

FACT SHEET 4: What Activities Do Stream Setbacks Regulate?



Although construction setback regulations adopted by Montana local governments are not identical to each other, most setbacks treat certain activities similarly, including: public access to private land, agricultural operations, weed control, wildfire fuel reductions, and more.

4.1. What kind of construction activities are impacted by stream setbacks?

Each stream setback regulation adopted by local governments is developed at the local level, so regulations vary. However, all stream setback regulations adopted by local governments in subdivision or zoning regulations are focused on regulating the new construction of buildings, including new residential, commercial, or industrial structures, as well as manufactured or prefabricated building. Many regulations also regulate the locations of outbuilding such as garages and shops.

4.2. Do setbacks apply to more than just buildings?

In addition to buildings, the following items are regulated in one or more stream setback regulation adopted in the state of Montana: septic tanks and septic tank drain fields, communication towers, and parking lots or other impervious surfaces.

4.3. Can stream setbacks be used to allow public access to private land?

Stream setbacks in zoning and subdivision regulations can not be used to gain public access to private land. Instead, public access is governed by Montana's Stream Access Law. Under our state's Stream Access Law, the public can use rivers and streams for recreational purposes up to the ordinary high-water mark of a stream. Although the law gives recreationists the right to use rivers and streams for water-related recreation, it does not allow them to enter posted lands bordering those streams or to cross private lands to gain access to streams. Local governments cannot trump this law through local stream setback regulations.

In fact, when Montana's Stream Access Law was first adopted in 1985, it contained provisions allowing for hunting and overnight camping along our waterways. In a lawsuit decided in 1987 by the Montana Supreme Court (*Galt v. State of Montana* (1987), Supreme Court, No. 87-255), allowing hunting and overnight camping was specifically ruled unconstitutional because these activities "served to take private property without just compensation."

For more information regarding Montana's Stream Access Law, contact the Montana Dept. of Fish, Wildlife & Parks or visit <<http://fwp.mt.gov/fishing/fishingmontana/access.html>>.

4.4. How do stream setbacks impact agricultural operations?

Although regulations differ between local governments, almost all of the setback regulations adopted at the local level in Montana do not place restrictions on agricultural uses, including irrigation structures. In fact, many regulations spell out agricultural exemptions from the regulations in detail. One exception is Lewis & Clark County, which prohibits “barns, feed lots, and corrals” within the setback.

4.5. Can weed control be done in vegetated buffers? Can timber harvest and wildfire fuels reduction activities be carried out in the stream setback area?

The vegetated buffer area of stream setbacks is usually described by local government not as a “don’t touch” zone, but as a “carefully managed” zone. To ensure that this allowance is clear, most local governments have explicitly allowed weed control to take place. Additionally, local governments have specified that timber harvest and fuels reduction may occur as long as it complies with Montana’s Streamside Management Zone Regulations (see question # 2.3 above).

Within the vegetated buffers, landowners are encouraged to retain native vegetation because these areas filter out pollutants, help prevent unnatural erosion, work to minimize the impact of floods, sustain the food and habitat of fish and wildlife, and more. Because of all the benefits associated with vegetated buffers, wholesale removal of riparian vegetation is discouraged—and under some regulations not allowed.