

NATURAL STREAMBED AND LAND PRESERVATION ACT OF MONTANA,  
ADMINISTERED BY CONSERVATION DISTRICTS

75-7-101. Short title. This part may be cited as "The Natural Streambed and Land Preservation Act of 1975".

75-7-102. Intent -- policy. (1) 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. It is the legislature's intent that the requirements of this part 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.

(2) It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state 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. Further, it is the policy of this state 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 of the State of Montana.

75-7-103. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means any person presenting notice of a project to the supervisors.

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means:

(a) a conservation district under Title 76, chapter 15, in which the project will take place;

(b) a grass conservation district under Title 76, chapter 16, where a conservation district does not exist; or

(c) the board of county commissioners in a county where a district does not exist.

(4) "Person" means any individual, corporation, firm, partnership, association, or other legal entity not covered under [87-5-502](#).

(5) (a) "Project" means a physical alteration or modification that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks.

(b) 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](#); or

(iii) livestock grazing activities.

(6) "Stream" means any natural, perennial-flowing stream or river, its bed, and its

immediate banks except 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](#).

(7) "Supervisors" means the 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.

(8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or the applicant's representative.

(9) "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.

75-7-104. Vested water rights preserved. This part 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.

75-7-105. Application of flood plain management. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 76, chapter 5, parts 1 through 4, floodway management and regulation, where designated flood plains or designated floodways have been established in accordance with that chapter.

75-7-106. Junked motor vehicles as reinforcement prohibited -- penalty. (1) It is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between the channel banks of any stream or to reinforce banks of a stream with junked motor vehicles or the body portion of junked motor vehicles.

(2) A person who violates subsection (1) is subject to penalties as provided in [75-7-123](#).

75-7-111. Notice of project. (1) A person planning to engage in a project shall present written notice of the proposed project to the supervisors before any portion of the project takes place.

(2) The notice must include the location, general description, and preliminary plan of the project.

(3) At the time of filing a notice of the proposed project under subsection (1), the applicant may sign an arbitration agreement as provided in [75-7-117](#).

(4) The district may authorize a representative to accept notices of proposed projects.

75-7-112. Procedure for considering projects -- team. (1) Upon acceptance of a notice of a proposed project, the district or the district's authorized representative shall, within 10 working days, notify the department of the project. If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors. The department shall, within 5 working days of receipt of the notification, inform the

supervisors whether the department requests an onsite inspection by a team.

(2) The supervisors shall call a team together within 20 days of receipt of the request of the department for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 working days after notice of the call for an inspection, of the team member's waiver of participation in the inspection. If the department does not request an onsite inspection within the time specified in this subsection, the supervisors may deny, approve, or modify the project.

(3) Each member of the team shall recommend in writing, within 30 days of the date of inspection, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(4) 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.

(5) (a) When a member of the team, other than an applicant that has not agreed to arbitration, disagrees with the supervisors' decision, the team member shall request, within 5 working days of receipt of the supervisors' decision, that an arbitration panel as provided in [75-7-114](#) be appointed to hear the dispute and make a final written decision regarding the dispute.

(b) When an applicant that has not agreed to arbitration under [75-7-111](#) disagrees with the supervisors' decision, the applicant shall, within 15 working days of receipt of the supervisors' decision:

(i) agree to arbitration under this section and request that an arbitration panel, as provided for in [75-7-114](#), be appointed to hear the dispute and make a final written decision regarding the dispute; or

(ii) appeal the decision of the supervisors to the district court for the county where the project is located.

(6) Upon written consent of the supervisors, the applicant shall notify the supervisors in writing within 15 days if the applicant wishes to proceed with the project in accordance with the supervisors' decision. Work may not be commenced on a project before the end of the 15-day waiting period unless written permission is given by all team members and the district.

(7) The supervisors may extend, upon the request of a team member, the time limits provided in subsections (3) and (4) when, in their determination, the time provided is not sufficient to carry out the purposes of this part. The time extension may not, in total, exceed 1 year from the date of application. The applicant must be notified, within 60 days of the date of application, of the initial time extension and must be notified immediately of any subsequent time extensions.

(8) Work on a project under this part may not take place without the written consent of the supervisors.

(9) 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 proposed 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 on 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 streamflow, turbidity, and water quality caused by materials used or by removal of ground cover; and
- (vi) the effect on fish and aquatic habitat.

(10) 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.

(11) 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.

75-7-113. Emergencies -- procedure. (1) The provisions of this part do not apply to those actions that are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for a taking action under this section 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 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) 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.

(4) A team, called together as described in [75-7-112](#)(2), shall make an onsite inspection within 20 days of receipt of the emergency notice.

(5) Each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, denial, approval, or modification of the project.

(6) 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.

(7) A person who has undertaken an emergency action that is denied or modified shall submit written notice, as provided in [75-7-111](#), to obtain approval pursuant to [75-7-112](#) to mitigate the 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) (a) When a member of the team, other than an applicant that has not agreed to arbitration, disagrees with the supervisors' decision of an emergency action, the team member shall request that an arbitration panel, as provided for in [75-7-114](#), be appointed to hear the dispute and to make a final written decision on the dispute.

(b) When an applicant that has not agreed to arbitration under [75-7-111](#) disagrees with the supervisors' decision, the applicant shall, within 15 working days of receipt of the supervisors' decision:

(i) agree to arbitration under this section and request that an arbitration panel, as provided for in [75-7-114](#), be appointed to hear the dispute and make a final written decision regarding the dispute; or

(ii) appeal the decision of the supervisors to the district court for the county where the project is located.

(9) The failure of a person to perform the following subjects the person to civil and criminal penalties under [75-7-123](#):

(a) failure to provide emergency notice under subsection (1);

(b) failure to submit a notice of the project under subsection (7); 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.

75-7-114. Arbitration panel -- selection. The arbitration panel shall consist of three members chosen by the senior judge of the judicial district in which the dispute takes place. The members must be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the arbitration agreement and the policy set forth in [75-7-102](#).

75-7-115. Arbitration panel -- costs. Cost of the arbitration panel, computed as for jurors' fees under [3-15-201](#), shall be borne by the contesting party or parties; all other parties shall bear their own costs.

75-7-116. Modification of plan -- assignment of costs. (1) If the final decision of the arbitration panel or district court requires modifications or alterations from the original project plan as approved by the supervisors, then the arbitration panel or district court shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.

(2) Any of the involved entities may withdraw or modify required modification of the project within 10 days after the decision.

75-7-117. Rules -- minimum standards -- arbitration agreement. (1) The department of natural resources and conservation, after consultation with the association of conservation districts, shall adopt and may revise rules setting minimum standards and guidelines for the purposes of this part.

(2) The supervisors of each district shall adopt and may revise by resolution after a public hearing rules setting standards and guidelines for projects and exclusions within their districts that meet, exceed, or are not covered by the minimum standards set by the department under subsection (1).

(3) The department of natural resources and conservation, after consultation with the association of conservation districts, shall prepare an arbitration agreement for use by the conservation districts when an applicant chooses to use arbitration. The arbitration agreement must contain provisions for:

(a) the appointment of arbitrators;

(b) the exercise of power by the arbitrators;

(c) an arbitration hearing process, including time and place for hearing, notification, presentation of witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or change of award; and

(d) the fees and expenses of arbitration.

75-7-121. Review. (1) Any review of final action by the supervisors under [75-7-112](#) or [75-7-113](#) may be by arbitration or by the district court of the county where the project is located. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3, and must be brought in the county where the action is proposed to occur.

(2) An applicant's choice of the judicial review remedy prevails over any other team member's request for arbitration regardless of whether arbitration was requested prior to the filing of a petition for judicial review by the applicant.

75-7-122. Public nuisance. Except for emergency action, a project engaged in by any person without prior approval or activities performed outside the scope of written consent of the supervisors, as prescribed in this chapter, is declared a public nuisance and subject to proceedings for immediate abatement.

75-7-123. Penalties -- restoration. (1) A person who initiates a project without written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in [75-7-113](#), or violates [75-7-106](#) is:

(a) guilty of a misdemeanor and upon conviction 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.

(2) 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.

(3) In addition to a fine or a civil penalty under subsection (1), the person:

(a) shall restore, at the discretion 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.

(4) Money recovered by a conservation district or a county attorney, whether as a fine or a civil penalty, must be deposited in the depository of district funds provided for in [76-15-523](#), unless upon order of a justice's court the money is directed to be deposited pursuant to [3-10-601](#).

75-7-124. Repealed. Sec. 4, Ch. 470, L. 2003.

75-7-125. Jurisdiction -- declaratory ruling -- standards -- judicial review. (1) (a) The supervisors shall determine the applicability, interpretation, or implementation of any statutory provision or any rule or written consent of the supervisors under this part.

(b) The supervisors' determination pursuant to subsection (1)(a) must be made, in accordance with rules established under [75-7-117](#), prior to the filing of a petition under subsection (2).

(2) (a) A person who may be directly affected by the applicability, interpretation, or implementation of this part and who disagrees with a determination made under subsection (1) may petition the supervisors for a declaratory ruling.

(b) 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.

(c) 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.

(d) 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.

(3) 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 Procedure Act.

(4) A declaratory ruling is subject to judicial review. Judicial review must be conducted by a court without a jury and is limited to the data, information, and arguments made before the supervisors. A court may reverse or modify the supervisors' ruling if substantial rights of the appellant have been prejudiced because the ruling is:

(a) in violation of constitutional or statutory provisions;  
(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.

(5) A final judgment of a district court under this section may be appealed in the same manner as provided in [2-4-711](#).

(6) This section 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 under [75-7-112](#) or [75-7-113](#) granting, denying, or conditioning a written consent. Review of a final action by the supervisors pursuant to [75-7-112](#) or [75-7-113](#) is exclusively provided for in [75-7-121](#).