

THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF
1975

MISSOULA COUNTY 310 ADMINISTRATIVE RULES

ADOPTED

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RULE 1. TITLE

These rules shall be cited as the "Missoula County 310 Administrative Rules".

RULE 2. PURPOSE

These rules provide for the administration of The Natural Streambed and Land Preservation Act, commonly referred to as the 310 law, within the portion of Missoula County as shown on the map in Appendix A.

RULE 3. POLICY

(A) 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.

(B) It is the policy of Missoula County that the natural rivers and streams, and the lands and property immediately adjacent to them, within the area of Missoula County subject to the jurisdiction of the Act 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.

(C) Further, it is the policy of Missoula County to recognize the needs of irrigation and

agricultural uses 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 and laws of the State of Montana.

RULE 4. DEFINITIONS

(A) The following definitions are applicable to these rules:

(1) "Act" means The Natural Streambed and Land Preservation Act;

(2) "Activity" or "Activities" means a physical alteration or modification to a natural perennial-flowing stream or river, its bed or its immediate bank;

(3) "Applicant" means the person submitting notice of a project to the Board;

(4) "Application" means a request for review and approval of a proposed project using a form provided by Missoula County or the Montana Department of Natural Resources and Conservation and including all information necessary to review the proposed project;

(5) "Bed" means the channel occupied by a stream;

(6) "Board" means the Missoula County Board of County Commissioners;

(7) "Channel" means the area of a stream measured from mean high water mark to mean high water mark;

(8) "District " means Missoula County;

(9) "Emergency" - means an unforeseen event or combination of circumstances that calls for immediate action to safeguard human or animal life or property, including growing crops, without time to obtain a permit, pursuant to Rule 11;

(10) "FWP" means the Montana Department of Fish, Wildlife and Parks;

(11) "Immediate banks" means the area above the mean high water mark and adjacent to the stream which supports stream stability and function;

(12) "Livestock grazing activities" means grazing animals;

(13) "Mean high water mark" means the line that water impresses on the land for sufficient periods to cause physical characteristics that distinguish the area below the line from above it. Characteristics of the area below the line include, when appropriate, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural value;

(14) "Meeting" means the convening of a quorum of the Board, whether corporal or by means of electronic equipment, to hear, discuss or act upon any matter over which the Board has supervision, control, jurisdiction or advisory power. A team inspection is not a meeting.

(15) "Natural perennial-flowing stream" means a stream, which in the absence of diversion, impoundment, appropriation, or extreme drought, flows continuously at all seasons of the year and during dry as well as wet years;

(16) "Permit" means the written consent of the Board authorizing a proposed project;

(17) "Person" means any individual, corporation, firm, partnership, association or other legal entity other than an agency of state government, county, municipality or other subdivision of the State of Montana;

(18) "Physical alteration or modification" means human caused actions resulting in the placement, removal or disturbance of any nature or character;

(19) "Plan of operation" means an annual plan for a project of a recurring nature that, if approved by the Board, authorizes a specific activity for a period not to exceed ten (10) years;

(20) "Project" means an activity that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate bank;

- (a) "Project" does not include:
 - (i) an activity for which a plan of operation has been submitted to and approved by the Board. Any modification to the plan must have prior approval of the Board;
 - (ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of Section 75-7-102, MCA;
 - (iii) livestock grazing activities.
- (b) "Project area" means the area within the jurisdiction of the Act and these rules and includes the area within the mean high water mark on both sides of the stream. The term also includes the immediate banks to a stream as determined by the Board.

(21) "Stream" means any natural perennial flowing stream, or river, its bed and immediate banks. The term does not include a stream or river that has been designated by the Board as not having significant aquatic and riparian attributes in need of protection or preservation under Section 75-7-102, MCA and Rule 7.

(22) "Team" means one representative of the Board, one representative of the Montana Department of Fish, Wildlife and Parks and the Applicant or the Applicant's representative.

(23) "Written consent of the Board" means a written decision of the Board approving a project and specifying activities, including any conditions, authorized or required to be performed in completing the project.

RULE 5. APPLICABILITY

(A) The area in which the Missoula County Board of County Commissioners has jurisdiction is defined as the area inside the 1946 Missoula city limits, as shown on Appendix A.

(B) These rules apply to projects on natural perennial-flowing streams, or portions thereof, including its bed and immediate banks, unless the stream has been designated as not having significant aquatic and riparian attributes in need of protection in accordance with Rule 7. The Board may consider a stream to flow perennially if it dries up due to man-made causes or extreme drought.

(C) These rules do not apply to ditches, intermittent streams or wetlands not associated with the bed or banks of a stream.

(D) The Board shall determine the applicability, interpretation, or implementation of any statutory provision or any rule or written consent of the Board under the Act or under these rules.

RULE 6. DESIGNATION OF NATURAL FLOWING PERENNIAL STREAMS

(A) All natural perennial-flowing streams within Missoula County's jurisdictional area are subject to these rules.

(B) The Board may use, but is not limited to, any of the following sources, to make a determination required under these rules:

- (1) USGS topographic maps;
- (2) Water Resource Surveys;
- (3) water rights records;
- (4) oral interviews of persons with knowledge of the subject being determined;

- (5) hydrology reports;
- (6) historical information;
- (7) aerial photos;
- (8) streamflow data; or
- (9) any other relevant information it finds to be reliable.

RULE 7. DESIGNATION OF STREAMS NOT IN NEED OF PROTECTION

(A) The Board may designate natural perennial-flowing streams or rivers as not having significant aquatic and riparian attributes in need of protection or preservation in accordance with Section 75-7-102 MCA.

(B) The Board may consider whether a stream should be designated as not having significant aquatic and riparian attributes in need of protection at the request of any person or upon its own motion.

(C) In order to make a determination under this rule, the Board shall hold a public hearing, to gather information about the aquatic and riparian attributes of a stream.

(D) If after a public hearing, the Board determines that a stream does not have significant aquatic and riparian attributes in need of protection or preservation under the Act, it may adopt a rule excluding the stream, or a portion thereof, from the requirements of the Act and these Rules.

RULE 8. FORMS

The following forms shall be used by the Board and the applicant.

Form 270 - *Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other*

Water Bodies is to be submitted by the applicant to the Board for review of the proposed project prior to the initiation of the project.

Form 271 - The Arbitration Agreement is to be used by team members who are requesting to resolve disputes through arbitration.

Form 272 - The Team Member Report is to be used by team members to submit recommendations for action on proposed projects to the Board.

Form 273 - The Supervisors' Decision Form is used to convey the Board's decision to the Applicant and team members.

Form 274 - Official Complaint Form may be used by any person to notify Missoula County of an activity taking place without written consent of the Board. Persons may make complaints without use of this form.

Form 275 - Notice of Emergency is to be used by persons to notify the Board of projects undertaken during an emergency to safeguard life, property or growing crops. This is not a permit application and the person must take additional steps, outlined in Rule 15, to obtain approval of the emergency action.

RULE 9. PUBLIC MEETINGS/HEARING/AGENDAS/MINUTES

(A) Meetings of the Board shall be open to the public in accordance with Article II, Section 9 of the Montana Constitution and Part 2, Chapter 3, Title 2, Montana Code Annotated, subject to statutory exceptions contained therein.

(B) Team inspections conducted on private property are not meetings and are not open to the public, unless the property owner consents to the attendance of members of the public. The Board will not give notice of the time of the scheduled inspection or secure permission from the property owner for the public to attend the inspection,

provide transportation to or from the site or represent or insure the safety of the public upon private property.

(C) The Missoula County Board of County Commissioners holds a regularly scheduled meeting Wednesday afternoons at 1:30.

(D) Notice of all regularly scheduled and special meetings or hearings shall be posted with an agenda at the Missoula County Courthouse. Notice may also be published in a local newspaper and in other locations, publications or medium where it can be seen by the public.

RULE 10. PUBLIC PARTICIPATION PROCEDURES

(A) In accordance with Section 7-1-4144 MCA, the Board hereby provides the following procedures for permitting and encouraging the public to participate in 310 decisions that are of significant interest to the public.

(B) Prior to the adoption, amendment or repeal of an administrative rule or the issuance of a declaratory ruling or a determination to remove a stream from 310 jurisdiction, where the decision is of significant public interest, the Board shall give notice of the pending action and ensure public participation is assisted in accordance with these rules and applicable state law.

(C) The Board may hold a public informational hearing whenever the Board determines it would be beneficial for the general public or for interested citizens' groups for the purpose of disseminating information, providing technical or information assistance or obtaining additional information.

(D) Interested persons may submit comments, data or arguments, in person or in written form, for consideration by the Board prior to a final decision that is of significant interest to the public.

(E) Public comment to the Board may be made by use of an electronic mail system.

RULE 11. PERMIT REQUIREMENTS

(A) A person is required to submit an application to and obtain approval from the Board before initiating a project or otherwise physically altering or modifying a natural perennial-flowing stream or river, its bed or immediate banks.

(B) The Board shall review all proposed permits to ensure they are achieved in a manner consistent with the policy set forth in the Act and these rules. The Board in making its decision to approve, deny, or modify an application for a project shall determine the purpose of the project and whether the applicant is using a reasonable means of accomplishing the project.

(C) An applicant, if not the owner of the property upon which the project is located, must obtain the consent of the property owner for the project. A permit to conduct a project does not give permission to the applicant to enter onto another person's property or to construct a project on another person's property without the owner's consent.

**RULE 12. SUBMISSION OF APPLICATION AND FORMATION
OF INSPECTION TEAM**

(A) Application and Supporting Information

(1) To obtain a permit for a project, the applicant must submit an application to the Board, using Form 270. The completed application may be mailed or personally delivered to the Board at its office, located at 200 W. Broadway, Missoula, MT 59802. It is the applicant's responsibility to provide all necessary credible information for the Board to make its determination to approve, modify, or deny a proposed project. Information to be provided by the applicant must include, but is not limited to:

- a. the location of the project;
 - b. the purpose of the project;
 - c. a detailed description of how the project will be accomplished;
 - d. project plans and drawings;
 - e. maps of the site;
 - f. time of construction;
 - g. length of time to complete the project;
- and
- h. engineering designs if required by the Board.

(2) The Board may request additional information that it determines reasonably necessary to make a decision about the application.

(3) The Board may reject any project application that is incomplete or contains insufficient information for review. The Board may request additional information from the applicant before making a final decision on an application.

(4) Upon receipt of a complete application, the Board will review the application and supporting data and other relevant information and determine whether the proposed activity is a project under the Act and these rules.

(5) If an applicant is proposing an activity that is conducted annually, such as maintenance on

a bridge, culvert, or irrigation structure, he or she may submit an annual plan of operation to the Board with Form 270. The Board may approve the annual activity for a period of up to ten (10) years.

(6) Where a single land use activity involves multiple stream modifications or alterations as part of a single project (such as a placement of several culverts for a timber sale), application for all foreseeable stream alterations may be made on a single application (Form 270). The application shall include a map and legal description of all the multiple locations of the proposed project. The application for multiple location projects may also make provision for necessary but unforeseen stream alterations provided that the stream locations are identified in reasonable detail for purposes of review.

(7) If at any time during the review process, the Board determines that the proposal is not a project or that these rules are otherwise inapplicable to the proposed activity, the applicant will be notified that written consent of the Board is not necessary.

(B) Formation of Team

(1) Within (10) ten working days of receipt of an application, the Board shall send a copy of the application to FWP.

(2) FWP shall inform the Board within five (5) working days of receipt of an application whether FWP requests an on-site inspection by a team.

(3) The Board shall call a team together within twenty (20) working days of receipt of the request for an on-site inspection. A team member may waive participation in the inspection by notifying the Board in writing after the FWP's call for inspection.

(4) An applicant may waive his or her right to participate in the inspection but the applicant may not waive his or her status as a team member. If

FWP does not request an on-site inspection within the time specified in this subsection, the Board may approve, modify or deny the project without further participate from FWP.

(5) Each team member shall recommend approval, modification or denial of the project, using the Team Member Report Form (Form 272). Team member reports must be submitted within thirty (30) days of the date of the inspection.

(6) At the request of any team member, the Board may extend the time limits provided herein, when in its determination, the time provided therein is not sufficient to carry out the purposes of the Act and these Rules. Total time extensions may not exceed one (1) year from the date the application was officially accepted. The applicant must be notified of the initial time acceptance within sixty (60) days of the official acceptance date and must be notified immediately of any subsequent time extensions.

RULE 13. REVIEW OF APPLICATION AND DECISION

(A) The Board shall provide reasonable notice to an applicant and property owner if different from the applicant, of the date and time of the meeting at which his or her application will be reviewed by the Board.

(B) The Board shall review the proposed project and affirm, overrule, modify or table the individual team member recommendations and notify the applicant and team members of its decision within sixty (60) days of its decision of the official acceptance date. The Board may, at the request of any team member extend the time limits provided in this rule, when in its determination, the time provided is not sufficient to carry out the purposes of the Act and these rules. The time extensions may not exceed one year from the date of

acceptance of the application. The applicant must be notified of the initial time extension within sixty (60) days of the date of the acceptance of the application and must be notified within seven (7) working days of the Board action granting the extension.

(C) The Board, in denying, approving, modifying or tabling a project shall determine:

(1) the purpose of the project; and

(2) 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 of 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;

(vi) the effect of fish and aquatic habitat.

(D) If the Board determines that a proposed project or part of a proposed project should be modified, it shall condition its approval upon the modification.

(E) The Board may not approve or modify a proposed project unless the Board determines that the purpose of the proposed project will be accomplished by reasonable means.

(F) The decision of the Board shall be made by concurrence of a majority of the Board.

(G) No work may begin on a project before the end of the fifteen (15) day period after the date of decision unless written permission is given by all team members and the Board on Form 273.

(H) Unless otherwise stated, a permit is valid for one year from the date of the Board's approval of the application. An applicant shall complete construction of the project within one year from the date of issuance of the permit, unless otherwise specified.

(I) An applicant may apply to the Board for any extension of a permit. The applicant must submit a written request for an extension to the Board before the original permit has expired. An extension may be granted by the Board for a term of up to one (1) year, upon a showing by the applicant that the conditions under which the permit was originally issued have not changed.

(J) If the application is requesting written consent for an annual maintenance plan, the Board may approve specific activities for a period of up to ten (10) years. No time extensions will be given for annual maintenance permits. A person must submit a new permit application at the end of the permit time period.

RULE 14. CONSTRUCTION STANDARDS AND PROHIBITIONS

The following standards shall apply to all projects:

(A) Projects must be designed and constructed using methods that minimize adverse upstream and downstream impacts and future disturbance to the stream.

(B) All disturbed areas must be managed during construction and reclaimed after construction to minimize erosion.

(C) Temporary structures used during construction must be designed to handle high flows reasonably anticipated during the project construction period. Temporary structures must be completely removed from the stream channel at the conclusion of construction and the area must be restored to a natural and stable condition.

(D) Channel alterations must be designed to retain original stream length or otherwise to provide hydrologic stability.

(E) Streambank vegetation must be protected except where removal is necessary and then removal must be kept to a minimum.

(F) Riprap, rock, or other material used in a project must be of adequate size and shape and must be properly placed to protect the streambank from erosion.

(G) The Board may:

(1) limit the time and duration of construction to minimize impacts to the stream or associated aquatic life;

(2) require the applicant to submit designs prepared by a licensed professional engineer, when in the Board's judgment, the project's complexity requires greater assurance of project stability to minimize impacts to the stream;

(3) require the applicant to provide project completion documentation, which may include photographs;

(4) other reasonably practical conditions which will reduce the disturbance to the stream.

(H) Unless specifically authorized by the Board, the following activities are prohibited:

(1) the placement of concrete in a stream as rock riprap;

(2) the placement of road fill material in a stream;

(3) the placement of debris or other material in a stream where it may erode or otherwise enter the stream;

(4) projects that permanently prevent fish migration;

(5) excavation of streambed gravels;

(6) construction of an in-stream pond.

(I) The Board may require an applicant to comply with additional construction standards, including, but not limited to compliance with best management practices or construction guides prepared, adopted or endorsed by the Board, and/or requiring the applicant to obtain and comply with a design prepared by a professional engineer or other qualified technical consultant.

(J) It is unlawful to place junked motor vehicle or the body portion of junked motor vehicles between the channel banks of any stream or to reinforce banks of a stream with junked vehicles or the body portion of junked motor vehicles.

RULE 15. EMERGENCIES

(A) Except as provided in this rule, the provisions of these rules shall not apply to actions that are necessary to safeguard life or property, including growing crops, during period of emergency. The person responsible for taking action under this rule shall notify the Board in writing within fifteen (15) days of the action taken as a result of an emergency

(B) The emergency notice given under subsection (A) shall be provided on Form 275 and shall contain the following information:

- (1) the location of the action taken;
- (2) a general description of the action taken;
- (3) the date on which the action was taken;
- (4) an explanation of the emergency causing the need for the action taken.

(C) If the Board determines that the emergency action taken is an activity that requires review under these rules, it shall send one copy of the emergency notice within five (5) working days of receipt to FWP.

(D) A team, called together as described in Rule 12, shall make an on-site inspection within twenty (20) days of receipt of the emergency notice.

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

(F) The Board shall review the emergency project and affirm, overrule or modify the individual team member recommendations and notify the applicant and team members of their decision within sixty (60) days of receipt of the emergency notice.

(1) If an action is approved, no further action is necessary on the part of the Board or the applicant.

(2) A person who has undertaken an emergency action that is modified must submit an application to the Board, using Form 270, to mitigate possible damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency solution. Notice under this subsection must be filed within ninety (90) days after the Board's decision.

(3) A person who has undertaken an emergency action that is denied shall submit written notice on Form 270 to obtain approval to remove the project to avoid further 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 section must be filed within ninety (90) days after the Board's decision.

RULE 16. INSPECTIONS OF COMPLETED PROJECTS

The Board, or its designated representative may inspect any project during or after construction to ensure that permit conditions have been met. The Board shall give reasonable notice to the applicant prior to inspecting the project.

RULE 17. COMPLIANCE WITH OTHER LAWS

(A) Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 76, Chapter 5, MCA, floodway management and regulation where designated floodplains or designated floodways have been established in accordance with that chapter.

(B) These rules 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.

(C) The issuance of written consent of the Board does not relieve the applicant of the responsibility to obtain any other permits that may be necessary for the proposed project or to obtain permission from the landowner, if the project is not located on the applicant 's property.

RULE 18. PERFORMANCE GUARANTEES

(A) The Board may require an applicant, as a condition of the permit, to enter into a written performance agreement guaranteeing the completion of the project as permitted within a specified time frame.

(B) The guarantee may include one or more security arrangements acceptable to the Board, including but not limited to cash, a note, a bond or some other instrument readily convertible into cash with the County or a financial institution approved by the governing body.

(C) The security arrangements, including the amount and type, will be established by the Board, after consultation with the applicant. The Board may seek information from qualified vendors and other credible sources to determine the cost of completing and maintaining the project in accordance with the permit. The Board may also include an administrative fee in the amount of the performance guarantee.

RULE 19. DISPUTE RESOLUTION

(A) Any permit decision or decision regarding an emergency may be reviewed by an arbitration panel or by judicial review in the Fourth Judicial

District. Judicial review of an arbitration panel's decision may be made under the provisions of MCA, Title 27, Chapter 5, Part 3 of The Uniform Arbitration Act and must be brought in Missoula County.

(B) The applicant may request arbitration as the method to resolve disputes by signing an arbitration agreement either before the application review process or within 15 days of receipt of the Board's decision.

(a) If an applicant signs an arbitration agreement prior to the application review process, the applicant waives his or her right to judicial review.

(C) The applicant may request judicial review of the Board's decision by filing a petition in district court within 15 days of receipt of the Board's decision.

(D) Any other team members may seek formal dispute resolution only through arbitration by signing an arbitration agreement within 5 working days of receipt of the Board's decision.

(E) The arbitration agreement is stated on Form 271 and contains provisions for appointment of arbitrators; the exercise of power by the arbitrators; the hearing process; fees and expenses of arbitration.

(F) An applicant's choice of the judicial review remedy prevails over any other team member's request for arbitration.

(G) Subsection (A) does not preclude other informal means of dispute resolution, upon agreement of all parties. Informal efforts at resolution will not relieve the disputing team

member from perfecting his or her request for judicial review or arbitration within the times provided by law.

(H) An appeal of the determination made by judicial review may be made to the Montana Supreme Court.

(I) Judicial review of an arbitration panel's decision may be made to district court under the Uniform Arbitration Act (Title 27, Chapter 5, Part 3 MCA).

(J) The granting, denying or conditioning of a written consent of a project or an emergency action may not be reviewed by a petition for declaratory ruling. Review of final action by the Board pursuant to Section 75-7-112 or 75-7-113 is exclusively provided in Section 75-7-121 MCA.

RULE 20. DECLARATORY RULINGS

(A) A person who is directly affected by the applicability, interpretation or implementation of the Act, and who disagrees with a determination made by the Board may petition for a declaratory ruling in accordance with Section 75-7-125 MCA.

(B) Upon receipt of the petition for a declaratory ruling, the Board shall determine if the issue raised is of significant interest to the public. If the Board determines the issue is of significant public interest, the Board 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 Board determines the issue raised in the petition for declaratory ruling is not of

significant public interest, the Board 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) Within thirty (30) days of the filing of a petition for declaratory ruling, the Board may appoint a hearing officer, who may be a supervisor, to conduct the declaratory ruling hearing. The hearing officer will regulate the course of the hearing, and with a concurrence of the Board, set the time, place and date of the hearing.

(E) Within thirty (30) days of appointment of a hearing officer, the Board shall set a date for a hearing to gather information and data, allow public comment, and allow the public to submit written comment. The hearing may be continued if necessary, the Board shall provide notice of the hearings in accordance with Rule 9. A quorum of the Board must be present at the hearing. The Board shall maintain a record of the hearing, including the petition, notices, information and data gathered, and proposed findings of fact and conclusions of law.

(F) The hearing officer will make a recommendation to the Board for their approval and adoption within sixty (60) days of the conclusion of the hearings process. The Board may extend this deadline, if necessary.

(G) The hearing officer and the Board shall consider information provided by the petitioning party to be persuasive unless the information is overcome by a preponderance of information presented at the hearing.

(H) A written declaratory ruling, consisting of findings of fact and conclusions of law, must be

made by a concurrence of a majority of the Board present at the declaratory hearing.

(I) If the Board elects to proceed without a hearing officer, it shall consider the information gathered and issue written findings of fact, conclusions of law and ruling.

(J) A proceeding held under this rule is not a contested case proceeding or otherwise subject to the provisions of the Montana Administrative Procedure Act.

(K) This rule may not be interpreted or construed to allow a person to petition for a declaratory ruling for a decision of the Board's granting, denying or conditioning a written consent for a project or for review of an emergency action.

(L) 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 Board's ruling if substantial rights of the appellant have been prejudiced because the ruling is:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the Board;
- (3) affected by error of law; or
- (4) arbitrary or capricious; characterized by abuse of discretion, or a clearly unwarranted exercise of discretion.

(M) A final judgment of a district court under this rule may be appealed as provided in Section 2-4-711 MCA.

RULE 21. COMPLAINT PROCEDURE

(A) Complaints made to the Board become part of the public record.

(B) Upon receipt of a complaint, the Board, or its designated representative, will notify the subject of the complaint, as soon as he or she can be identified, by telephone or in person, of the complaint. The Board, or its designated representative, will request access to private property in order to inspect the site of a complaint.

(C) Investigations will be documented with photographs, drawings, interviews, research and written reports, as available and appropriate.

(D) The Board shall review complaints to determine whether a violation of these rules has occurred or is occurring. If the Board determines that no violation has occurred or is occurring, the Board will notify the complainant and the subject of the complaint, in writing, within fifteen (15) days of the date of the determination by the Board.

(E) If the Board verifies a complaint, the Board, at their discretion, may seek voluntary correction of the violation or they may refer the matter to the County Attorney's office with their recommendations for further enforcement action.

RULE 22. PENALTIES

(A) A person who initiates a project without written consent of the Board, performs activities outside the scope of written consent of the Board, violates the emergency procedures provided for in Section 75-7-113 or violates 75-7-106 is:

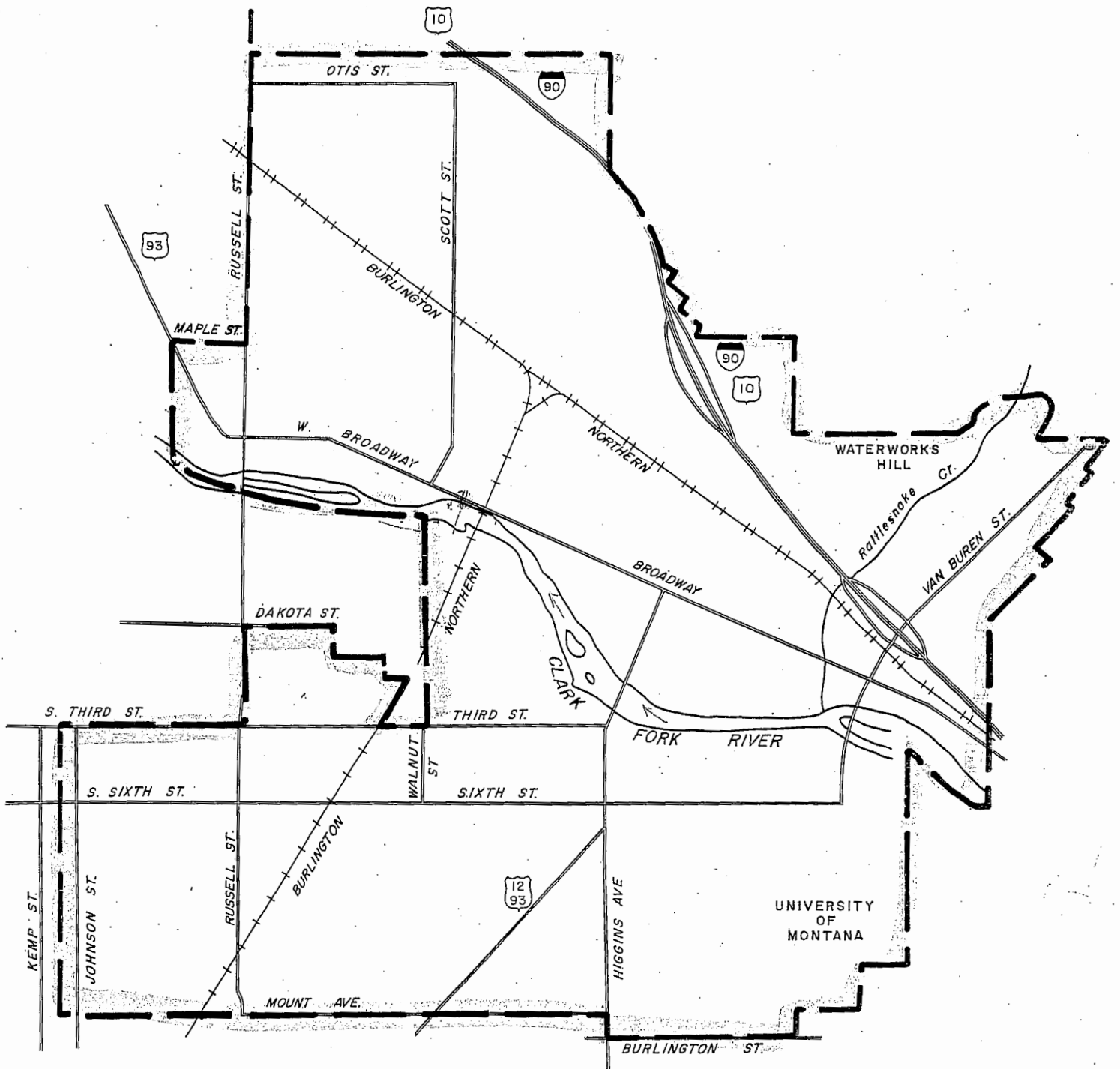
(1) guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500; or

(2) subject to a civil penalty not to exceed \$500 for each day that person continues to be in violation.

(B) Each day of a continuing violation constitutes a separate offense. The maximum civil penalty is the jurisdictional amount for purpose of 3-10-301 MCA. The Board 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 court to collect a civil penalty.

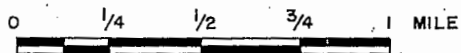
(C) In addition to a fine or a civil penalty under subsection (A), the person shall restore, at the discretion of the court, the damaged stream, as recommended by the Board, to as near its prior condition as possible; or is civilly liable for amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to Section 3-10-301 MCA if the amount of liability does not exceed \$70000. If the amount of liability for restoration does exceed \$7000, then the action must be brought in district court.

(D) Money recovered by the Board or a county attorney, whether as a fine or a civil penalty, must be deposited in a depository of funds provided for in Section 76-15-523 MCA, unless upon order of a justice court, the money is directed to be deposited pursuant to Section 3-10-601 MCA.



MAP 2
 MISSOULA'S CITY LIMITS

1946



SCALE 1:24,000

Sources:

Base map prepared by SCS, WTSC Corro Unit from USGS 1:24,000 quads.

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