



AN ACT EXTENDING THE TIME PERIOD TO APPEAL A CONSERVATION DISTRICT DECISION ON AN APPLICATION TO ALTER A STREAMBED UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; AND AMENDING SECTIONS 75-7-112 AND 75-7-113, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-7-112, MCA, is amended to read:

"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 75-7-114~~ disagrees with the supervisors' decision, the applicant shall, within ~~45~~ 30 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 ~~45~~ 30 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~~ a 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."

Section 2. Section 75-7-113, MCA, is amended to read:

"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 75-7-114~~ disagrees with the supervisors' decision, the applicant shall, within ~~45~~ 30 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."

- END -

I hereby certify that the within bill,
HB 0383, originated in the House.

Speaker of the House

Signed this _____ day
of _____, 2019.

Chief Clerk of the House

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 383

INTRODUCED BY K. WHITE

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CD Logo, Address etc.

MEMO

Date:

To: Conservation Districts Bureau
PO Box 201601
Helena, MT 59620-1601

Re: Adopted Rule Changes/Revisions

We have enclosed the following:

1. Copy of the notices
2. Copy of the resolution
3. Copy of the (Date) 310-meeting minutes
4. A copy of the updated FCD Adopted Rules

If you have any further questions, please do not hesitate to contact our office.

(Name)

(CD Name) Administrator

**GUIDELINES FOR CONSERVATION DISTRICTS
WHEN
ADOPTING/REVISING 310 RULES**

1. Thoroughly go through the rules and discuss any changes that your conservation districts will adopt.
2. Contact the Conservation District Bureau to get information on whether the addition or change is in accord with the 310 law. Consult your local county attorney.
3. Agree on the revisions and update and draft your rules as you would like to adopt them so the public can request a copy and review it prior to the public hearing.
4. Set a schedule for adopting the revisions to the rules, including a date for the public hearing and final decision. The date for your public hearing can be the same day as a regular board meeting – either before or after it.
5. Draft a notice of hearing for publication. Include in the notice a general statement of the action the conservation district is taking. (The revisions do not need to be placed in the paper verbatim) Also, include in the notice the time, place, and the manner in which interested persons may present their views on the adoption of the rules. The best practice would be to ask for written comments with each person allowed 3 to 5 minutes to elaborate on his/her written comments. See **sample ad below**. Also, include a statement as to where the draft rules may be obtained.

SAMPLE AD

The ____ Conservation District will revise natural streambed and land preservation act rules governing the administration of the district's stream permitting program. The revision will include changing the time frame for an applicant to appeal a Board's decision from 15 days to 30 days per HB383 that become law during the 2019 legislative session. A public hearing will be held (date/time/place) to provide an opportunity to present views and submit written comments on the proposed rules. Copies of the draft rules are available by contacting the district at (address), (phone). (If a cd has a website, you may post the draft rules on your web and provide the website here).

6. Advertise in a newspaper, of general circulation within the conservation district, twice before the public hearing.
 - a. The first notice at least 28 days prior to the hearing.
 - b. The second notice at least 14 days later. As an alternative you may post your notice at public places where it is customary to post notices concerning county or municipal affairs generally.
 - c. The notices must be posted at least 28 days prior to the hearing.
7. At the public hearing, read the notice into the record, and if a specific amount of time for the public to comment was in the notice be sure to emphasize the time limits. Don't try to address the comments given at the public hearing, only take note of questions so they can be **answered in writing**. Keep a record of your notice of the meeting, who attended, and minutes of the discussions.
8. You can pass the resolution (copy provided) to adopt the revised rules at your meeting after the public hearing if you haven't received any comments.
9. If you receive comments you will want to take some time to consider them. If, based on the comments, you want to modify your document, discuss the options at your meeting, and set a date for revision and final adoption of the rules. However, before modifying any model rule you should check with the DNRC and your county attorney as to the legal impact of any modification.
10. After the public hearing and adoption of new rules, send a copy of the notice, minutes, resolution, and a final copy of the new rules to Conservation Districts Bureau, Box 201601, Helena, MT 59620. (Memo attached) If you have questions, contact the Conservation Districts Bureau at 444-6667.
11. Adopted Rules may be filed with your local Clerk & Recorder's office.

RESOLUTION

WHEREAS, pursuant to 75-7-116, MCA, the Board of Supervisors of each conservation district may revise rules setting standards and guidelines for projects in natural perennial-flowing streams in the district; and

WHEREAS, the standards and guidelines must meet or exceed the Administrative Rules of Montana, 36.2.401 through 410, adopted by the Department of Natural Resources and Conservation; and

WHEREAS, a public hearing on the revision of proposed rules to reflect HB383, extended time period for appeals from 15 to 30 days was held as required by law on _____, after due notice was given.

NOW, THEREFORE, BE IT RESOLVED that the _____ Conservation District having considered all the comments received at said public hearing, hereby adopts the rules attached hereto as Appendix A.

DONE and dated this _____ day of _____ 20 .

Conservation District
Board of Supervisors

Chairman

Member

Member

Member

Member

Member

Member

ATTEST:

Resource Conservationist

CD Administrator

Appendix A