

Throughout this document, oral comments from the public hearing on 9 June 2026 are in quotes, written comments are indicated with date of submission, and the BCD's responses are in italics.

COMMENTS RELATING TO DRAFT RULES

Concerns regarding wording of BCD Adopted Rules

Roy Fenster (from written comments submitted on 6/8/26)

Regarding Rule 2. Policy: Section 1 states “It is the policy of the Bitterroot Conservation District that the natural rivers and streams, and the lands and property immediately adjacent to them...” in describing areas presumably under the BCD regulation authority? As written, this is overreach on private property rights. The “lands and property immediately adjacent” is a broad description of lands near or close to a stream or river and is not well defined. The jurisdiction of the BCD is the streams and rivers, not the entire “lands and property” of individuals who own land near a river or stream. This section needs to be edited to reflect that.

Regarding Rule 10. Decision: Section 2 (B) states that the team shall determine whether the project is a reasonable means of accomplishing the purpose of the proposed project. “Reasonable” is a very abstract and individual determination, not unlike the phrase “common sense”. It has no meaning outside of an individual’s personal opinion. Using this term grants the BCD team member absolute power to declare if they approve or disapprove of a project based on their personal feelings about if it is “reasonable” in their perspective. Section 2 (b)(ii) goes even further to suggest that team members can decide if, in their minds, there are “alternative solutions that are reasonably practical” and force an applicant to follow those alternatives instead. “Reasonable” is purely subjective, and not based on tangible measured outcomes such as effect on stream flow, turbidity, erosion, materials used, intended results, etc. These are the kinds of factors that must go into accepting or denying a permit, not the individual preferences of the inspection team members. Because “reasonable means” cannot be defined, section (4) should be omitted as well.

Regarding Rule 12. Project Construction: Section 1 (b) states projects must be designed and constructed using methods that minimize “future disturbance to the stream”. This needs to be clarified as the future is unpredictable. Section 8 (d) states that prohibited projects include “excavation of streambed gravels”. This needs to be revised if the expectation is that prohibited projects would be to remove gravels solely for the purpose of removing them. Otherwise this is very unclear given that many projects, for example culvert placement, may require the act of excavating streambed gravels in order to complete the project properly.

Regarding Rule 17. Penalty - Restoration: Section 2 (A) declares a person who initiates a project without consent or violates the very cumbersome emergency procedures of Rule 16 is “guilty of a misdemeanor and upon conviction, the person shall...”. This violates “innocent until proven guilty” in the most egregious language possible. A suggested edit could read “IF convicted and found guilty of a misdemeanor, the person....”. This definitely needs to be re-drafted.

Allison Devlin (from written comments submitted on 6/8/26)

Rule 2. Policy (1)

- o **Current phrasing:** “It is the policy of the Bitterroot Conservation District that the natural rivers and streams, and the lands and property immediately adjacent to them, within Ravalli 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. [LAW]”
- o **Concern:** Potential contradiction with **Appendix A.2.e)** and **B.2.a)**, as is currently written (see comments re: **Appendix**, below).
- o **Justification:** Understood that the **Appendix** is intended to alleviate burden of processing numerous 310 permits, but concerns include potential for misuse and lack of clarity on protection of landowner rights. Please refer to additional comments and examples in the section dedicated to the **Appendix** (below).

Rule 17.2.a.)

- o **Current phrasing:** “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: guilty of a misdemeanor and upon conviction, the person shall be punished by a fine not to exceed \$500; or...”
- o **Suggested edit:** “A person who is **FOUND TO BE GUILTY OF INITIATING A PROJECT** without the written consent...or violates the emergency procedures of Rule 16 or the Act **WILL BE:** (a) guilty of a misdemeanor...”
- o **Concern and Justification:** As it is currently written, the language identifies an individual **alleged** to have violated a Rule as **guilty before conviction rather than presumption of innocence**. The current phrasing the document appears to **violate due process**, and is overly restrictive on individuals that would otherwise be acting in good faith to address an emergency action. The language should be adapted for greater flexibility on a case-by-case basis.

The sections of the BCDs Administrative Rules that are highlighted above are all taken directly from the Montana Code Annotated (MCA) and/or the Administrative Rules of Montana (ARM) and therefore can only be changed through the legislative process.

Repeated and confusing text in the draft Rules as posted on the BCD website

Roy Fenster

“Yeah, let's see some of the rules things. There were a lot of definitions. There's a lot of things that were repeated that weren't clear when you read it. There's like it was a draft, but not a, in my opinion, not a final draft that was ready for public review. I thought that it could have been cleaned up one more round, and so when I read it, I wouldn't see duplications, duplications, duplications, and those were concerning that we got to that point.”

Roy Fenster (from written comments submitted on 6/9/26)

Regarding Rule 4. Definitions: In definition 11, two different definitions are given for the same term; “immediate banks”. Which one is it supposed to be?

Definition 21 also offers multiple definitions for a “stream”. Which one is it supposed to be?

Regarding Rule 5. Applicability: Section 2 includes two different versions of applicability. Which one is the recommended edit? Section 3 also includes two different versions of persons affected. Which is the recommended edit?

Regarding Rule 6. Aquatic and Riparian Attributes - Exclusions: Section 2 has two different versions of rule exclusions. Again, which is the intended version?

Section 2(A) has two different versions of how to make a determination. Which is intended to be the one we are reviewing?

Regarding Rule 9. Application Process: Section 1 and subsections (B-H) contain numerous redundancies with sections that are already written, i.e. description of the project, plans, drawings, etc. This seems unnecessary and is confusing to the reader.

Allison Devlin

“Some of the points requesting clarification include the definitions, so in the main document, rule four, definition 11. There are two side-by-side definitions for what adjacent land is. And so, in the appendix, when it refers to the woody debris and then the vegetation adjacent, there are a couple of different pieces where a certain definition is referred to or not referred to, so just having some clarification on that, and consistency with referral to perhaps the main document.”

Allison Devlin (from written comments submitted on 6/8/26)

Rule 4. Definitions (11)

Current phrasing: “Immediate banks” means the area above the mean highwater mark and directly adjacent to the stream, which when physically altered or modified has the potential to affect the state of a stream. [ARM] ““Immediate banks” means the area above the mean high-water mark and directly adjacent to a stream which when disturbed will physically alter or modify the state of a stream in contravention of 75-7-102, MCA. [ARM] ““

o **Concern:** As currently phrased, two definitions appear to be presented in the draft text. The inclusion of “...**when disturbed**...” introduces additional subjectivity beyond BCD Rules & Appendix 2026 Public Comment (ALD)

“...physically altered or modified...”. Is the first definition the main definition, or is the second included with intent to replace the first definition?

o **Justification:** As currently presented in the draft **Appendix** [e.g., **B.2.a.)** and **F.1.c.)**], the phrasing seems to refer only to the second definition. Clarifying language is requested, and further concerns on this language are raised in the respective comments (below).

Yes, noted. With apologies, the version of the draft rules that was posted contained both the old and new text in many cases and was confusing to read. A clean version of the draft rules will be posted.

Request for BCD rule to prohibit malicious complaints

Roy Fenster

“One thing I would have loved to have seen was we've recently had some complaints that weren't founded. I see that tonight on the board agenda; there's one of those complaints that's still being talked about four months later. I need to guess how much time's gone into these things, and I guess when I brought up the idea that we needed to do something about it. I kind of got a “there's nothing we can do”. The complaint procedure is part of that rulemaking process. If we're editing things, edit in a process to handle false complaints and make people who go after landowners accountable for that... I'd like to feel that if somebody, if one individual makes more than one false complaint, that the second time that that happens, that they get to pay for the time and effort to go through the process of confirming that the complaint was false, you know, your guys' time is worth something, my time's worth something. I wouldn't want to see something that would make it a negative, where no citizen would ever want to file a complaint, because a lot of them are valid. I appreciate that, but the ones where you're just totally making stuff up, or like this last case. I mean, it was a joke. I'd like to see some repercussion for people who would repeatedly use the 310 law as a means of, you know, aggression towards a neighbor or a landowner, the public, and that'd be my thought.”

Roy Fenster (from written comments submitted on 6/9/26)

Regarding Rule 18. Complaint Procedure: There are no edits in this section. I highly recommend taking this opportunity to add some. Recently, it has been brought to the attention of the BCD that individuals with ulterior motives are using the 310 law as a method of harassing landowners. There are currently no repercussions for filing complaints that are not warranted. Reacting to unfounded complaints is burdensome to both landowners who have done no wrong and the BCD itself. Some form of repercussion for those who file false complaints for violations need to be included the complaint procedures.

This does not seem like something that can or should be addressed in the BCD's Administrative Rules but should instead be handled on a case-by-case basis as these situations arise. Referral to the County Attorney may be appropriate in instances where complaints are filed with obvious malicious intent.

COMMENTS RELATING TO PROPOSED APPENDIX

Requirement for landowner permission before moving cut woody debris above the ordinary high water mark

Roy Fenster

“I thought there were some things that could impact landowners, but particularly like the cutting of woody debris, not needing a permit to do six-inch branches or smaller in a stream, and then you have to throw the branches up on the bank above the high water mark. If you're on private property, I don't think that's right that we'd allow publicly accessing people to walk up and down river channels or streams and cut apart trees and throw them up on the bank, and we have a lot of bad faith actors that will do stuff like that. The language said landowner permission should be required, doesn't mean anything. It must be required. I mean, that has to be written in there. You can't authorize activities that occur above the high water mark without that landowner permission. I think that's beyond the scope of the conservation district's authority, really.”

Roy Fenster (from written comments submitted on June 8,2026)

While I agree that a 310 permit should not be required to remove woody material that is part of a single tree and less than 6 inches in diameter as stated in section 2 part C, this section must be amended to read that where a channel runs through or is bordered by private property, ONLY the landowner or another individual with specific, written landowner permission be allowed to remove ANY vegetation. Section 2 part E states that landowner permission *should* be obtained for cutting, and this language absolutely does not protect a landowner from having their private property damaged by others through cutting trees that are rooted outside the stream channel, and in certain cases may actually encourage members of the public to damage private property through unauthorized tree cutting. The statement “Landowner permission *should* be obtained...” means nothing to those who would act in bad faith. Sportsmen have already been known to illegally cut vegetation that interfere with casting, boat passage, etc. As written, this change would legitimize such destructive behavior in direct violation of private property rights. This language needs to be revised, and one option could be “Written landowner permission MUST be obtained for any and all cutting of any plant where a portion of said plant is above the high-water mark or for placement of any and all debris above the ordinary high-water mark”. Further, Section 2 part D states that all cut material, regardless of if a 310 permit is necessary, must be placed above the ordinary high-water mark. I question that the BCD has any regulatory authority above the high-water mark, and the BCD certainly does not have the authority to allow members of the public to take actions above the high-water mark as written. Landowner permission must be required for any action above the high-water mark.

Allison Devlin

“Also, when it comes to woody debris, as mentioned, some of the concerns include the landowners’ right to manage the vegetation on their land, and some of the potentials for abuse by individuals that want to clear that without landowner permission or knowledge, including throwing that woody debris onto their private property. That's something that I think should be addressed, and through modifying some of that language about landowner permission should be required before removing those vegetation, and woody debris, and then I think just a couple of other points related to some of the final parts of the appendix, some of the phrasing and ensuring that the 310 permitting again this to alleviate that pressure on the system, but making sure that

we're being consistent with what that means for relation between let's say public that's accessing the water and then private lands that are alongside that water.”

Allison Devlin (from written comments submitted on June 8, 2026)

A.2.b.)

- o **Current phrasing:** “A 310 permit is not required in cases where the material to be cut is part of a single tree and is less than 6 inches in diameter.”
- o **Concern and Justification:** As it is currently written in the draft **Appendix**, section **A.2.b.)** welcomes abuse of the law by individuals and potentially violates property owner rights to manage vegetation in a way that fits with their land management objectives. For example, residents along waterways in the Bitterroot Valley have already experienced multiple instances of bad faith actors that (without permission) cut down willow tree branches (of all sizes, including those greater than 6” in diameter), for the purposes of recreational casting or for ease of recreational floating, thereby (as it currently stands) in violation of 310 permitting laws, destroying landowner property, and removing habitat cover for fish (violation of **Rule 12.12**, as cited in **A.2.c.)** of the **Appendix**). As it currently stands, the language of **A.2.b.)** justifies the abuse of such regulations and leaves grey areas for contradictory application of the law. Should 2BCD Rules & Appendix 2026 Public Comment (ALD) placement of a young tree be approved via 310 permitting with projects related for bank stabilization, the phrasing of **A.2.b.)** leaves open for bad faith actors to cut down said trees (e.g., willows) without consequence.
- o **Suggestion:** “A 310 permit is not required **BUT EXPRESS, WRITTEN, AND/OR PRIOR LANDOWNER PERMISSION IS REQUIRED** in cases where material to be cut is part of a single tree and is less than 6 inches in diameter.”

A.2.e.)

- o **Current phrasing:** “Landowner permission should be obtained for cutting or placement of debris above ordinary high-water mark, even if a 310 permit is not required.”
- o **Required edit:** “Landowner permission **IS REQUIRED** for cutting or placement of debris above ordinary high-water mark, even if a 310 permit is not required.”
- o **Concern and Justification:** As it is currently written in the draft **Appendix**, **A.2.e.)** welcomes abuse of the law by individuals and violates property owner rights to manage vegetation in a way that fits with their land management objectives. For example, residents along waterways in the Bitterroot Valley have experienced multiple instances of bad faith actors that cut down willow tree branches (of all sizes, including greater than 6”), for the purposes of recreational casting or for ease of recreational floating, thereby (as it currently stands) in violation of 310 permitting laws, destroying landowner property, and removing habitat cover for fish (violation of **Rule 12.12**, as cited in **A.2.c.)** of the **Appendix**). As it currently stands, the language of **A.2.e.)** justifies the abuse of such regulations by bad faith actors (which has already occurred), and also permits those bad faith actors to dispose of the branches on private property, violating private property rights. It appears that such cases would also be in violation of **Model Rule 2. Policy (1)**.
- o **Suggested addition: A.2.f.)** Individuals accessing waterways for recreational use as protected under Montana’s Stream Access Law are prohibited from removing woody debris (WD) or vegetation (and are also prohibited from placing debris or vegetation above the ordinary high-water mark) without express, written, and/or prior landowner

permission.

The requirement to move any cut wood to above the ordinary high-water mark is stipulated by the Ravalli County Floodplain Regulations. It is referenced in the Appendix so that applicants will be aware of this requirement.

Regarding the need for landowner permission, this is not a part of the 310 Law and is instead addressed elsewhere in the Montana Code Annotated (MCA 45-6-203 “Criminal trespass to property”). As such, the BCD does not have the authority to require landowner permission before issuing a 310 Permit. However, the BCD’s website does advise that applicants should “Be aware that the issuance of any permit does not give permission to carry out a project on land that is not owned by the applicant. The applicant has the duty to secure necessary landowner authorization.”

A more definitive standard regarding 310 requirements for work involving riparian vegetation is required

Allison Devlin (from written comments submitted on 6/8/26)

B.2.a.)

o **Current phrasing:** “A 310 permit may be required for projects involving cutting or removal of riparian vegetation on lands immediately adjacent to natural rivers and streams. (Rule 2.1.)”

o **Concern 1:** The phrasing of “...may be required...” is subjective and currently unclear on if/when the 310 permit **would be** required. This also seems to be contradictory to **A.2.e.)**, especially with the current phrasing that landowner permission is suggested but not required (even if a 310 permit is not required). As raised in the above comment, concerns include abuse of this regulation by individuals to remove important fish habitat at-will while also violating landowner rights. This is also unclear on how to enforce instances where removal of vegetation violates 310 permitting (versus not). For a practical example, is lawn maintenance prohibited under this proposed regulation?

Dave Ward/BRTU (from comments submitted on 6/9/26)

We are grateful that the Appendix clarifies that riparian vegetation is within the BCD’s jurisdiction. However, the current wording of that section is still vague in terms of when BCD would or would not require a 310 application: “A 310 permit may be required for projects involving cutting or removal or riparian vegetation on lands immediately adjacent to natural rivers and streams” (Appendix, section B.2.a). We suggest, instead, that riparian vegetation removal be prohibited unless necessary for the completion of a permitted project. This is in line with the Adopted Rules presented for public review along with the draft Appendix. Rule 12.5 outlines standards for all projects and states: “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. [ARM]”

The use of “may be required” gives the BCD the flexibility to determine on a case-by-case basis if a 310 permit is required depending on the nature and location of the project. The BCD does

consider that only those portions of the riparian zone in which cutting or removal of vegetation would have a direct impact on the stream to be within 310 jurisdiction.

Definition of “immediately adjacent”

Roy Fenster

“And there are a couple other things along that same line, stuff about the riparian vegetation, although I agree with a lot of what you're probably trying to do, trying to regulate that beyond high water mark, adjacent to a stream. What does adjacent to a stream mean? There's no definition there, so that stuff just needs to be rewritten...”

From written comments submitted on 6/8/26

Regarding Rule 2. Policy: Section 1 states “It is the policy of the Bitterroot Conservation District that the natural rivers and streams, and the lands and property immediately adjacent to them...” in describing areas presumably under the BCD regulation authority? As written, this is overreach on private property rights. The “lands and property immediately adjacent” is a broad description of lands near or close to a stream or river and is not well defined. The jurisdiction of the BCD is the streams and rivers, not the entire “lands and property” of individuals who own land near a river or stream. This section needs to be edited to reflect that.

Allison Devlin (from written comments submitted on June 8, 2026)

B.2.a.) (Continued)

o **Current phrasing:** “A 310 permit may be required for projects involving cutting or removal of riparian vegetation on lands immediately adjacent to natural rivers and streams. (Rule 2.1.)”

o **Concern 2:** What is the enforceable definition of “...immediately adjacent to...”? Is this related to the definition provided in **F.1.c.)** and/or **Model Rule 4. Definitions (11)**? As stated in **Appendix F.1.c.)**, “Immediate banks” means the area above the mean high-3BCD Rules & Appendix 2026 Public Comment (ALD)

water mark and directly adjacent to a stream which when **disturbed** will physically alter or modify the state of a stream in contravention of 75-7-102, MCA. [ARM]? However, based on my interpretation, **Model Rule 4. Definitions (11)** provides two definitions. Greater clarity and consistency is requested (see comments above, this document).

o **Justification:** The language as it currently appears, reads as prohibitive on landowners without clarity on enforceable regulation, while also binding landowners from protecting private property should other individuals choose to cut off branches and toss those branches onto private property [as indicated in **A.2.e.)**].

o **Suggestion:** Require landowner permission in **A.2.e.)**, and provide clarifying language on **B.2.a.)**; what constitutes “adjacent to” and/or physical alterations (versus disturbance)? Provide direct relation to definition as raised in **Appendix F.1.c.)** and ensure consistency with **Model Rule 4. Definitions (11)**

The terminology used in the Appendix relating to riparian vegetation is taken directly from the Policy statement for the 310 Law, which states that “...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...”. The BCD considers “immediately adjacent” to

be the immediate banks as defined in its Rules: “the area above the mean high-water mark and directly adjacent to a stream which when disturbed will physically alter or modify the state of a stream in contravention of 75-7-102, MCA.” [36.2.402 ARM] This definition, like much of the 310 Law, was purposely written to be somewhat subjective, recognizing that each situation is unique and that “one-size-fits-all” definitions are generally not feasible or realistic. Instead, the 310 Law relies on Conservation Districts to exercise their knowledge and common sense when deciding whether or not a 310 Permit is required.

Jurisdiction for off-stream revetments

Roy Fenster

“...and kind of the same thing with the off-stream revetments. I didn't quite understand where we were getting a jurisdiction that now goes to land beyond the stream banks, you know, because of the “future”, could have a channel migrate, we can't predict that, nobody knows where those channels will be 100 years from now or 500 years from now. That language definitely needs to be fixed and clarified.”

Off-stream revetments are defined as material that is placed away from the stream bank with the intent of providing erosion control once the stream migrates to that location. This narrow definition is used to determine when a 310 permit is required, and excludes activities and materials that are not intended to provide erosion control.

Concern about BCD jurisdiction over riparian vegetation relative to SMZ regulations

Josh Smith

“[The SMZ] regulations have already been in place, you know, by law since 1993. In 2024 they did an audit of practices that met or exceeded BMP best practices, so I just kind of see this as unnecessary in another extra step that might not be necessary with the adjacent vegetation, as it pertains to the forestry world. We already have established contractors that adhere to this all the time. I've worked along miles and miles of streams at this point, and I had a warning for BMP that was five feet in length. I've worked quite a bit in Missoula, and I've kind of dealt extensively with some of these issues, and I don't know if the Bitterroot wants to necessarily, or Ravalli County wants to kind of go that route.”

Dirk Kruger

“We have the Montana Streamside Management Zone law that was created in the early 90s, and that law pertains to projects that have a hazard reduction agreement with the DNRC, so they're projects that may have a commercial product coming off of them. So those projects are already quite regulated by the DNRC, by our local office, and so I really don't feel the Conservation District needs to worry about, so to speak, a lot of those projects, because Dan McConnell and others here locally are already monitoring them. There's getting to be a greater amount of non-commercial harvest projects that are more fuels reduction, they may be mastication, maybe hand piling, and burning, and a lot of those are in some of our riparian areas, and I think it's important to remember that if we, or if the board chooses to limit activity in these riparian areas, that some of these areas are at fairly high fire risk. So, if the intent is to preserve the shade, the stream bank

stabilization, etc. and we have a fire rip through there, we've kind of negated a lot of those things we're trying to protect, and you know there's a need to be light handed in those areas. But again, especially when it comes to commercial activities, where we already have a very well established process law to regulate that stuff. So I guess I just ask the board to consider what's already in place in our state, and, maybe you know, just go with the current law as pertaining to the SMZ law, and again, I guess somebody brought it up earlier to that immediately adjacent terminology is a little bit confusing to me. I think if the board does choose to move ahead and say create some specific distance from the stream bank that it's that immediately adjacent stuff. To be honest with you, I think a lot of contractors will probably back off from even applying for a permit to do work in those areas, which I think is also dangerous as well, because those are some areas that do need some treatment, in particular for fuels reduction.”

Jason Todhunter

“If you look at the 404 permit, they exempt forest practices, in particular, for your floodplain management. I guess if you would review that and then review the streamside management zone law, it would maybe give you some ideas of ways to address that, where if somebody's doing like forestry, I'm not saying a golf course, but forestry work is typically different, right. We're doing management to manage fire and management to grow trees, so just throwing out a few ideas on that. Hopefully at some point here we can get some clarification from the state legislature, so there isn't this gray area that of whose jurisdiction is what when it comes to vegetation management adjacent to the stream, because then we get into another question of what is immediately adjacent, you know, we can't - there's nowhere in law that gives us a distance of what immediately adjacent is, so it throws the logging contractor into a question, you know, what am I supposed to do here? Whereas the SMZ law is cut and dry, and you can look at it and know exactly what you're supposed to do while you're on the ground. You can open up the book, and there will be the spot that you're looking at that you can figure out.”

Kevin Kanduch

“I'm also the president of Montana Logging Association, and I sit on the Conservation District Board of Supervisors here for Granite County. And I just want to echo what everyone before me has said, talking about these comments in terms of working with forestry next to the stream, and I guess the point I'm just trying to raise is I don't need to repeat what everyone else said. I just want to point out that it's very important for our industry to not have volatility and unpredictability, especially at this day and age, and if we have multiple Conservation Districts looking at this differently, and some saying they do think they have jurisdiction with the trees, and some saying they don't. It's going to create a lot of volatility and unpredictability in the industry, and that's going to be bad for everyone. And I know that our Conservation District here in Granite County doesn't see where we need to be policing the loggers when they already have a tried and true system, which is the SMZ law, which has 30 years of success behind it, and the facts, and the data, and the history to back it up. So we're just asking that everyone's playing on a level playing field, and that kind of everyone looks at it the same way, and there isn't going to be some random Conservation District that is coming after and policing the loggers a little bit more, and kind of catching us off guard, so to speak.”

Zachary Bashore

“I'll echo pretty much what everyone else has said here, but we do, we work across many, many different counties across the state, and it does get pretty confusing working with multiple

conservation districts that have different regulations. It can get pretty confusing for contractors who may be coming from other counties. We've found it, you know, turn into folks not wanting to work with the Conservation Districts at times, and we definitely don't want that, because we have amazing relationships with our Conservation Districts. I'd also just say that the timing right now, I know that the Montana Association and Conservation Districts is currently working on some universal regulation for all Conservation Districts across Montana, and with this upcoming legislative session, I foresee a world where that's going to come to fruition with the State Association of Conservation Districts, the DNRC, Montana Logging association and others, and so I just caution you, if you're going to be spending resources to put procedures in place to regulate this, I mean, by the time you do that, there might very well be new regulations that come out.”

Kevin Kanduch

“The rules and laws on the SMZ are very restrictive. In fact, most of the time it's keeping us from getting our equipment within 50 feet of the ordinary high-water mark. So, if the SMZ laws are being followed, we're not altering the stream or affecting the banks or channels at all. And just to comment on what you're talking about with the stream crossing, that's what you're seeing there, with any stream crossing, is in a class three stream. So, in the SMZ law, there are three classes of streams, and the only time we're ever allowed to cross a stream with a piece of equipment is in a class three, and that's a non-perennial stream, which the Conservation District doesn't have any jurisdiction over, anyways. But that's never through actual water, that's through a dry channel. So they actually make us work and stay away from dry channels as well, but they allow us to cross them every several 100 feet when there's no water in them. But most of the time we're working with class one and two channels, which have water in them, and we can't get equipment within 50 feet normally, unless there's a certain amount of slope between the 50 foot mark and the ordinary high water mark, and once we get over 35% of slope, then that buffer mark moves back to 100 feet instead of 50 feet. So, really, there's no world as long as the loggers following the SMZ law, where they're going to be impacting the stream, the bank, and the channels, which is kind of why we're trying to address this, because we really feel the SMZ law, over and above, like you said, addresses these issues, and to comment on the crossings when it comes to bridges and roads and culverts. Yes, absolutely, anytime there is actually a crossing with a culvert or bridge or something, there are 310 permits applied for 110% If we're touching the stream in any way, shape, or form, we apply for 310 permits.”

Kevin Kanduch

“The second there's a commercial value being derived, then the SMZ law comes into play. So, in order to sell a forest product to a forest product manufacturer, you have to first give them what's called an HRA, which is a hazard reduction agreement. In order to get that, you're saying that there is going to be a commercial product, and then that's kind of when the SMZ law comes into play because you have to check the box when you apply for HRA, if there is water on the project, and then that kind of kick starts the whole process, but yeah, you're right, the SMZ law does not stop some landowner from going in and cutting down trees and not selling a product out of it, that's kind of a different thing, but for the logging industry, you're absolutely right. We have to have a forest products value and forest products industry, and that's kind of what kick starts the law.”

Jason Todhunter

“In the SMZ law it states that if any perennial stream is crossed, we have to get a 310 permit. So just a little bit of history on the SMZ Law, Conservation Districts were a part of the creation of the rules. There was a partnership where each organization took ownership to it. It seems like that institutional knowledge has left and that’s where we are seeing these issues coming up, because its been long enough where these players are no longer at the table.”

The BCD appreciates and values the comments from the above individuals involved in commercial logging operations. The BCD recognizes that the SMZ regulations overlap with the 310 Law in many respects and are generally more stringent. However, the SMZ regulations apply primarily to commercial logging activities and do not relate to private citizen wishing to do work within the high watermark or immediately adjacent to the bed and banks. The BCD views the relation of the 310 Law to the SMZ as complementary rather than contradictory. We appreciate the comment by Mr. Kanduch that “If we're touching the stream in any way, shape, or form, we apply for 310 permits.”

Need for rule or standard to address private recreational structures below mean high water mark

Dave Ward/BRTU (written comments submitted 6/9/26)

The current appendix does not address concerns about recreational structures like private boat ramps, steps or patios built in the stream channel (below the mean high water mark) or in the immediate banks. These structures have the potential to cause habitat degradation, erosion, or to be washed downstream in a high flood event and become a public safety hazard. While one single structure may not pose a major threat, the cumulative impacts of many structures should be considered. This was recently brought up in Montana Fish Wildlife and Park’s letter “Disagreement with unconditional approval of SB310 application BT021-2026” regarding two grouted stone staircases approved to be built on the West Fork Bitterroot River.

“Rule 2. POLICY” of the Revised Rules clarifies BCD’s authority to preserve rivers and streams in their natural state, minimize erosion and sedimentation and protect natural resources. It also highlights the laws allowing agricultural uses of rivers, streams and water for a beneficial use. Based on this, we believe recreational structures are within BCD’s jurisdiction. However, we are not clear how often BCD encounters these types of projects and if they are worth a specific mention in the Appendix. We do not want to unnecessarily delay passing of the Appendix.

We request that the board of supervisors discuss how much of a threat these structures pose (How often are they being proposed or built illegally? Is there a growing concern as the valley sees more development?). If the BCD decides that the Appendix should clarify BCD’s position on recreational structures, we suggest an amendment stating that permanent, private recreational structures require a 310 permit. These structures are discouraged, but if proposed for a project, should not be built below the mean high-water mark and should be designed to be natural and unobtrusive in appearance. This would not apply to non-recreational structures (e.g. agricultural structures).

The BCD does not intend, at this time, to create a standard or rule relating to private recreational structures that are built below mean high water mark, but will instead address such

project applications on a case-by-case basis as they arise. Note that a 310 permit is already required for any activity below the mean high water mark.

Comments in support of standard to allow limited cutting of woody debris

Kevin Shuland (written comment submitted on 6/9/26)

I strongly support the proposed appendix to the BCD administrative rules allowing cutting of a single tree six inches or less. This will facilitate river safety.

Eddie Olwell (written comment submitted on 6/9/26)

I am in support of the proposed appendix to the BCD administration rules allowing the cutting of a single tree 6 inches or less. Thank you for your consideration in this matter.

Steve Davis (written comment submitted on 6/1/26 and 6/9/26)

Strongly support the proposed appendix to the BCD administrative rules allowing cutting of a single tree six inches or less. This will facilitate river safety.

Howard Robinson (written comment submitted on 6/9/26)

I'm writing to express support for the proposed appendix to the BCD rules which would allow cutting of a single tree six inches or less. As a fly fishing guide who works almost exclusively on the Bitterroot River this change is much needed. While I understand and fully support the need for fish habitat on the river which downed trees provide, I also am very concerned about safety and freedom of access on the river for both guides and recreational fishermen. This is a reasonable compromise that would both still protect fish and help improve the safety and access to floating down and fishing the river. Thanks for what you do and taking the time to read and consider my thoughts on the matter.

Dave Buck (written comment)

I would like to express my support for the rule modification that would allow cutting of small limbs and woody debris in the rivers. This would certainly help with boater safety and also free up the board from having to review permit requests for these minor situations.