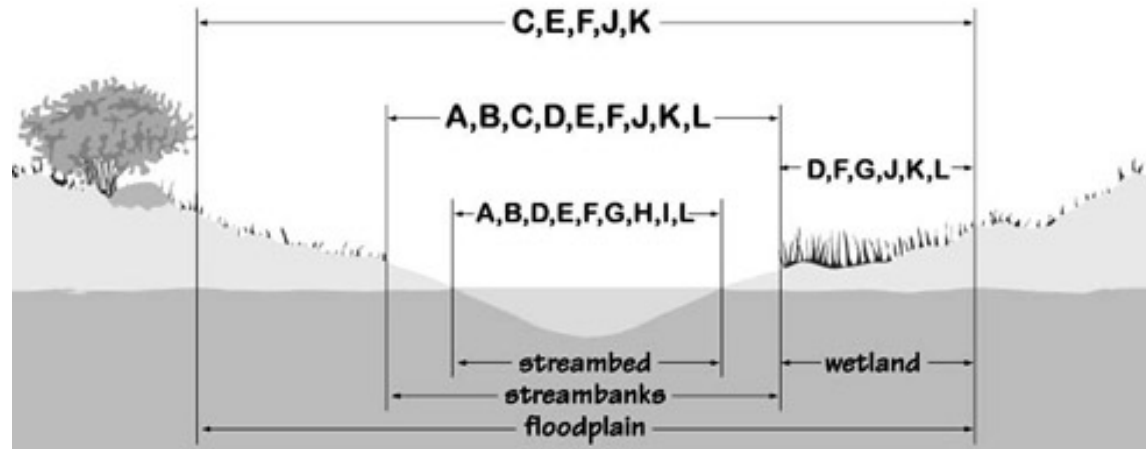


Stream Setbacks versus Stream Permitting Programs in Montana - What are the Differences?

This handout describes the basic differences between stream setbacks, which are being proposed by several local governments for new buildings, and Montana's required stream permits. The list of stream permits was taken from the Montana Department of Natural Resources, *A Guide to Stream Permitting in Montana*, found at http://dnrc.mt.gov/permits/stream_permitting/default.asp. In summary, riparian setbacks are scientifically proven to provide a "buffer" that reduces water pollution from human activities, have minimal investment costs, and provide long-term effective pollution control. They also provide many other benefits to other non-water quality related benefits, including slowing flood waters, helping prevent unnatural erosion, providing wildlife habitat, and more.



The letters in the diagram refer to the required permits listed below (A through L) and described on the following pages. The part of a stream that a specific permit applies to is illustrated in the above diagram: streambed, streambanks, wetlands, or floodplain.

- A. Montana Natural Streambed and Land Preservation Act (310)
- B. Montana Stream Protection Act (SPA 124 Permit)
- C. Montana Floodplain and Floodway Management Act (Floodplain Development Permit)
- D. Federal Clean Water Act (404 Permit)
- E. Federal Rivers and Harbors Act (Section 10 Permit)
- F. Short-Term Water Quality Standard for Turbidity (318 Authorization)
- G. Montana Land-Use License or Easement on Navigable Waters
- H. Montana Water Use Act (Water Right Permit and Change Authorization)
- I. Montana Water Use Act (Water Reservations)
- J. Stormwater Discharge General Permits
- K. Streamside Management Zone Law
- L. Other Laws that May Apply

This document was researched and written by Montana Audubon, with input from staff from the MT Dept. of Environmental Quality; the MT Dept. of Natural Resources; the MT Dept. of Fish, Wildlife & Parks; and from several local governments. November, 2007.

Stream Setbacks versus Stream Permitting Programs in Montana - What are the Differences?

Permit Letter	Name of Program	Program Description	Program Administration/ Contact Information	How This Program Differs from Stream Setback Regulations
A	Montana Natural Streambed and Land Preservation Act (310 Permit)	For any person or entity (non-governmental) proposing work in or near a stream that may affect <u>the bed or banks of the stream to the high water mark</u> . The 310 permit does not govern projects outside the stream channel and stream bank. Wetlands and riparian areas are only protected if they exist on the banks of streams and rivers.	Local Conservation District	The 310 law only regulates the bed and banks of streams, thus only homes proposed to be built directly on the bank would be regulated. Stream setbacks determine the allowable distance between a stream and new buildings and also include a natural, undeveloped, vegetative buffer that filters pollutants, slows flood waters, and more. The 310 law only regulates vegetation directly on the bank of a stream. Once a house or other high value infrastructure is located near a stream, 310 permits will almost always be issued to protect these structures, often regardless of the impact.
B	Montana Stream Protection Act (SPA 124 Permit)	For federal, state, and local government projects proposed in or near a stream that may affect <u>the bed or banks of the stream</u> . Wetlands and riparian areas are only protected if they exist on the banks of streams and rivers. The 124 permit does not govern projects outside the stream channel and stream bank. Wetlands and riparian areas are only protected if they exist on the banks of streams and rivers.	Fisheries Division Montana Dept. of Fish, Wildlife & Parks P.O. Box 200701 Helena, MT 59620-0701 (406) 444-2449	The 124 Permit program only regulates the bed and banks of streams, thus only government buildings proposed to be built directly on the bank would be regulated. Stream setbacks determine the allowable distance between a stream and new buildings and also include a natural, undeveloped, vegetative buffer that filters pollutants, slows flood waters, and more. The 124 permit only regulates vegetation directly on the bank of a stream. Once a building or other high value infrastructure is located near a stream, 124 permits will almost always be issued to protect these structures, often regardless of the impact.
C	Montana Floodplain and Floodway Management Act	For new construction within a <u>delineated 100-year floodplain</u> . Floodplain boundaries have been officially delineated along waterways near most Montana cities, but they have rarely been delineated outside city limits. In rural areas, floodplain “boundaries” – if they exist at all – are rough approximations of the 100-year floodplain associated with major rivers. Although floodplain regulations prohibit development in the floodway, they typically allow development in the floodway fringe, which allows property owners to bring in fill material to raise a building site above the 100-year flood elevation.	Local Floodplain Administrator	Floodplain regulations and stream setbacks differ in 4 important ways: 1. Floodplain regulations most commonly apply in places where the floodplain has been officially delineated, which is generally restricted to areas near Montana cities; very few tributaries have floodplains delineated. Stream setbacks provide blanket protection of designated rivers and streams from new buildings. 2. Most floodplain regulations allow building in the floodway fringe, which leads to more river channelization projects (e.g. riprap and levees), which increases the frequency and severity of floods and sends problems to downstream landowners and communities. 3. Floodplain regulations do not apply to areas perched above streams. This is important because many of Montana’s streams refuse to stay put. Instead, they constantly shift – threatening structures built too close to the stream’s edge. 4. Floodplain regulations do not require vegetative buffers; stream setbacks require vegetative buffers designed to filter pollution, etc.

D	Federal Clean Water Act (404 Permit)	For projects that will result in the discharge or <u>placement of fill material</u> (including dredged material) <u>into</u> waters of the United States. “Waters of the United States” include <u>lakes, rivers, streams, wetlands, and other aquatic sites</u> .	U.S. Army Corps of Engineers 10 West 15th Street, Suite 2200 Helena, MT 59626 (406) 441-1375	The 404 program only regulates placing fill directly into a body of water, thus new buildings can be built on the edge of a stream. Additionally, the 404 program has no vegetative buffer requirements. Stream setbacks separate new buildings and streams, including a vegetative buffer designed to filter pollutants, etc.
E	Federal Rivers and Harbors Act (Section 10 Permit)	For <u>projects in, on, or over any federally-listed navigable water</u> . Designated navigable waters in Montana include the Missouri River from Three Forks downstream to the Montana-North Dakota border; the Yellowstone River from Emigrant downstream to its confluence with the Missouri River; and the Kootenai River from the Canadian border to Jennings, Montana.	U.S. Army Corps of Engineers 10 West 15th Street, Suite 2200 Helena, MT 59626 (406) 441-1375	The Section 10 Permit only applies to a limited number of Montana streams. Because the Section 10 Permit only applies to activities “in, on, or over” certain rivers, construction of new buildings is not regulated by this program. Stream setbacks determine the allowable distance between a stream and new buildings and also include a natural, undeveloped, vegetative buffer that filters pollutants, slows flood waters, helps prevent erosion, and more.
F	Short-term Water Quality Standard for Turbidity (318 Authorization)	For <u>allowing the short-term, unavoidable exceedance of water quality standards</u> . It requires that steps be taken to minimize the amount and duration that the standard is exceeded.	MT Dept of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901 (406) 444-3080	The 318 Authorization is a water quality permit issued only during a short period of time, such as during construction of a project. It does not address on-going nonpoint source pollution associated with activities in riparian or wetland areas. Stream setbacks are designed to protect water quality for the long-term; they include a vegetative buffer that will filter pollutants, etc.
G	Montana Land-use License or Easement on Navigable Waters	For projects that impact <u>land below the low water mark on navigable waters</u> , which are owned by the State of Montana. This program ensures that the State of Montana is compensated for use of those waters, and that projects do not affect navigation. DNRC has designated 37 navigable streams sections (which are different than the Army Corps of Engineers' list (see “E” above)).	Special Use Management Bureau MT Dept. of Natural Resources & Conservation P.O. Box 201601 Helena, MT 59620-1601 (406) 444-2074	The Montana Land-use License program only applies to the channel of streams, which means building new homes is not regulated by this program. Stream setbacks determine the allowable distance between a stream and new buildings and also include a natural, undeveloped, vegetative buffer that filters pollutants, slows flood waters, helps prevent erosion, and more.
H	Montana Water Use Act (Water Rights Permit and Change Authorization)	For <u>new or additional water rights</u> , or to change an existing water right in the state.	Water Rights Bureau DNRC P.O. Box 201601 Helena, MT 59620-1601 (406) 444-6610	The Montana Water Use Act is specifically for water rights (water quantity). Stream setbacks address water quality, but they do NOT address water rights (and water quantity).
I	Montana Water Use Act (Water Reservations)	For <u>water for a new or existing development</u> within the boundaries of a conservation district.	Local Conservation District	Water Reservations are specifically water rights reserved by Conservation Districts. Stream setbacks address water quality, but they do NOT address water rights (and water quantity).
J	Storm Water Discharge General Permit	For <u>large municipal, industrial, or mining projects that will discharge storm water</u> —and its associated sediments, chemicals, petroleum products, etc.—into state waters.	MT Dept of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901 (406) 444-3080	Montana's Storm Water Discharge General Permit only applies to larger storm water projects; the permit does not apply to the location of new buildings.

K	Streamside Management Zone Law (SMZ)	For <u>commercial operations that are accessing, harvesting, or regenerating trees</u> within at least 50 feet of streams.	Forestry Division MT Dept. of Natural Resources & Conservation 2705 Spurgin Road Missoula, MT 59804-3199 (406) 542-4300	The SMZ law only applies to commercial logging operations within 50 feet of a stream, and it does not regulate the location of new buildings. Stream setbacks determine the allowable distance between a stream and new buildings and also include a natural, undeveloped, vegetative buffer that filters pollutants, slows flood waters, helps prevent erosion, and more.
L	Public Water Supply Watersheds	For construction or operation of <u>any new railroad, logging road, logging camp, or electric or manufacturing plant</u> in a public water supply watershed.	Dept. of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901 (406) 444-3080	Public Water Supply regulations only apply to specific activities, and they do not regulate the location of new buildings on streams.
L	Shoreline Protection and Aquatic Land Conservation Ordinance	For <u>work in, over, or near any stream, river, lake, or wetland on the Flathead Reservation</u> . The Shoreline Protection regulates activities altering water bodies but does not regulate activities adjacent to the water body. It also does not require vegetative buffers.	Confederated Salish & Kootenai Tribe 103 Main Street Polson, MT 59860 (406) 675-2700 ext. 7222	The Shoreline Protection program only regulates projects on the Flathead Reservation that place fill directly into a body of water, thus new buildings can be built on the edge of a stream. Additionally, the Shoreline Protection program has no vegetative buffer requirements. Stream setbacks separate new buildings and streams, including a vegetative buffer designed to filter pollutants, etc. Stream setbacks often protect specific streams located throughout a local government's jurisdiction.
L	County Septic System Regulations	For construction, alterations, or operation of <u>sewage treatment and disposal systems</u> . Conventional systems must be set back 100 feet from delineated 100 year floodplains and 6 feet from groundwater. Alternative designs that are 4 to 6 feet from groundwater must be approved.	County Sanitation	County Septic System regulations differ from stream setbacks in 5 important ways: 1. Septic system regulations may only require setbacks in places where the floodplain has been officially delineated, which is generally restricted to areas near Montana cities. Stream setbacks provide blanket protection of designated rivers and streams from new buildings. 2. Septic systems are only one impact that a new building has on streams. Stream setbacks protect streams from numerous water quality problems (including fertilizers, pesticides, etc), flooding, economic impacts, and more. 3. Septic System regulations do not apply to areas perched above streams. This is important because many of Montana's streams refuse to stay put. Instead, they constantly shift – threatening structures built too close to the stream's edge. 4. Septic system regulations do not require vegetative buffers; stream setbacks require vegetative buffers designed to filter pollution, etc. 5. Septic system regulations do not regulate building location.
L	General Mining Laws/Small Miner's Placer and Dredge Operations	For <u>placer, dredge, hardrock, coal, sand, or gravel mining</u> .	Dept. of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901 (406) 444-3080	Montana's mining laws only apply to mining projects, and they do not regulate the location of new buildings.
L	Lakeshore Protection Act	Lakeshore regulations apply to <u>lakes that are 160 acres or more in size</u> . Local governments are required to regulate development within 20 feet of the high water mark on these lakes.	County Planning Office	Lakeshore Protection regulations only apply to lakes, and they do not regulate the location of new buildings on streams.

L	Montana Dam Safety Act	For <u>construction, repair, or removal of any dam</u> that impounds 50 acre-feet or more at the normal operation pool.	Dam Safety Program DNRC P.O. Box 201601 Helena, MT 59620-1601 (406) 444-0860	The Dam Safety Act only applies to dam construction and management, and it does not regulate the location of new buildings.
L	Montana Pollutant Discharge Elimination System (MPDES Permit)	For <u>point source discharges to surface water or groundwater</u> . "Point source" means a discernible, confined, and discrete conveyance, including pipes, ditches, channels, tunnels, conduits, containers, or floating craft, from which pollutants may be discharged. It includes sand and gravel operations, sewage lagoons, fish farms, animal feeding operations, suction dredging, and placer mining projects.	Dept. of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901 (406) 444-3080	The MPDES Permit program only regulates "point" pollution sources; it does not regulate the location of new buildings (which are considered "nonpoint" pollution sources).
L	Montana Water Quality Act	For the <u>placement of wastes</u> in a location where they are likely to cause pollution of any state water. Wastes include sewage, industrial wastes, or other wastes, such as garbage, sawdust, sand, oil, tar, chemicals, dead animals, discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.	Dept. of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901 (406) 444-3080	The Montana Water Quality Act only applies to placement and management of waste that may pollute a stream or groundwater; it does not regulate the location of new buildings.
L	Fish Stocking Permit for Private Fish Ponds	For <u>stocking fish in man-made lakes, ponds, or private fish ponds</u> . Applicants must verify that stocking fish does not pose an unacceptable risk to game fish or species of special concern in adjacent waters.	Montana Dept. of Fish, Wildlife & Parks P.O. Box 200701 Helena, MT 59620-0701 (406) 444-2449	Montana's Fish Stocking permit program only applies to placing fish into ponds, and it does not regulate the location of new buildings.
L	Confederated Salish and Kootenai Tribe's Water Quality Program	For <u>activities in a location where they are likely to cause pollution of any waters on the Flathead Reservation</u> .	Confederated Salish & Kootenai Tribe 103 Main Street Polson, MT 59860 (406) 675-2700 ext. 7211	The CSKT's Water Quality program only applies to projects on the Flathead Reservation where the placement and management of waste may pollute a stream or groundwater; it does not regulate the location of new buildings.
L	National Pollutant Discharge Elimination System (NPDES) Permit	For <u>activities that may discharge pollutants into waters of the United States</u> —including activities related to construction, storm water, dewatering, suction dredges, and placer mining— <u>on all Tribal Reservations in Montana</u> .	NPDES Program Environmental Protection Agency 10 West 15th Street, Suite 3200 Helena, MT 59626 (406) 457-5000	The NPAES permit program only applies to projects on tribal land where the placement and management of waste may pollute a stream or groundwater; it does not regulate the location of new buildings.

Citation for this Handout: Ellis, Janet H. 2008. Stream Setbacks versus Stream Permitting Programs in Montana - What are the Differences? Handout developed as part of an EPA/DEQ Wetland Development Grant. Montana Audubon, Helena, Montana, January 23, 2008. 5 pp.