

DIRECTORY OF PERMITS

LAND DESIGNATIONS

Lands with special designations have additional land use and activity restrictions.

CONSERVATION DISTRICTS

1. General Requirements

Lands located within a conservation district may be subject to land use regulations designed to conserve soil and water resources and prevent and control erosion. Copies of the land use regulations are available from the district. These regulations are adopted with voter approval through a referendum and are administered by the Conservation District supervisors. Once the referendum is enacted, the district supervisors may compel compliance through a petition to District Court. Variances awarded upon demonstration of great practical difficulties or unnecessary hardship are allowed.

State law requires a 310 permit from a conservation district when a private, nongovernmental individual or entity proposes work in or near a stream on public or private land (see STREAM BEDS - STREAM BANKS - WETLANDS, p. 10).

Statute: 76-15-701, *et seq.*, MCA (land use regulations)
75-7-101, *et seq.*, MCA (stream preservation)

Contact: CONSERVATION DISTRICT or
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
Conservation and Resource Development Division
Conservation Districts Bureau

CONSERVATION EASEMENTS

1. Types of Activities Regulated

A public body or qualified public organization may acquire an interest in real property for the purpose of preserving the land's open space, natural, scientific, educational or aesthetic resources. By granting this land interest, the landowner establishes a conservation easement on the land whereby the landowner agrees to limit the use of certain property rights in order to preserve the property's conservation values. The terms of the conservation easement may prohibit or limit construction, excavation, surfaces uses, and

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subdivision, etc. The easement holder has the responsibility to monitor and enforce the terms of the conservation easement. Conservation easements run with the property title.

Statute: 60-4-207, MCA
76-6-103 and 76-6-201, *et seq.*, MCA
87-1-209, 87-1-241 and 87-1-242, MCA

Rule: ARM 12.9.511, 12.9.512 and 12.9.702
ARM 36.11.471

Contact: LOCAL GOVERNMENT
County Clerk and Recorder

DEPARTMENT OF FISH, WILDLIFE AND PARKS
Parks Division
Field Operations Bureau

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

DEPARTMENT OF TRANSPORTATION

FLOODPLAINS AND FLOODWAYS

1. Types of Activities Regulated

Artificial obstructions and nonconforming uses within a designated floodplain or floodway require a permit from the local governing body or from the Montana Department of Natural Resources and Conservation (DNRC) if local authorities have not adopted rules. Local governments may adopt land use regulations, including floodplain management regulations within sheetflood areas, that may restrict development. If local regulations are not adopted, the DNRC must adopt and enforce minimum standards.

Statute: 76-5-401 through 76-5-406, MCA (Floodplain and Floodway Management Act)

Rule: ARM 36.15.601-36.15.801

Contact: LOCAL GOVERNMENT (City or County)
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
Water Resources Division
Water Operations Bureau

2. **Application Requirements**

The application for a permit for obstructions or uses in a designated floodplain or floodway must be submitted to the local government or the DNRC and must contain maps, plans, profiles, and specifications of the obstruction or use of the water course or drainway.

Statute: 76-5-404, MCA

3. **Permitting Procedures**

Permits for obstructions or uses in a designated floodplain or floodway must be approved or denied within a reasonable time, usually 60 days after the receipt of an application.

Statute: 76-5-405(2), MCA

Rule: ARM 36.15.216

4. **Criteria**

The following criteria must be considered by the local government in evaluating a permit application: danger to life and property by water that may be backed up or diverted by the obstruction or use; danger that the obstruction or use may be swept downstream and cause injury; alternative methods of construction or alteration of obstruction or use which will minimize the danger; the availability of alternate locations; permanence of the obstruction or use; anticipated development in the area; and other factors specified by law.

Statute: 76-5-406, MCA

Rule: ARM 36.15.216

HERITAGE SITES

ANTIQUITIES PERMITS

1. **Types of Activities Regulated**

Individuals or organizations proposing to excavate, remove or restore a heritage property or paleontological remains on state-owned land for scientific, educational or mitigation purposes must obtain an antiquities permit from the State Historic Preservation Officer. The preservation officer consults with the appropriate state land management agency in issuing a permit. Permits may not be granted unless the preservation officer is satisfied that the

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individuals carrying out the proposed work are qualified to guarantee proper excavation of those sites and objects.

Statute: 22-3-421 through 22-3-442, MCA (Montana Antiquities Act)

Rule: ARM 10.121.901-10.121.916

Contact: MONTANA HISTORICAL SOCIETY
State Historic Preservation Office

2. **Criteria**

The heritage value of any historic or prehistoric site identified is determined by the National Register of Historic Places, Criteria for Evaluation.

3. **Additional Information**

Applicants for licenses or permits are encouraged to provide the permitting or licensing agency with specific information on the legal location of the proposed project, previous land use, and land condition. This information assists the agency and the State Historic Preservation Office in determining whether a cultural resource inventory of the proposed area is needed.

HUMAN SKELETAL REMAINS AND BURIAL MATERIALS

1. **Types of Activities Regulated**

The state Burial Preservation Board must be petitioned for a permit for the scientific removal or analysis of human skeletal remains and burial material from any unmarked burial site on state or private land. The Board may issue a permit for limited scientific study of remains and material if it determines that the analyses is scientifically justifiable. In Montana it is presumed that remains and material will be reburied rather than scientifically analyzed. The State Historic Preservation Office assists with coordination and provides staff services for the Board. The Preservation Office also maintains a burial registry and must be contacted in the event of an inadvertent discovery of unmarked human remains.

Statute: 22-3-801 through 22-3-811, MCA (Human Skeletal Remains and Burial Site Protection Act)

Contact: MONTANA HISTORICAL SOCIETY
State Historic Preservation Office

DEPARTMENT OF ADMINISTRATION
Burial Preservation Board

2. Additional Information

For skeletal remains or funerary objects excavated before the passage of this Act (Human Skeletal Remains and Burial Site Protection Act), the Montana Repatriation Act provides a hearing process for the repatriation of culturally affiliated remains or funerary objects from unprotected burial sites currently in the possession or control of any state agency, museum or individual. The Act also requires agencies and museums to complete and provide a copy of an inventory of any remains or objects to the state Burial Preservation Board, the State Historic Preservation Office, and each tribal government.

Statute: 22-3-901 through 22-3-921, MCA (Montana Repatriation Act)

Contact: DEPARTMENT OF ADMINISTRATION
Burial Preservation Board

LAKESHORES

1. Types of Activities Regulated

If a local government has adopted lakeshore protection regulations, a permit is required for any work that will alter or diminish the course, current or cross-sectional area of a navigable lake or its shore. These activities include construction of channels or ditches; dredging of the lake bottom to remove muck, silt, or weeds; ponding; filling; and constructing breakwaters or wharves and docks.

Statute: 75-7-201 through 75-7-217, MCA

Rule: As adopted by local governments

Contact: LOCAL GOVERNMENT

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
Water Resources Division
Water Operations Bureau

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2. **Application Requirements**

Specific application requirements are prescribed in regulations adopted by the local government.

3. **Permitting Procedures**

A. Local Regulations: Contact the local government for specific procedures.

- 1) The local government must seek the recommendations of the local planning board.
- 2) The local government may provide a summary procedure to permit work it finds has a minimal or insignificant impact on a lakeshore.
- 3) The planning board must report its recommendations to the local government on whether the proposed work conforms to the criteria for issuance of a permit, and it may require the applicant to submit additional information prior to making its recommendations.
- 4) A variance from local regulations may be obtained if an impact statement is prepared and a public hearing held.

B. Time requirements:

Unless the applicant for a lakeshore work permit agrees to an extension, the government must grant or deny the permit within 90 days.

Statute: 75-7-207 and 75-7-211 through 75-7-213, MCA

4. **Fees**

Permit fees set by local governments must be commensurate with the cost of administering the permit application. See 75-7-210, MCA, for more information.

5. **Criteria**

The following are minimum requirements and do not restrict a local government from adopting additional or more stringent regulations that may be authorized by other statutes.

The proposed work will not, during construction or its utilization:

- 1) materially diminish water quality;
- 2) materially diminish habitat for fish or wildlife;
- 3) interfere with navigation or other lawful recreation;
- 4) create a public nuisance; or
- 5) create a visual impact discordant with natural scenic values as determined by the local government when such values form the predominant elements of the landscape.

6. Additional Information

Landowners may petition the Montana Department of Natural Resources and Conservation to adopt regulations for a particular lake until the local government adopts the necessary regulations.

STATE LANDS

1. Types of Activities Regulated

Activities on state-owned land, including the beds of navigable waterways, generally require permits, licenses, leases or easements from the Montana Department of Natural Resources and Conservation (DNRC) and approval from the Board of Land Commissioners. See HERITAGE SITES, p. 3; CROPLAND AND GRAZING LEASES, pp. 18 and 21; TIMBER SALES, p. 61; GEOTHERMAL LEASES, p. 41; HYDROELECTRIC POWER DEVELOPMENT, p. 44; MINING, p. 123; GEOPHYSICAL EXPLORATION, p. 141; and OIL AND GAS, p. 142.

Lessees, licensees and permitholders must control noxious weeds or adhere to the noxious weed management program of the person's weed management district or enter into and be in compliance with a noxious weed management agreement.

In addition, the Montana Department of Fish, Wildlife and Parks and other state agencies should be contacted for information regarding rules and procedures on lands owned or administered by those agencies. See COMMERCIAL USE OF FISH, WILDLIFE AND PARKS LANDS, p. 73.

Statute: Title 77, chapters 1-6, MCA

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Rule: ARM 36.2.1001, *et seq.*

Contact: DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
Trust Land Management Division
Real Estate Management Bureau

2. Easements

The Board of Land Commissioners may grant easements on state trust lands and across navigable rivers of the state for the public uses identified in statute. Applications for easements are submitted to the DNRC. Required elements of an application package vary based on the requested use, but in all instances an application processing fee and completed application form is necessary. Additionally, compensation for the area of land encumbered by the easement is assessed and must be the full market value of the land, plus any diminution in the value of adjacent state lands.

The Board may also grant easements under the historic right-of-way law for private access roads, county roads and utility facilities that have been in place on state trust lands without a legal easement. Applications for historic rights-of-way must be received by the DNRC by October 1, 2015. The processing and issuance of these easements sunsets in 2025, allowing time for applicants to plan for and secure funding to purchase easements under application to the DNRC.

A regional water authority may apply for an easement on non-trust lands as a public entity. The non-trust land managing entity may recommend that the easement be transferred to the regional water authority at full, partial or no compensation as described in 77-2-351, MCA.

Statute: 77-1-130, 77-2-101 through 77-2-107, MCA

3. Exchange of Land

The Board of Land Commissioners is authorized to exchange state land for private land provided that the private land is of equal or greater value than the state land and approximately equal in area. The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser. The Board has a written policy and criteria for considering and processing land exchanges. Prior to the exchange, a public hearing must be held in the county where the state land is located. Objections to the exchange may be made at the hearing.

Statute: 77-2-201, *et seq.*, MCA

4. **Leases**

State lands may be leased to any person over 18 years old, heads of families, and associations, partnerships, and corporations. When the DNRC receives an application to lease a tract, it will advertise for bids and accept the highest bid, unless the Board determines that the highest bid is not in the best interest of the trust beneficiaries. See *Types of Activities Regulated*, on p. 7, for references to specific types of leases.

Statute: 77-1-901, *et seq.*, MCA

5. **Sales of Land**

The Board of Land Commissioners is authorized to sell state land. The estimated fair market value of the land must be determined by a Montana-licensed and Montana-certified appraiser. Some sales of land are restricted, for example, land that is likely to contain valuable mineral deposits or that is located in a navigable waterway. In addition, the DNRC administers a state program that allows the sale of state parcels with restrictions on the type of land for sale and to whom it may be sold. The use of the proceeds from the sales are used to purchase other land, easements or improvements that will provide a greater return to the state and consolidate public access.

Lessees are notified by the DNRC when they may submit their lease land for nomination. All sale of state land is conducted by public auction held in the county in which the land is located.

Statute: 77-2-301 through 77-2-367, MCA

Rule: ARM 36.25.128, 36.25.131 and 36.25.801, *et seq.*

6. **Recreational Use License**

A recreational use license is required for persons 12 years of age and older to participate in most types of general recreational activities on state trust lands. The license is issued for a 12 month period beginning March 1 and expires the last day of February the following year.

Under an agreement between the DNRC and the Montana Department of Fish, Wildlife and Parks, a person who obtains a wildlife conservation license is authorized to use legally

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accessible state lands for licensed hunting, fishing, and trapping¹. All other general recreational activities, unless conducted in conjunction with licensed hunting, fishing, and trapping, require the possession of a recreational use license.

Special recreational use licenses are required for organized or concentrated recreational activities, commercial activities such as outfitting, and other activities not included within the definition of general recreational use. The licenses are available only from a DNRC office.

Certain categories of state trust lands, i.e., lands leased for military sites, home sites and cabin sites, commercial developments, and lands on which there are growing crops are closed to all recreational activities. Lessees of state land can also request approval from the DNRC to temporarily, seasonally, or permanently close state lands or restrict certain activities if damage has occurred or if access would interfere with agricultural or ranching activities. Additionally, the DNRC may close or impose restrictions on state lands for a number of reasons, including imminent threat to property and/or public safety or for other emergency situations.

The fee for a recreational use license is \$10 for persons 18-59 years old, \$5 for persons 12-17 years old or 60 years and older, and \$20 for a family license.

Statute: 77-1-804, MCA

Rule: ARM 36.25.143, *et seq.*

STREAM BEDS - STREAM BANKS - WETLANDS

1. Types of Activities Regulated

- A. Private Projects: A private, nongovernmental individual or entity proposing to work in or near a stream on public or private land must apply for a 310 permit from the conservation districts' board of supervisors. Types of activities that may require a permit include the following: engineering operations for dams, dikes, ponds, ditches, fences, and other construction; stream crossings; bank stabilization projects; irrigation diversions, headgates, and pumpsite maintenance; and other activities that alter the condition of a stream or river. The applicant should contact the conservation district (Title 76, chapter 15, MCA) prior to initiating any activity.

¹ Although the fee for trapping is included in the wildlife conservation license, a person who wishes to trap on state land must first obtain a special recreational use license described above.

Statute: 75-7-101, *et seq.*, MCA (Natural Streambed and Land Preservation Act)

Rule: ARM 36.2.401, *et seq.*

Contact: CONSERVATION DISTRICT;
GRASS CONSERVATION DISTRICT;
BOARD OF COUNTY COMMISSIONERS; or

DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

Conservation and Resource Development Division
Conservation Districts Bureau

- B. Public Projects: An agency of state government, county, municipality, or other subdivision of the state of Montana, with the exception of irrigation districts, must apply for a Stream Protection Act (also called a 124) permit from the Montana Department of Fish, Wildlife and Parks (FWP) before beginning a project that may alter the bed or banks of any stream or river in Montana.

Statute: 87-5-501, 87-5-502, and 87-5-507, MCA

Contact: DEPARTMENT OF FISH, WILDLIFE AND PARKS
Fish and Wildlife Division
Fisheries Bureau

2. **Permitting Procedures**

- A. Private Projects: An individual planning a project must obtain a permit application (joint application) prior to any activity in or near a stream. Applications are available at the Conservation District offices or at the Department of Natural Resources and Conservation website at <http://dnrc.mt.gov/permits/>. If a permit is required, a team composed of a district supervisor, a FWP biologist and the applicant conduct a site inspection. The supervisors have 60 days from the date of application to approve, modify or deny the permit.

Statute: 75-7-111 through 75-7-116, MCA

- B. Public Projects: An agency planning a project must submit a Notice of Construction (joint application) to the FWP at least 60 days before the anticipated date of construction. Within 30 days after the department receives

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project plans, it must notify the applicant whether or not the project will adversely affect fish or wildlife habitat. The FWP may require modifications to the project and make recommendations for alternative plans. If required, recommended construction conditions are outlined in the permit issued to the applicant. If the applicant refuses to modify the plans as outlined in the permit, and an agreement cannot be reached, an arbitration panel may be appointed by the District Court.

Statute: 87-5-502 through 87-5-505, MCA

3. **Emergencies**

- A. Private Projects: No prior notice or approval is necessary for emergency actions taken to safeguard life or property. However, notice must be given to the supervisors or commissioners within 15 days following the emergency action. A team will be called together to evaluate the project.

Statute: 75-7-113, MCA

- B. Public Projects: A 124 permit is not required from public agencies for situations requiring emergency response such as ice jams, floods, etc. An emergency is defined as an imminent threat to life or property that could not be foreseen.

Statute: 87-5-506, MCA

4. **Federal Actions**

The FWP observes federal agency actions and nonactions in Montana for their effect on the state's fish and wildlife resources. The department sends notifications to the agency stating its objections and keeps records of all communications with the agency.

The FWP also has a Memorandum of Understanding with the U.S. Forest Service and a Cooperative Agreement with the U.S. Bureau of Land Management whereby these agencies apply for a Stream Protection Act permit for projects affecting stream beds and stream banks on their lands.

Statute: 87-5-508, MCA

5. Other Information and Requirements

A land use license, lease or easement is required by an entity proposing a project on lands below the low water mark of navigable waters as designated by the Montana Department of Natural Resources and Conservation (see STATE LANDS, p. 7).

Statute: 77-2-101 through 77-2-107, MCA
77-1-1109 through 77-1-1117, MCA

Contact: DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
Trust Land Management Division
Real Estate Management Bureau

Under section 10, federal Rivers and Harbors Act, any structure or work on, over, under, or affecting navigable waters requires authorization from the U.S. Department of the Army, Corps of Engineers.

Under section 404 of the federal Clean Water Act, a permit is required from the U.S. Department of the Army, Corps of Engineers, for the placement of dredged or fill materials in United States' waters.¹ The U.S. Environmental Protection Agency develops environmental review criteria, reviews projects, and has enforcement authority under the Act.

The Montana Department of Environmental Quality must provide 401 water quality certification prior to issuance of Corps of Engineers permits. The certification process is handled internally through agreements between the agencies for the Corps of Engineer's nationwide permits. For the Corps of Engineers individual permits, the permit applicant is notified by the Corps to apply to the Montana Department of Environmental Quality for a 401 water quality certification.

Statute: 33 U.S.C. § 401, *et seq.* (Rivers and Harbors Act)
33 U.S.C.A. § 1251, *et seq.* (Clean Water Act)

Rule: 33 C.F.R. 209 and 40 Federal Register 31319
ARM 17.30.101, *et seq.* (401 certification)

¹ Waters of the United States includes essentially all surface waters such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all impoundments of these waters.

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Contact: U.S. Department of the Army
Corps of Engineers
District Engineer

U.S. ENVIRONMENTAL PROTECTION AGENCY
Montana Office, Helena

DEPARTMENT OF ENVIRONMENTAL QUALITY
Permitting and Compliance Division
Water Protection Bureau

A person planning new construction, including, but not limited to, placement of fill, roads, bridges, culverts, transmission lines, irrigation facilities, storage of equipment or materials, excavation, and new construction of or additions to mobile homes and residential and commercial buildings must check with the local governing body to determine if the activity is in a designated floodplain or floodway (see FLOODPLAINS and FLOODWAYS, p. 2).

Contact: LOCAL GOVERNMENT

A 318 authorization must be obtained from the DEQ prior to initiating a short-term activity that may cause unavoidable short-term violations of state water quality standards. The FWP may also issue 318 authorizations during the 310 or 124 permitting process.

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY
Permitting and Compliance Division
Water Protection Bureau