

310 Law Mini Trainings: Forming a Team & Onsite Inspections

The 310 Law requires a “Team” to conduct onsite inspections for 310 permits under MCA 75-7-112. The Team is made up of one representative from FWP, one CD supervisor, and the applicant. Onsite inspections are not always necessary, but if FWP requests one, the district must comply. The Team’s role is to review possible impacts from the project and determine if the project is reasonable. They then provide a written recommendation to the CD board to approve, deny, or modify the proposed project within 30 days of the onsite inspection. This written recommendation is normally done on the team member report, but Team members can submit individual recommendations as needed.

Once the CD board has received the Team’s recommendations, the supervisors will vote to affirm, overrule, or modify the recommendation. If a member of the team, other than the applicant, disagrees with the supervisors’ decision, they have 5 working days to request an arbitration panel, which will hear the dispute and make a final written decision about the dispute. Additionally, the 15-day waiting period can only be waived if all members of the team agree and written permission is granted by the district.

Responsibility of FWP:

- Call an onsite inspection
- Be a member of the Team
- Provide recommendation for approval, denial, or modification
- Request arbitration panel, following disagreement with supervisors’ decision
- Waive 15 day waiting period, if desired

Responsibility of Supervisors:

- Determine if it constitutes a project within CD jurisdiction
- Be a member of the Team
- Make final decision to affirm, override, or modify the Team’s recommendations
- Request arbitration panel, following disagreement with supervisors’ decision
- Waive 15 day waiting period, if desired
- Notify the applicant of all decisions

Frequently Asked Questions:

Q: What are the factors the Team looks at to evaluate if a proposed project is “reasonable”?

A: Six factors including, 1) soil erosion and sedimentation; 2) modifications or alternatives; 3) flooding; 4) stream channel alteration; 5) streamflow, turbidity, and water quality; and 6) fish and aquatic habitat.

Q: Can the Team suggest modifications to reduce impacts of the project?

A: Yes. However, the Team should be careful not to design the project for the applicant because they would take on all the liability. When the necessary modifications are substantial and become project design, it is the landowner’s responsibility to provide information on how they will complete the project. This may require the landowner to hire professionals, such as an engineer, to develop the designs.

Q: What happens if the FWP rep or another member of the team disagrees with the board’s decision?

A: Following receipt of the board's decision, a member of the team (other than the applicant) has 5 working days to request an arbitration panel which will review the decision and make a final determination.

Q: Can all the board members attend an onsite inspection?

A: No. If a quorum of board members is present, it constitutes a meeting of the board. And as we know, all meetings must be noticed and allow for public participation, which is not feasible during an onsite inspection on someone else's property.