

Representing Property with Wetlands and Riparian Areas



A Guide for Montana's Realtors



**LAND
FOR
SALE**

Realtors have an important job of welcoming and educating new landowners moving to Montana. While many people are moving here to enjoy Montana's unspoiled natural beauty and recreation opportunities, most are unaware that the future health of these areas depends on responsible landowner stewardship. Rural properties near rivers, streams and wetlands are some of the most popular areas experiencing rapid growth. As the landowner's first contact, you are in a unique position to educate and empower Montana's citizens to make wise choices about their property. Additionally, realtors who are informed, knowledgeable and able to provide sound advice on land stewardship will gain an advantage in this competitive market and also contribute to sustaining healthy and prosperous communities. This publication is designed to inform Montana's realtors on the essentials of wetlands and riparian areas, their regulations, and landowner responsibilities.

The **Montana Watercourse** is a statewide water education program that supports water resource decision making and stewardship by providing unbiased information, resources, tools and education to all water users. Montana Watercourse staff is certified to teach a four-credit, mandatory continuing education course on wetlands and riparian areas and will travel throughout Montana to present this course. Contact us at 406-994-1684 or mtwatercourse@montana.edu for more information.



- Fostering Stewardship of Water Resources -

What are Wetlands Worth? Property Values, Community Values and More

Healthy wetlands and riparian areas provide Montana's citizens, new and native alike, with the opportunity to enjoy the unique natural beauty that Montana has to offer. It's a well known fact that property near open water is worth more and sells more quickly than other property. What about property near wetlands and riparian areas?

Protected wetlands and riparian areas not only increase housing prices, but also provide many other local economic advantages that improve the quality of life. Healthy wetlands and riparian areas lead to strong, vibrant communities that attract businesses and newcomers to Montana by providing:

- ✓ Increased tax revenue
- ✓ Inexpensive flood protection
- ✓ Increased revenue for businesses providing recreation services and products
- ✓ Protection for surface- and ground-water quality, eliminating the need for costly water treatment facilities that many communities cannot afford
- ✓ Inexpensive erosion control

Housing price increase for homes near a protected riparian corridor:

- ◆ 32% (Rubey Frost, J. and Sternberg K. 1992)
- ◆ 10-15% (Quayle and Hamilton, 1999)
- ◆ 6% (Colby and Wishart, 2002)

People are willing to pay more for homes near protected riparian areas.

Montana's Marvelous Wetlands

Montana residents are fortunate to have many different types of wetlands to enjoy: peatlands, prairie potholes, seeps or springs, wet meadows, oxbow sloughs, and riparian wetlands.

Wet meadow, courtesy of Sue Ball; prairie potholes, courtesy of Joe Stutzman, USFWS; oxbow slough, courtesy of Constanza von der Pahlen; spring, courtesy of Denine Schmitz.



Wondering about Wetlands?

When touring a property look for these signs of a wetland: low depressions, presence of water, water loving plants and poorly drained soils.

Wetlands are areas that are saturated with water for part or all of the year. They are usually near water bodies, rivers, streams or in low lying depressions that collect water. Although you will need a specialist to identify the exact boundaries of a wetland, you don't need to be an expert to look for certain clues that indicate there is a wetland on the property.

Water: The presence of water is an obvious sign that the area could be a wetland. But wetlands aren't necessarily wet all year round. During part of the year or an extended drought, the wetland may not be wet at all. For jurisdictional wetlands which are regulated by the Army Corps of Engineers and delineated by a professional, lands only need to be saturated at or NEAR the surface for 12.5 percent of the growing season. In Montana, this translates to about 12.5 days. Most of the time surface water will not be present, so you'll need to look for other signs, such as vegetation and landform location.



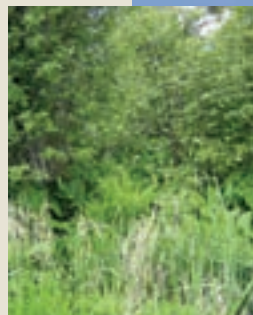
Wetlands may not be wet year round.

Photo courtesy of Sue Higgins.



Plants: Only special types of plants thrive in wet soggy ground. These plants are called hydrophytes (hydro=water, phyte=plant). Look for areas of robust, green vegetation that are more vigorous than the surrounding area, especially if located in a small depression or adjacent to open water. Several common water-loving plants and trees in Montana include willow, alder, cottonwood, cattail and water birch.

Soils: Wetland soils are poorly drained and may look grey. The color of the soil is only one indicator and does not solely determine if an area is a wetland. If you can't readily see the color of the soil but suspect the area is a wetland, contact a wetland delineator and leave the digging to the experts.



Small photos from top:

*Shooting stars;
lush wetland vegetation, photo
courtesy of Sue Ball;
bullrush and riparian grasses, photo
courtesy of Sue Ball;
bear prints in wetland soil.*

Sidebar photo:

*Cattails in wetland, photo courtesy
of Debbie Zarnt.*

What Do Wetlands and Riparian Areas Do?



Wildlife: Wildlife thrive in healthy wetlands. Birds, fish and mammals use wetlands like we use the grocery store, nurseries and hotels. Wetlands provide an ample supply of food and habitat for wildlife so they can feed, raise their young and find shelter.

Flood control: Many wetlands are located next to rivers and small streams and serve communities by absorbing flood waters. Large volumes of water that would otherwise accumulate and cause massive downstream flooding and endanger homeowners are absorbed by nearby wetlands.



Wetland absorbing flood water.

Erosion Control: By absorbing high flows, wetlands also prevent erosion of stream banks. Healthy robust streamside plants and trees provide economical bank stability, cool stream temperatures, and excellent habitat for fish and wildlife.

Water Supply: Wetlands allow water to soak into the earth and replenish ground-water supplies called aquifers. Approximately half of Montana's residents rely solely on ground water for their drinking water and domestic use.



Pollution: Wetlands help purify contaminated water and prevent toxins from entering nearby streams, rivers and ground water. Wetlands break down pollutants and filter out sediment. Wetlands are often called the earth's kidneys. They are giant filters that provide Montana's communities with a clean water supply.

Riparian Areas

Areas next to the river are great places to relax, listen to the sound of the flowing water, and maybe catch a glimpse of Montana's wildlife. No wonder that property near streams and rivers are premium locations. These areas, called riparian areas, also serve the community in many other ways that aren't obvious to the new landowner.

Temperature control:

Riparian areas are like an air conditioner or thermostat for aquatic life. Healthy riparian areas with robust plants and trees cool the stream temperature which allows aquatic life to thrive.



Riparian plants slow erosion.

rainfall, streets, parking lots and other paved areas during storms (urban runoff) that would otherwise funnel into the river.

Wildlife: Riparian areas provide similar benefits to wildlife as wetlands: a place to live, eat and raise young.



Columbia spotted frog.
Photo courtesy of Lisa Eby.

“Except for support of biodiversity, some of the environmental services of riparian areas can be provided by technologies, such as reservoirs for flood control and treatment plants for pollutant removal. However, these substitutions are directed at single functions rather than the multiple functions that riparian areas carry out simultaneously and with little direct costs to society.”

National Research Council

Erosion Control: The roots, stems and leaves of riparian plants slow the flow of the water in a flooding river and allow new sediment to settle, rebuilding the banks and preventing erosion.

Clean Water: Healthy riparian areas put the brake on fast-flowing polluted water from storms. These areas absorb and filter pollution collected from



Western Grebes.
Photo courtesy of Tom Hinz.

Wetlands, Rivers and Streams: A Recipe for a Quick Sale or a Regulatory Headache?

Activities that do not require permits and are beneficial to wetlands and riparian areas are re-establishing native vegetation along the stream bank and planting trees.

If a property contains wetlands or riparian areas, it will be subject to certain regulations about which your client should know. By understanding the basics of these permits, you will be able to help your client feel more confident and knowledgeable about the property and make wise land use decisions.

There's no need to be intimidated or confused by wetland and riparian area regulations. The regulations are designed to minimize damage to these valuable areas for the benefit of the landowner and their community. Stewardship of these areas begins with recognizing their value and avoiding impacts to them by building away from these areas or restoring them if necessary. If construction near these areas is unavoidable, the permit system ensures that minimal damage is done and if necessary, restoration projects are completed.

Additionally, it's not difficult to apply for these permits. To reduce paperwork, several Montana agencies involved in permitting developed a joint application. Landowners can now fill out and submit one application for four different permits. Also, the people in charge of administering the permits are willing to answer questions and may be available for a site visit.

Several landowner activities that will require permits include, but are not limited to: dredging or filling of wetlands, bridge construction, river bank stabilization, use of heavy equipment near surface waters, road construction, building a dock or boat ramp, building a pond, and installing a culvert. This list is not all-inclusive, but provides an introduction to the major activities concerning private landowners and water resource regulations. Contact information is provided (pages 10-12) so that you can obtain the most up to date information on how to apply.

If the landowner is considering any of the activities listed above and is purchasing a property with wetlands or riparian areas, please review the following list of potential permits they may need.



If the property has wetlands:

- ✓ 404 Permit
- ✓ 318 Authorization
- ✓ Local Setback Regulations

If the property has a river or stream:

- ✓ 310 Permit
- ✓ Floodplain Permit
- ✓ 404 Permit
- ✓ 318 Authorization
- ✓ Water Rights
- ✓ Local Setback Regulations

If the property is near a lake

- ✓ Lakeshore Regulations
- ✓ 318 Authorization

If the property has a well or needs a septic system:

- ✓ Ground Water Certificate
- ✓ Septic System Permit

If the property is located on a tribal reservation:

- ✓ Flathead Reservation: 1) Shoreline Protection and Aquatic Land Conservation Ordinance for work near a stream, river, lake or wetland. 2) Confederated Salish and Kootenai Tribes Water Quality Program, Ordinance 89 B for projects affecting reservation waters. On the web at <http://www.cskt.org/tr/epa.htm>.
- ✓ Blackfeet Reservation: Aquatic Lands Protection Ordinance 90 for projects that occur in wetlands, riparian areas or streams.
- ✓ Other reservations are currently developing their own protection measures. If the property is located on a reservation, contact the appropriate tribal government.

Activities requiring permits. Photos from top: stream restoration, building within a floodplain, road construction, wellhead.

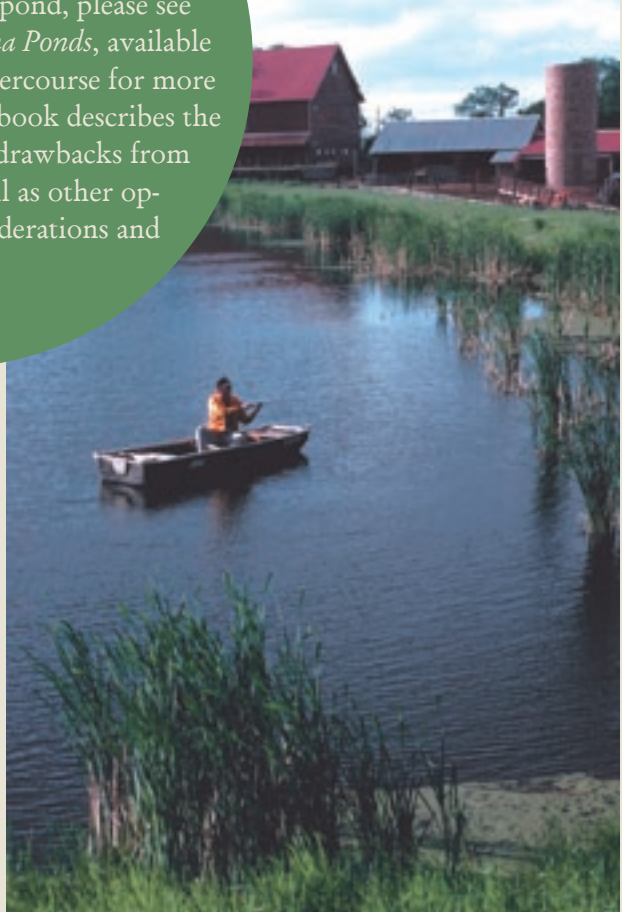


If the landowner is considering developing a pond:

- ✓ Non-Commercial Private Fish Pond License
- ✓ Water Rights
- ✓ Depending on the location, the pond may be subject to the wetland regulations listed above. Additionally, if it is in the floodplain, near a stream, river, wetland, lake, or on a reservation, other regulations may apply.

Having or building a pond is not simple or easy and requires time, money and responsible maintenance by the landowner. If your client is considering a pond, please see *A Guidebook to Montana Ponds*, available from the Montana Watercourse for more information. This guidebook describes the benefits and potential drawbacks from owning a pond as well as other options, landowner considerations and resources.

*Permits are required for private fish ponds.
Photo courtesy of USDA
Natural Resources
Conservation Service.*



Information on Commonly-Required Permits

Joint Application: In Montana, landowners can fill out one application for the following permits: 310 Permit, Floodplain Permit, Section 404 Permit, and 318 Authorization. The joint application permit is available online at <http://www.deq.mt.gov/wqinfo/MPDES/permits/JointApplication.pdf>.

Section 404 Permit: The U.S. Army Corps of Engineers (USACE) administers the Clean Water Act Section 404 Permit, which regulates discharge of dredged or fill material in “waters of the United States” that includes jurisdictional wetlands and open water systems. Landowners proposing projects that involve a regulated discharge require this permit.

On the web at <https://www.nwo.usace.army.mil/html/od-rmt/mthome.htm>

Contact: USACE: Helena, 406-441-1375; Billings, 406-657-5910

310 Permit: The Board of Supervisors of the local Conservation District administers the Montana Natural Streambank and Land Preservation Act, which regulates any activity that physically alters or modifies the bed or banks of a perennially flowing stream. These activities include, but are not limited to: streambank stabilization, placing a culvert in the stream, building a bridge, diversions, reservoirs, or other channel changes.

Contact: Local Conservation District

Local Setback Regulations: Many of Montana’s counties and cities have regulations governing minimal distances between new buildings and rivers, streams and wetlands. Contact city and county planning offices to find out about setback requirements in your area. For more information on setbacks see *A Planning Guide for Protecting Montana’s Wetlands and Riparian Areas*, available from the Montana Watercourse.

Contact: Local County and City Government Planning Department

Floodplain Permit: These permits are administered locally by the floodplain administrator who may be the city/county planner, sanitarian, building inspector, town clerk or county commissioner. Landowners planning to build within a designated 100 year floodplain must apply for a floodplain permit. Local planning officials or the Department of Natural Resources and Conservation (DNRC) will have floodplain maps if one has been made for that area.

On the web at http://dnrc.mt.gov/wrd/water_op/floodplain/

Contact: Local County and City Government

DNRC at 406-444-0862

318 Authorization: The Department of Environmental Quality (DEQ) administers Short-term Water Quality Standard for Turbidity (318 Authorization) for projects that will cause short term or temporary violations of state surface waters for turbidity. The state waters include any body of water, irrigation system, drainage system, ponds and also wetlands. Landowners who will be constructing near a river or wetland will need to apply for this permit.

On the web at <http://www.deq.mt.gov>

Contact: DEQ Water Protection Bureau at 406-444-3080

Septic System Permits: The local county sanitarian or health department administers septic system permits. The local official will review the design, size, placement and installation of the septic system to ensure that it will function properly. The DEQ reviews septic systems for subdivisions.

Contact: Local County Government

Water Rights: Our constitution declares that Montana's waters belong to the state for the use and development of its citizens. Water rights holders do not own the water itself but instead possess a right to use the water. This use is authorized and documented by a "water right." The DNRC administers both surface- and ground-water rights. Water rights are subject to the Doctrine of Prior Appropriation which guides and allocates water rights in times of shortage. This doctrine in short provides that first in time is first in right. A person must receive a Permit to Appropriate Water before beginning to construct diversion work or diverting water from any water source. There are some developments that require a water right but may be exempt from the permitting process. Currently, anyone intending to appropriate ground water over 35 gallons/minute or 10 acre feet/year must apply for a water right permit. *(This regulation is current for 2006 and may change during the next legislature. Please contact the DNRC to get the most up to date information.)*

On the web at http://dnrc.mt.gov/wrd/water_rts/

Contact: DNRC Water Rights Bureau at 406-444-6610 for a referral to the correct Regional DNRC Water Resources Office

Lakeshore Regulations: Under the Lakeshore Protection Act, local county governments can develop lakeshore regulations for lakes that are at least 160 acres in size. Landowners proposing projects such as building docks, boat ramps, filling and constructing breakwaters, or otherwise altering the lakeshore should contact the local county planning office for more information.

Contact: Local County Government

Non-Commercial Private Fish Pond License: Based on state law first passed in 1945, Montana Fish, Wildlife and Parks (FWP) administers private fish pond licensing. Regulations are intended to (1) allow the stocking of private fish ponds while ensuring that public resources are not adversely affected by unwanted fish or fish diseases, (2) guarantee that nuisance aquatic species are not planted into ponds where they can escape or be introduced into state waters, and (3) ensure that habitat of wild fish is not harmed. Many streams suffer from de-watering by consumptive water uses that have been legal in Montana for over 100 years. Additional water withdrawals can compound an already serious problem for wild fish and their habitat. Pond builders should be aware of and sensitive to the fact that water withdrawals for new fish ponds may negatively impact downstream public resources, including wild fish. All private fish ponds consume some water. Every effort should be made to eliminate or minimize the use of stream surface water or alluvial groundwater for ponds.

- ◆ The FWP will not process a Fish Pond License until it is certain that the landowner has legal water rights.
- ◆ The license must be renewed every ten years.

On the web at <http://fwp.mt.gov/fishing/regulations/ponds.html>
Contact: Montana Fish, Wildlife and Parks at 406-444-2535

More information:

The Guide to Stream Permitting at:
http://dnrc.mt.gov/permits/stream_permitting/

For local county contact
information visit:
<http://www.mt.gov/maco/MACoHOME.htm>

For local Conservation District
information visit:
<http://www.macdnet.org/>

Good Advice Pays in the Long Run!

As the new landowners' first contact, you will be in a position to provide valuable advice about the property. If the landowner has a choice of where to build, you can encourage projects that are located away from wetlands and riparian areas. In fact, more local governments are requiring that new buildings are set back from streams and wetlands. Be sure to check with your local government to know what is required. If the building is farther away from these areas, it will minimize the need for permits, simplify the permitting process and provide other benefits such as improved wildlife viewing, stable stream banks, and long term protection of these resources. Homes built away from rivers will also protect the landowner from flooding and ensure enjoyment of the property for many years.

Projects that minimize damage by preserving the native vegetation, using bioengineering methods, allowing fish passage, or mitigating the impacts through restoration or creation of other wetlands will have an easier time receiving agency approval.

So that they have clear expectations, advise the landowner that it could take up to four months to go through the permitting process. For pond development, obtaining water rights could take up to two years. Although the permit system may seem daunting at first, it is much easier to apply for a permit before the project begins rather than deal with expensive mitigation and fines afterwards. Fines can be severe and cost the landowner tens of thousands of dollars. Therefore, it is beneficial for the landowner to apply for these permits and contact local and state land management agencies prior to starting their project.

Photo courtesy of Billie Kerans.



Conservation Options:

There are many conservation and restoration options available for landowners who own property with wetlands or riparian areas. Large scale projects can seem daunting if you don't know about the many different options available. Technical and financial assistance is available for landowners interested in restoration projects, management assistance, or conservation easements.

Federal options:

- ◆ Natural Resource Conservation Service
 - Wetland Reserve Program, <http://www.nrcs.usda.gov/programs/wrp/>
 - Environmental Quality Incentives Program, Wildlife Habitat Incentives Program, <http://www.nrcs.usda.gov/programs/eqip/>
 - Wildlife Habitat Incentives Program, <http://www.nrcs.usda.gov/Programs/whip/>
- ◆ Fish and Wildlife Service: Partners for Fish and Wildlife Program, <http://montanapartners.fws.gov>

State Programs:

- ◆ Montana Department of Transportation Aquatic Resource Mitigation, 406-444-6201
- ◆ Montana Fish, Wildlife and Parks: Future Fisheries, <http://fwp.mt.gov/habitat/futurefisheries/content.asp>

Private Organizations that Handle Conservation Easements:

- ◆ Bitterroot Land Trust, <http://www.bitterrootlandtrust.org>, 406-375-0956
- ◆ Blackfeet Land Trust, 406-338-2992
- ◆ Five Valleys Land Trust, <http://www.fvlt.org>, 406-549-0755
- ◆ Flathead Land Trust, <http://www.flatheadlandtrust.org>, 406-752-8293
- ◆ Gallatin Valley Land Trust, <http://www.gvlt.org>, 406-587-8404
- ◆ Mid-Yellowstone Land Trust, 406-252-2606, spaldingmt@yahoo.com
- ◆ Montana Wetlands Legacy, <http://www.wetlandslegacy.org>, 406-994-7889
- ◆ Montana Land Reliance, <http://www.mtlandreliance.org>; Helena, 406-443-7027; Flathead, 406-837-2178; Billings, 406-259-1328
- ◆ Prickly Pear Land Trust, <http://www.pricklypearlt.org>, 406-442-0490

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Montana Watercourse of the Montana Water Center

Written by

Debbie Zarnt, Montana Watercourse

Graphic Design

Molly Boucher, Montana Water Center

Review Committee

Janet Ellis, Montana Audubon

Tom Hinz, Montana Wetlands Legacy

Jean Ramer, U.S. Army Corps of Engineers

Jeff Ryan, Montana Department Environmental Quality

Lynda Saul, Montana Department Environmental Quality

Allan Steinle, U.S. Army Corps of Engineers

Additional Reviewers

Frances Graham, Montana Watercourse

Tim Hall, Department of Natural Resources and Conservation

Sue Higgins, Montana Water Center

Mike McLane, Department of Natural Resources and Conservation

Kathleen Schulte, Northwest Montana Association of Realtors

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To request additional copies

Montana Watercourse

(406) 994-6671

mtwatercourse@montana.edu

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