members and the district give written permission.
- (7) Unless otherwise stated, the term of a permit is one year from the date of the supervisor's decision. An applicant may request, and the district may approve a one-year extension if for any reason the project could not be completed within the initial term of the permit.
- (8) A plan of operation may be approved for activities of a recurring nature for a period not to exceed 10 years. In order to qualify for an approved plan of operation, the activities must occur in the same location and in the same manner on an annual basis. No time extensions will be given on annual maintenance permits. When the term of a permit for an annual maintenance permit has expired, a person must submit a new application.

#### **RULE 11. PUBLIC PARTICIPATION**

- (1) All business of the supervisors shall be conducted in an open meeting after reasonable notice has been given.
- (2) A team inspection is not a meeting of the supervisors; however, the public may participate in a team inspection if the landowner has given permission. The district is not responsible for securing this permission or providing transportation to the site.
- (3) Unless privacy interests of an applicant outweigh the public's right to know, all district records are available to the public. The district chair shall make determinations regarding privacy issues in accordance with applicable statutes.
  - (a) The district chair may close a meeting during the time of a meeting that the discussion relates to a matter of individual privacy and then if and only if the district chair determines that the demands of individual privacy clearly exceed the merit of public disclosure. The individual about whom the discussion pertains, may waive the right to privacy. In that event, the meeting shall remain open.
- (4) The district shall keep minutes of its meetings and decisions under these rules.
- (5) Conduct of Regular Meetings/Public Information Meetings
  - (a) Before a meeting is held to take final action on a notice of proposed project, the supervisors shall give reasonable notice to the applicant and other persons who may be directly affected by decision.
    - (i) Notice of regular, special, and public information meetings shall be given a minimum of 5 days in advance of the meeting by posting the notice in 5 conspicuous

places, or by advertising in the local media, by a news story, or by posting a notice on the district's website.

- (ii) The district may require the applicant to give written notice to any person the district determines may be directly affected by a proposed project.
- (b) Meetings shall be conducted at the discretion of the Chair under normal rules of meeting procedure. All directly affected persons, including the applicant, shall be provided an opportunity to state their case and to present relevant evidence supporting their positions. At the discretion of the Chair, each directly affected person may also ask relevant questions of another directly affected person.
- (6) The district may hold a public informational meeting when the supervisors determine a proposed project to be controversial, or where additional information is desired prior to final action by the supervisors. If the matter is of significant interest to the public, members of the public shall be given the opportunity to comment on the proposed project prior to final action by the supervisors.
- (7) The district may hold a public hearing to gather information relative to making an initial designation of a perennial-flowing stream.
- (8) Adopting Rule Changes/Public Hearings to Remove Perennial Streams
  - (a) The district shall conduct a public hearing before adopting any major changes in these rules.
  - (b) The district shall conduct a public hearing, if petitioned, to gather information about whether a natural perennial-flowing stream has significant aquatic and riparian attributes in need of protection or preservation under 75-7-102.
  - (c) Notice of public hearing to be conducted under (8)(a), and (b), shall be given by publication of a notice in a newspaper of general circulation in the area at least twice with an interval of at least 14 days between the two publication dates. The first notice must be published at least 28 days prior to the hearing.
- (9) Hearings for Declaratory Rulings.
  - (a) Hearings for declaratory rulings shall be conducted in accordance with the Act and Rule 20, Declaratory Ruling.
  - (b) Notice of hearing for declaratory rulings shall be given as described in (6)(c) of this rule.

**History:** (8)(c) & (9)(b) typos corrected 4/9/07

## **RULE 12. PROJECT CONSTRUCTION**

The following standards shall apply to all projects:

- (1) Projects must be designed and constructed using methods that minimize:

- (a) adverse impacts, both upstream and downstream;
  - (b) future disturbance to the stream.
- (2) All disturbed areas must be managed during construction and reclaimed after construction to minimize erosion.
  - (3) Temporary structures used during construction must be designed to handle high flows reasonably anticipated during the project construction period. Temporary structures must be completely removed from the stream channel at the conclusion of construction and the area must be restored to a natural and stable condition.
  - (4) Channel alterations must be designed to retain original stream length or otherwise provide hydrologic stability.
  - (5) Streambank vegetation must be protected except where removal is necessary for completion of a project. When removal of vegetation is necessary, it must be kept to a minimum and revegetated as soon as possible.
  - (6) Riprap, rock, or other material used in a project must be of adequate size, shape, and must be properly placed to protect the streambank from erosion.
  - (7) The district may:
    - (a) limit the time and duration of construction to minimize impacts to the stream or associated aquatic life;
    - (b) require the applicant to submit engineering designs; when in the district's judgment, the projects complexity requires greater assurance of project stability to minimize impacts to the stream;
    - (c) require the applicant to provide project completion documentation, which may include photographs.
  - (8) A person may not place road fill material in a stream.
  - (9) A person may not place debris or other materials in a stream where it can erode or float back into the stream.
  - (10) Projects may not permanently prevent fish migration.
  - (11) For streambank stabilization projects, the district encourages the use of methods that preserve or enhance natural stream habitat and function.

- (a) Applications proposing the use of riprap or other hard stream bank stabilization methods shall include information establishing that due consideration has been given to methods that use organic materials (e.g., root wads, riparian vegetation, biodegradable geotextile fabrics, tree revetments) as the primary means of stabilization and that such methods are not practicable because:
  - (i) Sufficient long term durability would not be achievable;
  - (ii) Hydrodynamic considerations make it likely that the project would not meet its intended purpose;
  - (iii) The project would result in the same or greater impact on channel stability, flooding, erosion, and/or aquatic habitat; or
  - (iv) Economical considerations prevent the use of such methods.
- (b) Live vegetation used in a project must remain viable and functional for one year after completion of the project. The district may perform follow-up inspections of projects involving live vegetation and may require that dead vegetation be replaced.

### **RULE 13. DISPUTE RESOLUTION**

- (1) Any permit decision or decision regarding an emergency may be reviewed by an arbitration panel or by judicial review in the district court in the county where the project is located. Judicial review of an arbitration panel's decision may be made under the provisions of MCA, Title 27, Chapter 5, Part 3 of the uniform arbitration act and must be brought in the county where the action is proposed to occur.
- (2) The applicant may request arbitration as the method to resolve disputes by signing an arbitration agreement either before the application review process or within 15 days of receipt of the supervisors' decision.
  - (a) If an applicant signs an arbitration agreement prior to the application review process, the applicant waives their right to judicial review.
- (3) The applicant may request judicial review of the supervisors' decision by filing a petition in district court within 15 days of receipt of the supervisors' decision.
- (4) Any other team members may seek formal dispute resolution only through arbitration by signing an arbitration agreement within 5 working days of receipt of the supervisors' decision.
- (5) The arbitration agreement is outlined on Form 271 and contains provisions for the appointment of arbitrators; the exercise of power by the arbitrators; the hearing process; and fees and expenses of arbitration.

- (6) An applicant's choice of the judicial review remedy prevails over any other team member's request for arbitration.
- (7) Subsection (1) does not preclude more informal means of dispute resolution. A meeting or meetings, to include, at a minimum, all of the team members and the supervisors, may be scheduled, at the discretion of the supervisors, at any time in order to discuss and attempt to resolve disputes. This subsection does not relieve the team member(s) wishing to dispute a permit decision of the duty to submit a request for arbitration or file a petition for a judicial review in district court in compliance with subsection (3) or any party from any other provision of the statute.
- (8) An appeal of the determination made by judicial review may be made to the Montana Supreme Court.
- (9) Judicial review of an arbitration panel's decision may be made to district court under the Uniform Arbitration Act (Title 27, Chapter 5, Part 3, MCA).

#### **RULE 14. INSPECTION OF PROJECTS - PROJECT FOLLOW-UP**

- (1) The supervisors, team members, or their designated representative may inspect any project during or after construction to insure that the conditions of the permit were followed and to provide technical assistance to the applicant.
- (2) The district shall make a concerted effort to notify the landowner prior to entering land to inspect a project, either orally or in writing.
- (3) The district may require the applicant to provide photo documentation of the project.

#### **RULE 15. EMERGENCIES**

- (1) Except as provided in this rule, the provisions of these rules shall not apply to those actions that are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for taking action under this rule shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.
- (2) The emergency notice given under subsection (1) must be provided on Form 275 and must contain the following information:
  - (a) the location of the action taken;
  - (b) a general description of the action taken;
  - (c) the date on which the action was taken; and
  - (d) an explanation of the emergency causing the need for the action taken.

- (3) The supervisors will determine if the action taken meets the definition of emergency as defined in Rule 4 (10). Violations of the emergency procedures are subject to provisions of Rule 17, Penalty/Restoration.
- (4) If the supervisors determine that the action taken meets the definition of a project, the supervisors shall send one copy of the Notice within 5 working days of its receipt, to the department.
- (5) A team, called together as described in Rule 10, shall make an on-site inspection within 20 days of receipt of the emergency notice.
- (6) Each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, approval, modification or denial of the project.
- (7) The supervisors shall review the emergency project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members of their decision within 60 days of receipt of the emergency notice.
  - (a) If an action is approved no further action is necessary in the part of the district or the applicant.
  - (b) In an emergency action that has been modified, the applicant must submit written notice on Form 270 to mitigate possible damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this subsection must be filed within 90 days after the supervisors' decision.
  - (c) A person who has undertaken an emergency action that is denied shall submit written notice on Form 270 to obtain approval to remove the project to avoid further damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this subsection must be filed within 90 days after the supervisors' decision.
- (8) Disagreements with the supervisors' decision may be formally resolved according to Rule 13, Dispute Resolution.
- (9) The failure of a person to perform the following, subjects the person to civil and criminal penalties:
  - (a) failure to provide emergency notice under subsection (1);
  - (b) failure to submit a notice of the project under subsection (7)(b) and (7)(c); or
  - (c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible, to the emergency situation

## **RULE 16. COMPLIANCE WITH OTHER LAWS**

- (1) Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 76, Chapter 5, MCA, floodway management and regulation where designated floodplains or designated floodways have been established in accordance with that chapter.
- (2) These rules shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.
- (3) The issuance of written consent of the supervisors does not relieve the applicant of the responsibility to obtain other permits or landowner permissions that may be necessary to undertake a project.

## **RULE 17. PENALTY - RESTORATION**

- (1) Except for emergency action, a project engaged in by any person without prior approval, or an activity performed outside the scope of written consent of the supervisors, is a public nuisance and subject to proceedings for immediate abatement.
- (2) A person who initiates a project without the written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, places a junked motor vehicle in a streambed or bank, or violates the emergency procedures of Rule 16 or the Act is:
  - (a) guilty of a misdemeanor and upon conviction, the person shall be punished by a fine not to exceed \$500; or
  - (b) subject to a civil penalty not to exceed \$500 for each day that person continues to be in violation.
- (3) Each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to collect a civil penalty.
- (4) In addition to the criminal fine or civil penalty provided in subsection (2), the person:
  - (a) shall restore, at the direction of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible, or:
  - (b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to 3-10-301 if the amount of liability does not exceed \$7,000. If the amount of liability for restoration exceeds \$7,000, then the action must be brought in district court.

- (5) Any person may report a violation of these rules or of the Act to the county attorney or to the supervisors.

#### **RULE 18. COMPLAINT PROCEDURE**

When a conservation district receives a complaint alleging a violation, the conservation district will follow the steps below:

- (1) Request that the complainant submit a written complaint on Form 274. The complaint should specify the nature of the alleged violation, who is involved, where it is taking place, and when it occurred.
- (2) After receiving a completed Form 274, the district will contact the alleged violator by certified letter and advise the person of the complaint and give the alleged violator 15 days to respond. Once a response has been received, an on-site will be scheduled to conduct a field investigation, collect evidence, and document the time, date, location, nature of activity, and the person(s) involved in activity. The district will acquire information to confirm or deny that the complaint was valid and whether there is a violation of that Act. If the field investigation does not verify a violation, the district will notify the complainant and the alleged violator, in writing, of the districts findings.
- (3) After a field investigation affirms a violation, the district will send a letter certified with return-receipt requested, setting forth the results of investigation, the course of action required to rectify the violation, and a deadline date for taking the corrective action. If the violator acknowledges the districts request and is willing to work with the supervisors to correct the violation, the supervisors may postpone issuing an Order assessing a civil penalty or forwarding the complaint to the county attorney. If the violator is not responsive to the letter and is not cooperative in correcting the violation, the supervisors may proceed with the violation in accordance with 75-7-123 and may issue a cease and desist order.

#### **RULE 19. ORDERS ON VIOLATIONS**

- (1) If the district determines that issuance of an Order is appropriate, the district shall send a letter to the violator, enclosing an order assessing a civil penalty not to exceed \$500 per violation per day. The letter will identify the specific violation, the district finding on noncompliance, the required corrective action, and time frames for compliance, the date the civil penalty commences, and the district's intent to seek judicial enforcement of the civil penalty if it is not paid. If the violator takes corrective action within the required time frame, the district may waive the order for civil penalty.
- (2) If a violator fails to respond to the order, or to take corrective action, the district may seek judicial enforcement by turning the matter over to the county attorney or other legal service provider for the district.

## **RULE 20. DECLARATORY RULING**

- (1) A person who is directly affected by the supervisors' determination of applicability, interpretation, or implementation of the law, these rules, a written consent, or a designation of a stream, including a portion of a stream, and who disagrees with a determination may petition the supervisors for a declaratory ruling.
- (2) Upon receipt of the petition, the supervisors' will determine whether the matter constitutes significant public interest.
- (3) If the issue raised in the petition for a declaratory ruling is of significant interest to the public, the supervisors shall provide a reasonable opportunity for interested persons and the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.
- (4) If the issue raised in the petition for a declaratory ruling is not of significant interest to the public, the supervisors shall provide a reasonable opportunity for the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.
- (5) Data and information may be submitted at a hearing before the supervisors. Data and information submitted to the supervisors outside of the hearing process must be made available for public review prior to the hearing being conducted before the supervisors.
- (6) A proceeding held under this section is not a contested case proceeding. A declaratory ruling under this section is not subject to the provisions of the Montana Administrative Procedures Act. No party may cross examine any party submitting data and information to the supervisors, but all data and information must be verified by the party submitting it.
- (7) This rule may not be interpreted or construed to allow a person to petition for a declaratory ruling under this section for an administrative review of a decision of the supervisors to grant, deny, or condition a written consent for a project or a project undertaken during an emergency. Review of these decisions is exclusively provided for in 75-7-121 as it pertains to arbitration or judicial review.

## **RULE 21. PROCESS FOR DECLARATORY RULING**

- (1) A directly affected person must submit a petition that states how and why the person is directly affected by the district's action and the specific question or initial determination made by the district to be addressed in the declaratory ruling
- (2) Within 30 days of the filing of a petition, the district shall appoint a hearing officer, who may be a supervisor, to conduct the declaratory ruling hearing. The hearing officer will regulate the course of the hearing, and with a concurrence of the district, set the time, place and date of the hearing.

- (3) Within 30 days of appointment of a hearings officer, the district shall set a date for a hearing to gather information and data, allow public comment, and allow the public to submit written comment. The hearing may be continued if necessary. The district shall provide notice of the hearings as described in Rule 11, Public Participation. A quorum of the supervisors must be present at the hearing. The district shall maintain a record of the petition, notices, all information and data gathered, any proposed findings of fact and conclusions of law.
- (4) The hearing officer will make a recommendation to the supervisors for their approval and adoption within 60 days of the conclusion of the hearings process. The district may extend this time frame if necessary.
- (5) The hearing officer and the supervisors shall consider information provided by the petitioning party to be persuasive unless the information is overcome by a preponderance of all available information presented at the hearing.
- (6) A declaratory ruling, consisting of findings of fact and conclusions of law, must be made by a concurrence of a majority of the board. Only those supervisors present during the hearing will participate in the decision.

## **RULE 22. JUDICIAL REVIEW OF DECLARATORY RULING**

- (1) A directly affected person or an interested person dissatisfied with a declaratory ruling may seek judicial review in district court. The district court review shall be only on information and data established on record before the district. A district determination may be reversed or modified if the declaratory ruling is:
  - (a) in violation of a constitutional or statutory provision;
  - (b) in excess of the statutory authority of the supervisors;
  - (c) affected by error of law; or
  - (d) arbitrary or capricious, characterized by abuse of discretion, or a clearly unwarranted exercise of discretion.
- (2) Any aggrieved person who was a party to the declaratory ruling proceedings who is dissatisfied with the district court determination may seek judicial review by an appeal to the Montana Supreme Court.

## **CHAPTER 2**

### **CONSTRUCTION STANDARDS & BUILDING MATERIALS**

The following standards apply to all projects:

- A. Construction Standards
  1. Projects must be designed and constructed using methods that minimize:
    - a. Adverse impacts, both upstream and downstream.
    - b. Future disturbance to the stream.
  2. All disturbed areas must be managed during construction and reclaimed after construction to minimize erosion.
  3. Temporary structures used during construction must be designed to handle high flows reasonably anticipated during the project construction period. Temporary structures must be completely removed from the stream channel at the conclusion of construction and the area must be restored to a natural and stable condition.
  4. Channel alterations must be designed to retain original stream length or otherwise provide hydrologic stability.
  5. Riprap, rock, or other material used in a project must be of adequate size, shape, and must be properly placed to protect the stream bank from erosion.
  6. The District may:
    - a. Limit the time and duration of construction to minimize impacts to the stream or associated aquatic life;
    - b. Require the applicant to submit engineering designs, when in the District's judgment, the project's complexity requires greater assurance of project stability to minimize impacts to the stream;
    - c. Require the applicant to provide project completion documentation, that may include photographs.
  7. Unless specifically authorized by the District, the following activities are prohibited:
    - a. Placement of road fill material in a stream;

- b. Placement of debris or other materials in a stream where it can erode or float back into the stream;
  - c. Projects that permanently prevent fish migration;
  - d. Operation of construction equipment in a stream;
  - e. Excavation of streambed gravels.
8. No equipment shall be operated below the existing water surface without specific approval from the District. Forging the stream at one location will be permitted only on a case-by-case basis.
9. Care shall be taken to cause only the minimum necessary disturbance to the natural appearance of the area. Stream bank vegetation shall be protected except where its removal is absolutely necessary for completion of the work. Any vegetation, debris, or other material removed during construction shall be disposed of at some location out of the flood plain where it cannot re-enter the channel during high stream flows. All new cut or fill slopes shall be immediately seeded, vegetated, or otherwise protected to prevent erosion.

B. General Construction Materials

- 1. Policy considerations
  - a. While metals are generally inert except for oxidation, surface applications of some foreign material (i.e. wet paint, grease, oil, etc.) can degrade water quality.
  - b. Any building material should be stable and free of silts, sands, fines, chemical preservatives, grease, oil or any surface application that could immediately or eventually contaminate water quality.
- 2. Standards
  - a. Wood
    - 1) All wood used shall be untreated or conform to the treated wood specifications, listed in the appendix. Preservatives including varnish, stain, paint, linseed oil, diesel fuel, and creosote are prohibited.
    - 2) The prohibition in 4.1.B.2.a.1 does not prohibit the application of paint or stain as a routine maintenance measure for any structure built prior to 1975 or as authorized since that date located landward of the high-

water line that has been painted or stained on a routine basis in the past.

- 3) Where wood is used for any project that would at sometime be in, or over the water, only solid wood shall be used. This specifically excludes plywood, particleboard, chipboard, etc.

b. Metal

- 1) Any metal used may be painted or coated with an inert metal sealant (i.e. paint, plastic, rubber, enamel, etc.) that has thoroughly dried/cured prior to its use.
- 2) Minimal lubrication of critical metal components may be used where necessary for movement.
- 3) No metal used in the project area may contain deposits or a surface application of any of the following:
  - a) Grease or oil (except as provided in 4.1.B.2.b.2, above);
  - b) Paint, varnish or coatings that have not thoroughly cured or dried; or
  - c) Any chemical or substance that will wash off or dissolve when in contact with water.

c. Foam flotation logs

- 1) Styrofoam logs, as a method of flotation, are prohibited. Extruded polystyrene (blue logs) or similar single cell foam is allowed.
- 2) All foam flotation logs shall be completely encased in solid wood (excluding particle Board, plywood, etc.) or in metal. Drain holes or a maximum of 1/2 inch spacing between wood boards may be allowed.

d. Asphalt

Asphalt or similar petroleum based products intended for use as a travel or walking surface are prohibited.

e. Concrete

- 1) Wet concrete shall not be poured into or allowed to come in contact with the water. On a case-by-case basis, concrete poured within water-tight forms may be approved.
- 2) Concrete is not allowed for bank stabilization unless the provisions established by the Montana Department of Environmental Quality are met.

f. Rock or stone

- 1) Rock or stone is a preferred natural material for construction.
- 2) All rock or stone that will come in contact with the stream shall be free of silts, sands or fines.

C. Excavation or Filling of Materials

1. Policy Considerations

- a. The stream should be preserved in its natural condition to the greatest extent possible, in order to protect fish and wildlife habitat and water quality.
- b. Increased sedimentation in the stream should be minimized to the greatest extent possible, as a protection for fish habitat and water quality.

2. Standards

- a. Any material that is excavated from the streambed or banks shall be removed entirely from the stream and flood plain and deposited in such a manner so as to prohibit re-entry of the material into the stream.
- b. Temporary stockpiling of excavated materials anywhere in the floodplain is prohibited.

D. Erosion, Sedimentation and Storm Runoff

1. Policy Considerations

- a. Any construction activity that will affect the stream bank should incorporate all necessary means to minimize pollution of the stream, including erosion, sediment and storm runoff controls.
- b. The proposed activity should minimize increased sedimentation, an increase in suspended sediments, or an increased discharge of

nutrients into the stream either during its construction or utilization.

2. Standards

- a. Unless otherwise specified in these rules or in the 310 Permit, the interface of fill materials, such as riprap, with the stream water shall be sloped at a maximum 1.5:1 ratio in order to dissipate wave and stream flow energy. The face of the slope shall be covered with suitable materials to discourage soil erosion and slumping of banks.
- b. The natural protective armament of the stream and stream bank shall be preserved wherever possible.
- c. Natural vegetation shall be preserved wherever possible and as specified in the rules adopted under the Montana Streamside Management Act Zone Law.
- d. Vegetation shall be provided, if required, as a means of stabilizing erosive areas.
- e. Mechanized equipment will be limited to those actions authorized in the 310 Permit and controlled by the Montana Streamside Management Act-Zone Law.

E. Burning

1. Policy Considerations

Burning of materials on the streambed or banks will cause a degradation of water quality, and may create safety hazards.

2. Standards

Burning of weeds, grass, shrubs, brush, trees, old construction materials, debris from new construction or similar materials on the streambed or banks is prohibited below the average high water line.

## PROJECT STANDARDS

Any proposed project shall meet the following standards:

### A. Docks, Warfs, Piers

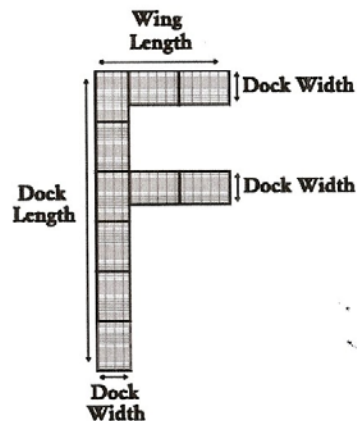
#### 1. Policy Considerations

- a. Open and floating docks are encouraged as they allow complete water transfer beneath them. Such docks with large free water transfer areas do not impede current flows and, therefore, stagnant water conditions are not created.
- b. Partially open docks that provide for restricted water transfer may be allowed. Partially open docks are those constructed of closely spaced piling or planking.
- c. Solid docks or structures that essentially block the transfer of water beneath the dock shall not be permitted.
- d. Docks, wharfs, and piers have a high potential to interfere with public navigation and public recreation. The property owner has a riparian right to stream access; the public has a right to navigation and recreation on public waters. A balance of these two rights should be arrived at by consideration of the water depth at a given location and the distance a structure extends into the public waters.
- e. Common stream bank dock facilities shared by two or more owners, should be encouraged, as such facilities shall reduce the overall environmental impacts on the streambed and bank and ease navigational congestion on the stream.

### A. Dock Standards

1. Docks shall not exceed twenty (20) feet in length, not to include the ramp (gangway).  
**History:** A.1. revised 8/13/2007
2. Where the depth of the water, at the end of a twenty (20) foot dock on Flathead River, and on Swan River is less than five (5) feet), additional length may be allowed if the dock cannot be moved laterally to achieve the five (5) foot depth.  
**History:** A. 2. revised 8/13/2007

3. The maximum length of the wing section on a dock, whether it shall be a T, F, 4 or L shaped dock, shall not exceed the lesser of 30 feet or 30 percent of the lot frontage (See Figure #2, Dock Dimensions).



**Figure 2. Dock Dimensions**

4. The width of the deck on a dock shall not be greater than six (6) feet, except on a floating dock, width may be increased to eight (8) feet for greater stability.  
**History:** A.4. revised 8/13/2007
5. If foam or similar easily damaged floatation systems are incorporated into the dock design, the material shall be completely encased in solid wood or a suitable impervious, non-corrosive material such as aluminum or galvanized sheet metal so as to avoid the breakup or scattering of materials. Plywood, particle board, etc., shall not be used. Boards may be spaced up to one-half inch apart on the bottom or drain holes may be incorporated into other materials to aid in drainage.
6. All floating docks shall be suitably anchored to the river bottom or bank to avoid drift. Anchoring methods are limited to cable; galvanized chain or nylon or polypropylene rope attached to a suitable clean weight such as solid clean concrete, rock or steel blocks or a temporary pipe and post system which allows the dock sections to slide up and down. In addition, the end of the floating dock may be secured by cable, anchor, or post to keep the end of the dock stable.
7. Only one dock is allowed per waterfront property ownership. This includes multiple contiguous lots under one family or related ownership, unless an individual dwelling is constructed on each separate and legally defined lot with independent water and sewage disposal, in which case one dock is allowed per independent dwelling unit/lot.
8. Docks which have deteriorated to the extent that they may contaminate the river, such as having exposed white Styrofoam, shall be immediately repaired as necessary to eliminate the risk of contamination or shall be removed entirely from the water.
9. It is a violation of these regulations to abandon docks or to otherwise allow docks or dock remnants to float out into the river unsecured.
10. Floating docks should be removed from the water by December 1 and anchored securely above the high water line.

## B. Marinas

### 1. Policy Considerations

Marinas, because of their size, have a high potential to impact the stream and stream bank. A marina should be designed to accommodate only its anticipated sizing and capacity needs, to protect the navigational rights and safety of neighboring property owners and recreational users of the water resource, and to protect the quality of the water and fish and wildlife habitat.

### 2. Standards

a. All marinas will be reviewed on an on-site basis. The following will be considered:

- 1) Current;
- 2) Water depth;
- 3) Stream width;
- 4) Stream configuration;
- 5) Soils; and
- 6) Bank Configuration.

b. The streambed and bank shall not be excavated or dredged in order to provide channels and suitable water depth for boating access into the marina.

## C. Boathouses, Boat Shelters and Shore Stations

### 1. Policy Considerations

These structures are essentially land based structures and, where built within the stream, have a high potential to significantly alter the natural characteristics of the shoreline and diminish water quality.

### 2. Standards

a. The streambed and bank shall not be excavated or dredged in order to provide channels and suitable water depth for boating access to a structure.

- b. Construction in the area of a stream will be such as not to concentrate run-off into the stream.

#### D. Boat Ramps and Boat Rail Systems

##### 1. Policy Considerations

- a. Boat ramps have a potential to increase sedimentation in the stream, and diminish water quality.
- b. Boat rail systems, if properly installed, generally have an insignificant impact on the stream and its banks.
- c. Facilities designed for removal of boats from a stream, such as rail systems, are preferred to attempting to build a dock, shore station, or boat shelter for protection of boats, as the overall impacts tend to be less adverse.

##### 2. Standards

- a. Footings and/or the base of the boat ramp shall be constructed below the pre-existing grade of the stream bank.
- b. All material excavated from the stream to construct the boat ramp and not used as the ramp foundation material shall be immediately and completely removed from the floodplain and deposited in such a manner as to prohibit its re-entry into the stream.
- c. Boat ramps shall be of the same elevation as the pre-construction streambed and banks.
- d. Maximum grade shall not exceed 15%.
- e. All ramps shall be finished with non-skid surface to insure maximum traction for vehicles launching and retrieving boats.
- f. Concrete boat ramp edges shall be thickened to a minimum of twice the average thickness of the ramp in order to prevent erosive undercutting or breaking of ramp edges.
- g. Launching rails shall be suitably anchored to the stream bottom.
- h. The rails of the rail launching system shall not exceed four (4) inches in height and the rail system shall lie on and follow the grade of the existing streambed and banks. No portion of the rail shall extend more than 18 inches above the immediately adjacent land.

E. Bank Stabilization

1. Policy Considerations

- a. Retaining walls significantly alter wave actions, currents, beach dynamics, bank erosion patterns, and may affect neighboring property.
- b. Other alternatives, such as riprap, stream flow regulators, or vegetation should be explored first. Retaining walls should be constructed only as a last resort. When used, retaining walls should be constructed only for the purpose of stopping shoreline erosion.
- c. Stone or wood retaining walls are preferred to concrete retaining walls.

2. Standards

- a. The use of retaining walls solely for landscaping is prohibited.
- b. Retaining walls designed to extend the land area into the stream is prohibited.
- c. Retaining walls shall be built at or landward of the mean annual high water elevation and shall conform to the contours of the existing shoreline.
- d. Riprapping shall constitute the primary retaining wall method. Riprap retaining wall standards are as follows:
  - 1) Riprap rock shall be angular and sized properly for the specific task unless otherwise specified.
  - 2) All riprap rock shall be free of silts, sands or fines.
  - 3) Rock may be hand picked from the immediate stream bank but removal of said rock shall only be allowed if a solid armament of rock remains in place. The removal of any rock that exposes silts, sands or fines is prohibited.
  - 4) Unless otherwise specified, riprap rock shall be toed-in below bottom of the stream and be placed at a maximum slope of 1.5:1.
  - 5) Prior to the placement of riprap, filter fabric may be required to be placed along the stream bank and

incorporated into the riprap design to inhibit erosion and the washing of fines through the riprap.

- 6) Use of concrete is not allowed for bank stabilization unless the provisions of the DEQ are followed.
- e. Concrete and other structure type retaining wall standards are as follows:
- 1) The landward side of the retaining wall shall extend at least two (2) inches but not more than eight (8) inches above the level of backfill to inhibit surface water run-off that may carry sediments to the stream.
  - 2) Within five (5) feet landward of any retaining wall, backfill shall consist of easily drained gravel, rock, stone, sand or a combination of the above. Drain or weep holes should be provided for in any wall. No attempt should be made to establish grass or a yard immediately behind a wall unless a silt barrier is included in the construction design.
  - 3) All material excavated for placement of the footings may be used as backfill behind the wall or else be deposited outside of the floodplain.
  - 4) Backfill shall be limited to that amount necessary to re-establish the pre-existing slope and contours of the landward side.
  - 5) If an existing wall has to be replaced, it shall be completely removed from the floodplain and the replacement wall shall be constructed in essentially the same location as the existing wall. If removal of the wall proves unfeasible or will cause environmental hazards (sedimentation, bank failure, etc.), the Board will consider an alternative method.

## F. Dredge, Fill, and Swim Beach Creation

### 1. Policy Considerations

- a. Dredging of a streambed or bank may have adverse effects due to suspension of fine materials, re-suspension of nutrients and toxic materials, exposure of stable streambed sediments to unstable conditions, removal of streambed armament and creation of steep bench areas.
- b. Filling of wetlands creates adverse effects due to destruction of an aquatic environment, loss of habitat for fish and wildlife, loss of

water storage capacity and loss of the natural storm runoff cleansing functions and the natural nutrient entrapment functions of wetlands.

2. Standards

- a. The stream banks shall not be undercut or damaged.
- b. Stream bank vegetation shall not be damaged.
- c. Fuel or lubricants shall not be allowed to enter the stream; if this happens all operations are to be stopped immediately and remedial efforts are to begin immediately.
- d. The dredge shall only be operated during daylight hours.

- e. Dredging and/or filling is only permitted at the time of year specified on the permit. Cutthroat and Rainbow trout spawning takes place in April and May and the fry emerge from the gravel from mid-June to mid-July. Brook and Bull trout spawn from mid-September to the end of November and the fry emerge from the gravel in March and April . The dredge shall only be operated between July 15 and September 15 to protect the eggs and fry that are developing in the gravels.
- f. Discharge of fill material into the stream is prohibited.
- g. If allowed, dredged areas shall be stabilized with a protective armament as soon as possible after excavation . In areas where there is a rock layer on the surface of the streambed or bank, such rock shall be removed and set aside, then replaced as a protective layer subsequent to the excavation.
- h. Dredging for the purpose of creating, enlarging, or improving an artificial harbor, lagoon, or in-stream pond is prohibited.
- i. Fill projects for the purpose of expanding existing land areas are prohibited.
- j. Filling of wetlands is prohibited.
- k. Filling for the purpose of creating a swimming beach may be allowed on a case by case basis. All fill, if allowed, shall be clean, washed material free of silts, sands or fines.
- l. Permits for any dredging and filling may also be required by the Department of Natural Resources - Land Office, and the U.S. Army Corps of Engineers, as well as others.
- m. The applicant will need to obtain a Point-Source Discharge Permit for Turbidity from the Department of Environmental Quality, P.O. Box 200910, Helena, MT 59620-0901, and other permits that may be necessary for the project.
- n. If dredging outside wetted channel, effluent from the dredge shall be run over a gravel bar or through a settling pond to remove suspended solids.
- o. Pits created by dredging will be filled at the conclusion of the operation.

G. Utility Lines (Electrical, Sewer, Water, Wells)

1. Policy Considerations

The placement and maintenance of utility lines and wells, if done improperly, can have significant effects on streams due to disturbance of the streambed or banks.

2. Standards

a. Sewer lines/Disposal facilities:

Streamside sewage pump out facilities may be placed in public or private marinas or public parks.

- 1) Approval must be received from all federal, state and local agencies governing such facilities.
- 2) Such facilities shall include equipment to pump or otherwise receive and transfer contents of vessel holding tanks into a sewage retention and/or disposal system located outside the flood plain.
- 3) Such facilities shall include in the design, appropriate plans to prevent all spillage or leakage from entering the stream.

b. Waterlines:

That portion of the waterline that is not buried and does lie exposed on the bottom of the stream bed or bank shall be weighted to prevent floatation or snagging.

c. Wells and Cisterns:

- 1) No well or cistern shall be drilled or developed in the stream.
- 2) For wells or cisterns located near a stream, when originally developing and pumping the well, the silt-laden water shall not be allowed to flow into the stream.

d. Utility Line Burial:

Trenching

- 1) Only the minimum amount of material necessary to lay the line shall be removed from the trench.
- 2) All material excavated from the trench shall be replaced back into the trench as backfill. Any material that is not

replaced back into the trench shall be completely removed from the floodplain.

- 3) In areas where there is a rock layer on the surface of the streambed or bank, such rock shall be removed and set aside, then replaced as a protective layer subsequent to the excavation.
- 4) In areas where no rock layer exists, the replaced dirt shall be compacted and consolidated in order to prevent erosion. Additional cover, such as gravel, a rock layer or vegetation, may also be required.
- 3) Following installation, the streambed or bank shall be returned to its condition prior to construction, and/or revegetated.

d. Boring

- 1) No application is required if utility line boring takes place a minimum of 20 feet away from the top of the highest bench of the bank, and takes place a minimum of five feet below the lowest part of the stream.
- 2) Discharged material from the drilling process shall not enter into the 20-foot riparian area, nor the stream.
- 3) These conditions can only be used if the Flathead Conservation District office is notified 10 days before the proposed project is to begin.

H. Fuel Tanks

1. Policy Considerations

Fuel spills into the stream can create serious water quality hazards and may impair fish and wildlife habitat.

2. Standards

- a. No bulk fuel tanks shall be placed over or under a stream or its immediate banks.
- b. If a tank is located near a stream and the line goes under, through, or over a stream, a pressure shut-off valve shall be located next to the bulk tank on the line, between the tank and the stream.

I. Dwelling Units

1. Policy Considerations

Buildings represent concentrations of human activities. Such activities are essentially land based with people entering the aquatic environment only for relatively short periods of time for recreational purposes. Buildings are potentially harmful through creation of impervious surfaces, increasing surface storm runoff into the stream and possible sewer leakage.

2. Standards

No buildings, or portions thereof, shall be constructed over a stream on the immediate banks of a stream. This includes roof overhangs, drip lines, balconies, bay windows, and chimneys.

J. Fences

1. Policy Considerations

a. Fences along streams restrict livestock and equipment movement near the stream, thereby minimizing bank damage and preserving water quality.

b. Fences across streams are a navigational hazard, alter stream currents, and trap debris.

2. Standards

a. Streamside and cross fencing will be reviewed on a case by case basis as to the need and purpose.

b. Livestock watering areas will be reviewed on a case by case basis.

K. Decks, Walkways, and Stairways

1. Policy Considerations

a. Decks, walkways and stairways are all structures that are located landward of high water and are considered constructed surfaces.

b. If properly placed and constructed these structures typically have minimal impact on the stream bank and, in some cases, help to protect the fragile shoreline from foot traffic.

2. Standards

- a. Projects for decks, walkways, and stairways will be reviewed on a case by case basis taking into consideration the following:
  - 1) Bank configuration;
  - 2) Bank slope;
  - 3) Soil stability; and
  - 4) Other site specific items.
- b. Structures allowed, will be constructed so as not to concentrate run-off into the stream.
- c. Structures shall be constructed on the existing terrain. Stones, gravel or wood are recommended travel surfaces as opposed to concrete.

#### L. Culverts

##### Standards

- a. All work should be completed in an expeditious manner as possible and shall take place during low flow periods.
- b. Work shall be conducted to minimize impact on the stream and immediate vicinity, with use of machinery in stream only when absolutely necessary. To prevent leaks of petroleum products into the waterway, no defective equipment shall be operated in areas capable of contributing surface flows to the waterway.
- c. Any excess material generated from a project must be disposed of out of the flood plain and not in an area classified as a wetland.
- d. All disturbed area (including any spoils or excess material) shall be shaped, seeded to grass, and lightly mulched to control erosion and prevent the infestation of noxious weeds. Existing vegetation shall be preserved wherever possible.
- e. The fill slope of the crossing shall be at a maximum grade of 1.5:1.
- f. The culvert shall be properly bedded in gravel and shall be on grade with the pre-existing slope of the stream, or buried one inch below the existing gradient unless otherwise specified.
- g. Both the upper and lower ends of the culvert shall be armored with oversize rock to control erosion and piping around the culvert unless otherwise specified.

- h. Culverts will have a fill depth over the top of the culvert of one third (1/3) the diameter of the culvert but no less than one foot.
- i. Culverts will be installed so that the low point in the road grade is not over the stream crossing. If this is not possible, construct water bars or cross drains in the road grade above the stream crossing.

#### M. Bridges

##### Standards

- a. All work should be completed in an expeditious manner as possible and shall take place during low flow periods.
- b. Work shall be conducted to minimize impact on the stream and immediate vicinity, with use of machinery in stream only when absolutely necessary. To prevent leaks of petroleum products into the waterway, no defective equipment shall be operated in areas capable of contributing surface flows to the waterway.
- c. Any excess material generated from a project must be disposed of out of the flood plain and not in an area classified as a wetland.
- d. All disturbed area (including any spoils or excess material) shall be shaped, seeded to grass, and lightly mulched to control erosion and prevent the infestation of noxious weeds. Existing vegetation shall be preserved wherever possible.
- e. Bridges will be installed so that the low point in the road grade is not over the stream crossing. If this is not possible, construct water bars or cross drains in the road grade above the stream crossing.
- f. Drain holes need to be put in concrete and steel bridge abutments and wing walls.
- g. Stringers for bridges will conform to a load carrying capacity of HS20.
- h. Old log bridges are to be removed and not left in stream.

#### N. Fish Passage at Road Crossings

##### 1. Policy Considerations

- a. Culverts can create adverse hydrologic conditions, such as drops at inlet or outlet, high velocities and turbulence, and inadequate depths that prevent fish from moving upstream.

- b. Preventing fish passage blocks spawning migrations and use of upstream habitats negatively impacting juvenile and adult fish.
- c. Unless specifically authorized by the district, projects that permanently prevent fish migration are prohibited.

## 2. Standards

- a. There are many factors which affect fish passage as a specific site, including species, size and age of fish, discharge and gradient of the stream, size and type of culvert, and inlet and outlet conditions that prohibit using a single set of specifications to assure passage. Each site is unique and therefore requirements for fish passage may vary.
- b. Bridges are the best structure in providing fish passage, followed by bottomless culverts, imbedded culverts, and non-embedded culverts in descending order of their ability to pass fish. Dependent on site characteristics, a non-embedded round culvert may not provide passage and one of the above options may be required.
- c. Generally, place culvert on the grade of the stream. Locate the culvert in a straight reach and minimize the length of the culvert.
- d. If possible, oversize the culvert to accommodate partial filling with streambed material and set the culvert below the level of the bed. Culvert width should be equal to or greater than the average bankfull channel width to reduce velocities in the culvert during high flows.

## O. Off-Stream Ponds

### 1. Policy considerations

- a. An off-stream pond is one that is built off the stream channel itself and diverts water from the adjacent stream.
- b. Done improperly, off-stream ponds contribute to poor water quality and raise potential for stream channel changes.
- c. Off-stream ponds are discouraged. See Pond Policy in the appendix.

2. Standards

- a. If allowed, the diversion shall be connected to the stream by means of a buried pipeline fitted with inlet and outlet controls. Fish screens may be required.
- b. Off-stream ponds will be designed to meet water quality standards set by all federal, state and local agencies governing such projects.
- c. If allowed, the off-stream pond will be constructed outside the floodplain.

P. Other Projects

Other types of projects that are not specifically covered by the foregoing design standards shall be reviewed on an individual basis under the "Jurisdiction" contained in Section 1.4, the "Review Process" contained in 3.3, and the "General Construction Standards" contained in Section 4.1 of these regulations.

## GLOSSARY

**ACT:** The Natural Streambed and Land Preservation Act of 1975, 75-7-101, et seq., M.C.A.

**APPLICANT:** Any person presenting notice of a project to the Supervisors, and any designee, agent, or employee of the applicant.

**APPLICATION:** A notice of proposed project on a form provided under Rule 7, forms, and containing all of the required information.

**BED:** The channel occupied by a stream.

**BOATHOUSE:** A permanent structure that provides housing and shelter for boats.

**BOAT RAIL SYSTEM:** A facility consisting of tracks extending from or across the stream bank into the stream that is designed to facilitate launching or retrieving boats.

**BOAT RAMP:** A facility consisting of a pad, driveway or roadway extending from or across the stream bank into the stream that is designed to facilitate launching or retrieving boats.

**CHANNEL:** The area of a stream measured from the mean high water mark to mean high water mark.

**CONSTRUCTED AREA:** That portion of the stream and stream bank covered by any structure such as a dock, deck, walkway, boat house, roofed shore station or covered by any non-native material or substance that would not naturally occur at this point such as concrete, asphalt, washed gravel for swimming areas, etc.

**DEBRIS:** Any vegetation or refuse material in a stream channel that generally does not include in-stream sand and gravel material.

**DEPARTMENT:** The Montana Department of Fish, Wildlife, and Parks.

**DOCK:** A platform, either non-floating or floating, that extends into, over or across the water to provide for boat moorage, access to a moorage area, swimming facilities, or other related activities.

**DREDGING:** The process of excavating material from the stream bottom, and thereby lowering the elevation of a portion of the stream bottom. The term shall include the process of extending the stream area landward by excavating material from the stream bank and thereby lowering the elevation of that portion of that area.

**EXTREME DROUGHT:** A prolonged period of less than normal precipitation such that the lack of water causes a hydrologic imbalance as designated by the National Oceanographic and Atmospheric Administration as, at least, abnormally dry.

**FILLING:** The process of discharging material into a stream and thereby raising the elevation of a portion of the stream bottom, including the elimination of an aquatic environment or a wetland environment by extending the dry land area into such aquatic or wetland area. The term shall include the process of discharging material onto the stream bank and thereby raising the elevation of a portion of that zone.

**FLOODPLAIN:** That area next to a stream that will be inundated in the event of a 100 year flood event.

**IMMEDIATE BANKS:** The area above the mean high water mark and directly adjacent to the stream, which when physically altered or modified has the potential to affect the state of the stream.

**IMPERVIOUS:** Not permeable, impenetrable by water.

**JETTIES:** Structures that extend from the shoreline into the stream that are designed to confine or deflect the flow of water.

**LAGOONS:** An artificial boat harbor created by excavating the shoreline, removing earth material and thereby extending an aquatic environment into a dry land area.

**LIVESTOCK GRAZING ACTIVITIES:** Grazing animals.

**MAINTENANCE:** Routine or seasonal work or upkeep involving painting, staining, tightening, minor replacement of boards, shingles, broken windows, clean up of debris such as branches and leaves, restacking fallen rock, etc. Typically, only hand tools would be involved. Any dredging, filling or excavation of this nature is not considered maintenance.

**MARINA:** Any waterfront facility that provides for recreational boating and other water related activities. Any facility that provides dock slips or moorage for five (5) or more boats is considered a marina.

**NATURAL PERENNIAL FLOWING STREAM:** A stream, which in the absence of diversion, impoundment, appropriation, or extreme drought, flows continuously at all seasons of the year and during dry as well as wet years.

**PERMIT:** The written consent of the supervisors authorizing a proposed project.

**PERSON:** Any individual, corporation, firm, partnership, association, or other legal entity, not covered under 87-5-502, M.C.A.

**PROJECT:** "Physical alteration or modification" means human-caused actions resulting in the placement, removal, or disturbance of materials of any nature or character.

**PLAN OF OPERATION:** "Annual maintenance plan" means an annual plan for a project of recurring nature that, if approved by the supervisors, authorizes a specific activity for a period not to exceed 10 years.

**PROJECT:** An activity that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks.

**REPAIR:** To restore an existing facility to sound condition by replacing component parts of the facility utilizing the same or similar construction materials and maintaining the exact design, size and configuration as was original prior to repair.

**RETAINING WALL:** Any structure built essentially parallel and contiguous to the shoreline of a stream that is designed to protect the land mass inland from the structure, from erosion or wave action and protect the stream from siltation.

**RIPRAP:** A layer, facing, or protective mound of stones, or rock or other materials placed to prevent erosion, scour, or sloughing of a structure or embankment.

**SEWAGE PUMP OUT FACILITY:** A facility specifically provided to pump out and receive the contents of holding tanks on board boats, with holding tanks understood to mean any retention system on a boat that is designed to hold sewage, and that must be emptied from time to time.

**SHORE STATION:** A seasonal, portable, metal or wood frame carriage that is designed to hoist boats from the water and to store boats over the water.

**STREAM:** Any natural perennial-flowing stream, or river, its bed, and immediate banks, and its channels and includes the entire stream from its mouth to its source even if portions go dry periodically. The term does not include a stream or river that has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102, MCA

**SUPERVISORS:** A board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

**TEAM:** One representative of the supervisors, one representative of the department, and the applicant or the applicant's representative.

**WATER USER:** A person having the right to appropriate or beneficially use water under the laws of the State of Montana or the United States, and any designee, agent, or employee of the water user.

**WETLANDS:** Water-land interface areas that are inundated or saturated by surface and/or ground waters at a frequency and duration of time periods sufficient to establish and, under natural conditions, support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to: swamps, marshes, bogs, and similar areas. Wetland areas may be separated from the main body of water by man-made barriers or natural berms.

**WRITTEN CONSENT OF THE SUPERVISORS:** A written decision of the supervisors approving a project and specifying activities authorized to be performed in completing the project

# APPENDIX

### *Concrete Specifications*

Concrete is not allowed for bank stabilization unless the provisions, established by the Montana Department of Environmental Quality, are met.

### *Treated Wood Specifications*

Wood which will be totally submerged in water does not require a preservative. Other wood requiring a preservative will be pressure treated.

Pressure treated material of only EPA-registered (approved) pesticides, including inorganic arsenic compounds (chromated copper arsenate (CCA), ammonical copper arsenate (ACA) and ammonical copper zinc arsenate (ACZA), pentachlorophenol and creosote is allowed.

Only commercially applied, pressure impregnated treated wood is allowed under the Natural Streambed and Land Preservation Act ("310") regulations.

Wood preserved by surface application such as brush-on application, soaking of wood in preservative or other surface treated processes will not be approved.

## **BEAVER DAMAGE AND BEAVER DAM REMOVAL**

The removal of any portion of a beaver dam will be under the following regulations.

If beaver problems involve removal of part or all of a beaver dam, the landowner must obtain a Natural Streambed and Land Preservation Permit (“310 Permit”) prior to any work within 20 feet of the stream. This permit is issued, in Flathead County, by the Flathead Conservation District who has jurisdiction of the upper Flathead River Drainage. Stipulations on any 310 Permit that involves the removal of a portion or all of a beaver dam include the requirement that the landowner undertake some control of beaver numbers causing the problem.

A project requiring the removal of the entire or more than 12 months accumulation of materials or by employing the assistance of power equipment to remove dam material could require additional time to acquire a permit. The additional time provides the opportunity to conduct an onsite investigation prior to consideration at the Board meeting.

The Mt. Department of Fish, Wildlife and Parks’ (MDFWP) primary and direct involvement in beaver depredation is when the Mt. State Statute is invoked, 87-1-224 MCA. This occurs when the Mt. Department of Environmental Quality determines that a beaver dam is creating a danger to public health, MDFWP has the responsibility to issue to the landowner a permit to “remove” the beaver and dams. If the landowner does not remove the beaver and dams, the MDFWP may accomplish the task.

87-3-501(2) MCA directs the MDFWP to issue a Beaver Depredation Permit to the owner of an irrigation system to kill or trap beaver that “are doing severe injury upon or are a menace” to irrigation structures. No such permit is required during the “closed season” on muskrats or beaver, that is from June 1 through August 31.

The MDFWP may also provide some beaver damage assistance through the General Game Damage Statute, 87-1-225 MCA, by granting a permit to kill or trap a specified number of animals in the vicinity of the damage. As stated above, no permit is necessary to control beaver numbers from June through August, when a landowner can shoot, kill or trap nuisance beavers. During the trapping season (November 1 through April 30) the MDFWP encourages control of beavers by licensed trappers. If no trappers are available, a Beaver Damage Permit can be issued allowing the landowner to control beaver numbers on his own. Damage permits are available through a local game warden or through the warden captain located at the regional headquarters, 490 N. Meridian Rd., Kalispell, MT.

The FCD monthly meeting for review of 310-application is usually held on the second Monday of the month, at our office located at 133 Interstate Lane, Kalispell, MT. Office phone is 752-4220, fax 752-4077, Email fcd@digisys.net.

**NEW POND CONSTRUCTION POLICY**  
*Of*  
**Flathead Conservation District**

The intent of the Natural Streambed and Land Preservation Act is to preserve streams in their natural, unaltered state as closely as possible. The Conservation District is responsible for considering the individual and cumulative impacts of proposed ponds on Montana's streams as they are public waterways.

Under Montana State law, the Flathead Conservation District has jurisdiction over ponds constructed in Flathead County that obtain their water from, or return flows to, or otherwise disturb the natural flow of a perennial stream.

Pond construction increases the water surface area exposed to the air that increases the water temperature in the pond and the adjacent stream. Since the majority of fish species in Flathead County streams favor cooler temperatures, habitat becomes less desirable when the in stream temperatures are raised. In addition, the increased surface area of a pond becomes subject to natural evaporation and increased nutrient loading, thereby diminishing water quality and quantity within the stream.

Construction of each additional pond compounds the associated problems, creating cumulative impacts. The Conservation District must consider the entire drainage when reviewing a pond construction application. In addition, the landowner must evaluate his increased personal liability potential created by the construction of a pond on his/her property. The construction of a properly designed pond can be expensive and accurate cost estimates should be obtained.

**IN-STREAM PONDS**

An in-stream pond is one built in the stream channel itself. The Flathead Conservation District Board of Supervisors does not favor the damming or excavation of a stream for the creation of an in-stream pond. The Dept. of Fish, Wildlife and Parks also has authority to require fish passage structures be incorporated into the design when deemed necessary.

**OFF-STREAM PONDS**

An off-stream pond is one that is constructed off the stream channel itself and diverts water from the adjacent stream. The Conservation District requires that, if the permit is issued, the diversion shall be connected to the perennial stream by means of a buried pipeline fitted with inlet and outlet controls.

**NEW POND CONSTRUCTION POLICY**  
*Of*  
**Flathead Conservation District**  
*(continued)*

**CRITERIA**

The Conservation District will require the following information be included in your application for review of a pond construction application:

- Purpose of the pond (wildlife, fire protection, irrigation, etc.)
- Water quantity required (sufficient flows in the drainage)
- Land ownership (pond must lie entirely on your property)
- Floodplain designation
- Soils type
- Proposed depth & dimensions
- Proposed side slopes
- Water control inlet and outlets structures
- Proposed lining of pond (if soils require)
- Safety (fencing of pond, subsurface pond shelf)
- Watering areas (cattle)
- Maintenance plan
- Re-vegetation plan

Additional requirements will have to be met if you propose to stock fish in the pond. Licenses and bonds will be required, separately, by the Mt. Dept. of Fish, Wildlife and Parks, along with their pre- and post-construction inspections and inlet/outlet screening.

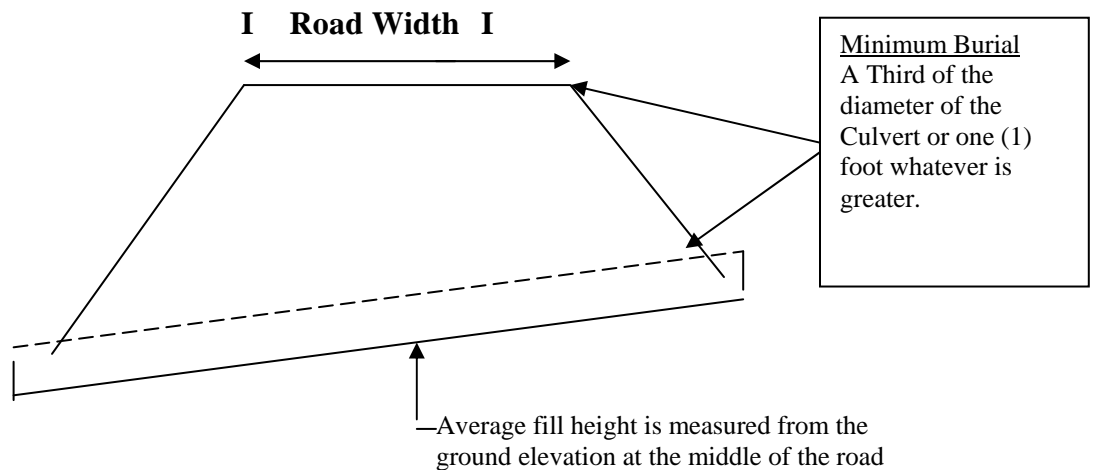
## Culvert Sizing Minimum Lengths

The following method for determining culvert length is offered as a guide.  
Accuracy is not assured for all situations.

The minimum culvert length to be used when installed in a location with straight approaches in and out can be estimated using the following method:

1. Multiply three (3) times the average fill height.
2. Add the road width to the result of step 1.
3. Add two (2) to the sum in step 2 for fill settling
4. Always round up to the nearest even length. Culvert is ordered in two foot multiples.

Note: If the installation is on a curve, additional length is needed for curve widening.



Example: A person plans to install a 48" culvert in a 12' road. The average fill height is measured to be 7 feet.

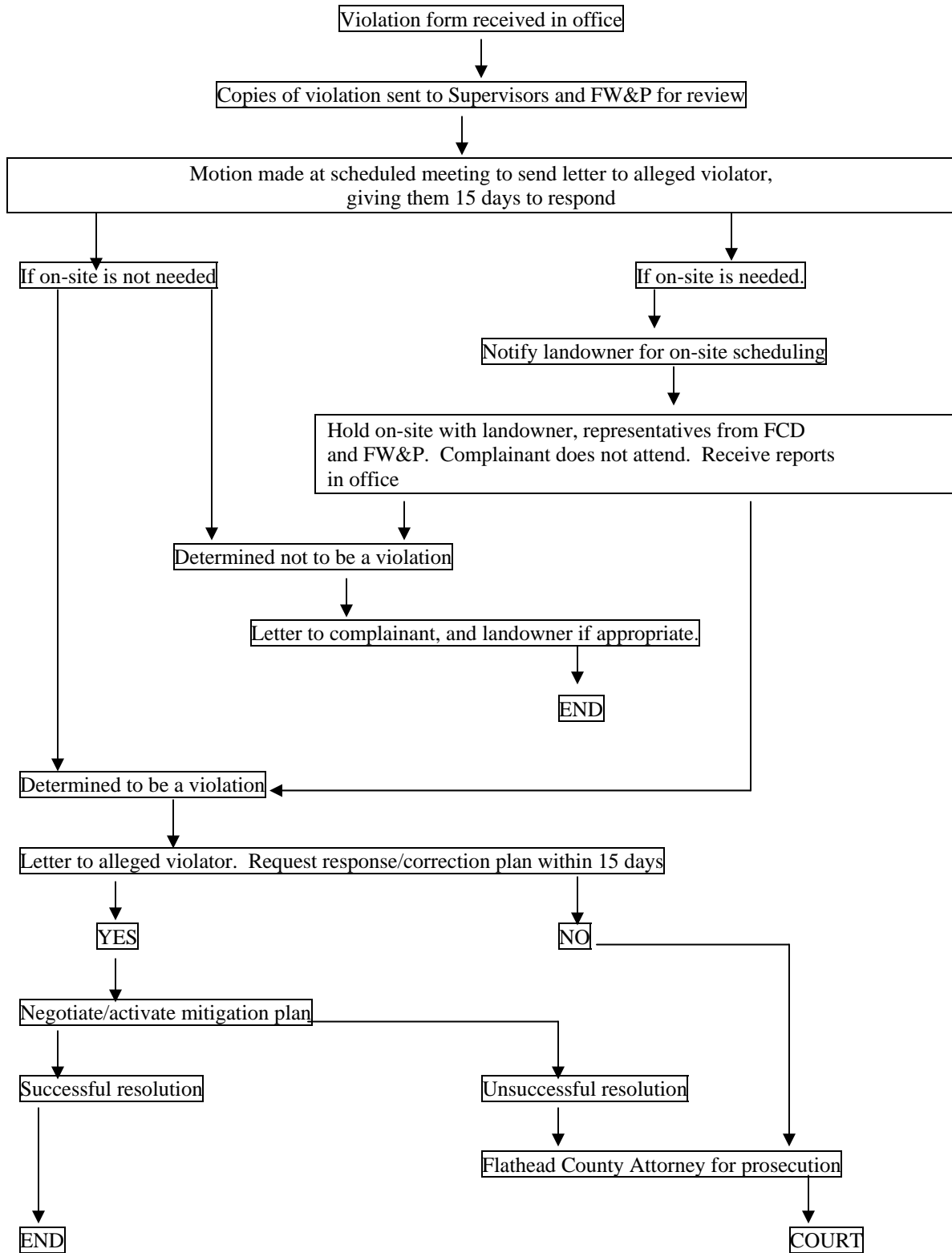
1. The minimum burial must be 1/3 of 48" or 16". This means the minimum fill height must be 16" + 48" or 64" (4'). Since the fill will be 7', the minimum burial has been met.

7' times 3 equals 21'.

2. 21' plus the 12' road width equals 33'.
3. 33' plus 2' for fill settling equals 35'.

Plan on a 36' culvert

# Procedure for Handling Violations



## **INFORMATION POLICY**

It is the stated policy of the Flathead Conservation District Board of Supervisors that information will be available to the public for review.

Individuals wishing to examine documents may do so in the Flathead Conservation District Office, by requesting the documents they wish to review and securing a mutually convenient time for an appointment with the appropriate staff personnel. The requesting party will schedule sufficient time for document review, depending upon the staff's availability at that particular time. The requesting party must specify that particular documents they wish to review. If the request is longer than three individual items, the requesting party will submit a written report, specifically identifying the particular records to be reviewed. As the FCD maintains a small staff, sufficient time must be allowed for document retrieval for review.

The staff will provide the information that will be available for copying in the FCD office only, while personnel are present. Copying of the documents will be done by the requesting party at the rate of 25 cents per page. No original documents may leave the office under any circumstances.

All Board Meetings are open to the public and all interested parties are encouraged to attend. Notice of upcoming board meetings appear in a local newspaper.

The Board reserves the right to determine if information is in the public's interest or if privacy and safety preclude the release of any document.

## **ADDITIONAL PERMITS**

All federal, state and local laws, rules and regulations governing construction activities on streams or concerning water use shall be followed. The owner and his agent shall be liable for securing all necessary permits and for performing all work in accordance to such laws and regulations. The following permits, along with others, may be required:

1. The Federal Endangered Species Act, contact U.S. Fish & Wildlife Service, Helena (406-449-5225);
2. The Flathead County Planning & Zoning Office's Floodplains Permit (406-758-5965);
3. The DNRC Trust Land Management Use License or Easement on Navigable Waters (406-751-2240 or Fax 406-751-2288);
4. The U.S. Army Corp of Engineers' 404 Permit, 301 South Park, Drawer 10014, Helena, MT 59626-1275 (406-441-1375).
5. Although water may be on or flow across your property, you may not have the right to use that water. Check your water right, and your neighbor's water right, by contacting DNRC/Water Resources, (406-752-2288).
6. A FERC (Federal Energy Regulatory Commission) permit may be required for energy generation, contact: FERC, 888 1<sup>st</sup> Street N.E., Washington, D.C. 20426 (202-219-2750). For further information access the FERC web site at [www.ferc.fed.us](http://www.ferc.fed.us). For energy generation inter-connections contact: Flathead Electric Coop, 2510 Hwy 2 East, Kalispell, MT 59901 (406-751-4483).
7. A Wild & Scenic River permit for the North and Middle forks of the Flathead River contact U.S.F.S., Flathead National Forest, 1935 3<sup>rd</sup> Avenue East, Kalispell, MT (406-758-5200).
8. In addition, if you will be disturbing the vegetative cover on more than five acres, or more than one acre which is less than 100 feet from a stream, you will need to obtain a permit from the Mt. Dept. of Environmental Quality, Permitting and Compliance Division, Box 200901, Helena, MT 59620-0901, (406-444-4323).
9. Streamside Management Zone Law, Department of Natural Resources and Conservation, State Land Management Office, 2250 Hwy. 93 North, Kalispell, MT 59901 (406-751-2240). Must be notified by the landowner or operator prior to beginning any forest practices that will access, harvest, or regenerate trees on a defined land area for commercial purposes on private, state or federal lands.