

DR-4901 Montana Green Sheet

Environmental and Historic Preservation and Disaster Recovery

Failure to comply with applicable Environmental and Historic Preservation (EHP) laws and regulations may jeopardize or delay FEMA funding. It is the applicant's responsibility to obtain required permits and approvals PRIOR to work commencing.

Please identify any potential environmental concerns or challenges and discuss these with FEMA EHP as soon as possible. This will help us identify potential issues early and expedite funding. For EHP assistance for DR-4901-MT please contact EHP Advisor, Kyle Cheeseman at kyle.cheeseman@fema.dhs.gov.

Waterways, Culverts, and Bridges

For all projects involving work in waterways, wetlands, and/or floodplains a **Joint Permit Application** must be completed. See below for details.

The Clean Water Act (CWA) and The U.S. Rivers and Harbors Act (RHA) apply to actions affecting Waters of the United States. This includes any part of the surface water tributary system (natural waters including small streams, lakes, and wetlands) as well as isolated man-made waters. The U.S. Army Corps of Engineers (USACE) administers both laws.

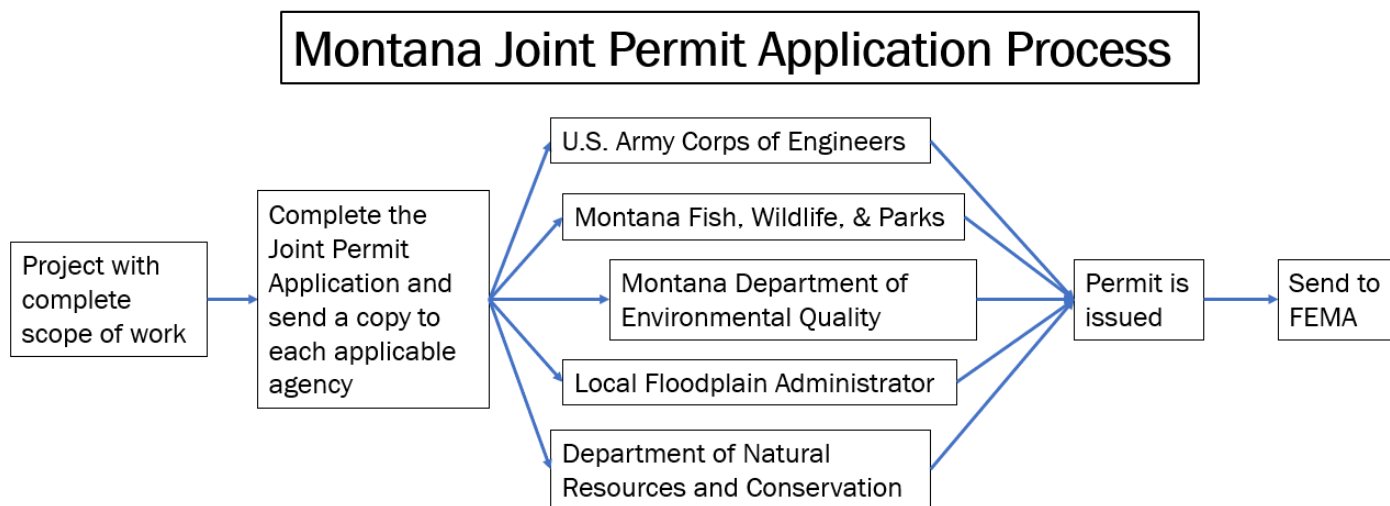


Figure 1. A Joint Permit Application is required for work in waterways, wetlands, and/or floodplains.

For projects involving work proposed or completed in a waterway or wetland, CWA and/or RHA permits from USACE are required. **It is the applicant's responsibility** to contact all appropriate resource agencies for site specific permits. Montana Joint Permit Application Form, Guide, and Directions are available at: <https://dnrc.mt.gov/licenses-and-permits/stream-permitting/> and included for reference at the end of this document. Programmatic Permits, such as Nationwide USACE Permits, still require submission of the application. Repairs to previously permitted structures may require amendments or modifications to existing permits. Examples of actions requiring permits include any repair, construction, demolition, dredging, or filling in any part of surface water tributaries or systems. Work in water that includes repair to pre-disaster condition and minor mitigation measures in most cases fit under a Nationwide Permit (NWP). The applicant should be familiar with the NWPs and is responsible for implementing, monitoring, and maintaining all Best Management Practices (BMPs) and Pre-Construction Notification (PCN) conditions of the applicable NWP. If the applicant needs assistance in determining whether their project fits under an NWP or if an Individual 401 or 404 Permit is needed, the applicant should contact USACE prior to the start of work.

For all culvert and bridge work done on navigable waterways, a Land use License of Easement may be required from the Montana Department of Natural Resources and Conservation (DNRC). DNRC can provide a determination of stream navigability.



**US Army Corps
of Engineers®**



Figure 2. Work in water due to a road collapse may require US Army Corps of Engineers NWP or 401 or 404 depending on the method of repair. FEMA photo.

Threatened and Endangered (T&E) Species

Under the Endangered Species Act (ESA), projects that may affect threatened or endangered species and their habitats require FEMA's coordination with the U.S. Fish and Wildlife Service (USFWS) **prior to** construction starting. All counties in Montana have at least one T&E species. Critical habitats may be located not only in or near water or forested areas but may also be in fields or along road edges. It is very important to know whether a proposed project might impact a critical habitat for any of these species. If T&E Species, migratory birds, bald or golden eagles, or critical habitat are potentially impacted by a proposed project, applicants should contact FEMA Environmental staff with project details. FEMA will coordinate with USFWS for proposed projects. **After-the-fact consultations cannot be accepted.**



Figure 3. Montana has many protected species, such as the Grizzly Bear, which may require FEMA to consult with USFWS. Photo/ USFWS National Digital Library

Bull Trout and Work in or Near Waterways

Work within 100 feet of waterways has high potential to impact Bull Trout and/or its critical habitat. If any work within 100 feet of waterways will occur, FEMA EHP should be contacted prior to the start of work as minimization measures and consultation with USFWS may be required. Please reach out to FEMA EHP if you have any concerns regarding work that has already been completed.

Historic Preservation and Tribal Relations

Per Section 106 of the National Historic Preservation Act (NHPA), all proposed projects which may affect historic properties must be reviewed by FEMA and the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO). FEMA will initiate consultation **prior to** construction starting. **After-the-fact consultations will not be accepted.** A historic property is any prehistoric or historic building, site, district, structure, or object significant in American or State history, architecture, archaeology, engineering, or culture.

Any structure (e.g., buildings, walls, bridges, culverts) 45 years old or older may be eligible for listing on the National Register of Historic Places and considered a historic property. Archaeological resources require special attention and may also require coordination. Any proposed project that may alter previously undisturbed ground (e.g., new construction, utility relocation, road realignment, borrow pit development, site preparation for debris or equipment staging) must be evaluated for potential effects to historic properties before work can begin. Land that has been graded, plowed, or used for agriculture is not necessarily considered previously disturbed and must also be reviewed. For applicants working within Tribal boundaries, contact FEMA before digging and FEMA will consult with the THPO.

Different measures can be taken if historic resources have the potential to be affected. It is critical to involve FEMA EHP and the SHPO or THPO offices **BEFORE** work begins to make these determinations, and to decide what measures, if any, can be taken to avoid or mitigate effects.

Borrow Material Requirements for Emergency Work and Permanent Work Projects

For a project to be compliant with the National Historic Preservation Act (NHPA) all borrow material (fill, gravel, rip rap, etc.) must come from a previously disturbed Montana Department of Environmental Quality (MT DEQ) Open Cut permitted pit or Hard Rock Quarry that has been recommended by MT SHPO. The applicant must obtain both of the following prior to utilizing a borrow source to ensure compliance:

1. Material must originate from a MT DEQ Open Cut permitted site and
 2. Provide FEMA with a letter from the MT SHPO listing their recommendation for that material source.
- Note: Borrow material taken from a non-MT DEQ permitted site or from a MT DEQ Limited/Short Form Site or Small Miners exclusion Pit, is not acceptable due to its lack of environmental and cultural compliance.

Executive Order 11988 Floodplain Management

Executive Order 11988 requires FEMA to review all projects for the potential to affect or be affected by the floodplain. Per 44 CFR Part 9, projects that take place in or affect a floodplain, FEMA must seek ways to avoid, minimize, or mitigate to the extent practicable long- and short-term impacts associated with occupancy and modification of the floodplain. Depending on the potential for impacts, an alternative analysis and public review may be required. There shall be no new construction or substantial improvements within the effective regulatory floodway unless the action demonstrates functionally dependent use. **The applicant is responsible** for coordinating with their local floodplain manager for any projects located within a floodplain to determine the need for other requirements including floodplain development permits, hydrologic and hydraulic studies, no-rise certifications, etc. Staging of debris in the floodplain is to be avoided to the extent possible and final debris disposal in the floodplain is not permitted.

Executive Order 11990 Protection of Wetlands

Executive Order 11990 requires FEMA to review all projects to evaluate the potential to affect a wetland. The applicant may be required to obtain a permit from USACE. Depending on the potential for impacts, an alternative analysis and public review may be required for work affecting a wetland. Debris should never be stored in a wetland or a floodplain, even temporarily. Debris removal from a wetland should be coordinated with USACE.

Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act provides special rules to protect Bald and Golden Eagles and their nesting areas, especially during the nesting season (January 1 [Golden Eagles] or February 1 [Bald Eagles] through August 15). Additionally, applicants are encouraged to minimize potential impacts to migratory birds under the Migratory Bird Treaty Act. See guidelines and minimization measures below.

- Montana Bald Eagle Management Guidelines: An Addendum to Montana Bald Eagle Management Plan (1994) https://fwp.mt.gov/binaries/content/assets/fwp/conservation/wildlife-reports/bald-eagle/bald-eagle-guidelines-final-5_05_10.pdf
- USFWS Nationwide Avoidance & Minimization Measures for Birds (2024) https://www.fws.gov/sites/default/files/documents/2024-07/nationwide_avoidance_minimization_measures_birds_0.pdf

USFWS recommends development of an Avian Protection Plan for Rural Electric Co-ops. For more information on electric utility repair and migratory bird protection, consult the following:

- Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006
- Mitigating Bird Collisions with Power Lines: The State of the Art In 1994

Debris Disposal and Hazardous Materials

For any debris removal projects or projects that may have final disposition of materials (demolition or repair of buildings, cleaning of ditches and water control facilities, etc.), applicants must follow the disposal guidance provided by the MT DEQ. Debris must be separated by type: sediment, vegetative, white goods and construction and demolition (C&D) and disposed of at MT DEQ approved landfills or sites and final disposal must be located outside of floodplains and wetlands.

Debris removal from waterways may require coordination and/or permitting with the local Floodplain Administrator, USACE, MT DEQ, Montana Fish, Wildlife, & Parks (MT FWP), and/or DNRC.

Construction and use of temporary access roads may require FEMA's coordination with federal agencies including SHPO/THPO and USFWS **prior to** construction beginning.

No agency contact, approval, or permits are needed to take solid waste debris to a licensed landfill. Asbestos, if present, must be removed prior to building demolition. Contact the MT DEQ Asbestos Control Program for guidance.

Damaged utility poles are considered solid waste. Damaged transformers may be considered hazardous waste depending on the level of Polychlorinated biphenyl (PCB) and will either need to be disposed of at a Toxic Substance and Control Act (TSCA) approved disposal facility or a landfill/recycling facility. See EHP's "Transformer Disposal Requirements" for further info below.

Vegetative Debris

Burning clean woody vegetative debris (open burn) is allowed year-round in Montana; however, a burn permit and all MT DEQ requirements must be followed, including disposal of vegetative ash. Chipped or chopped clean vegetative debris can be spread on site, composted, or taken to a wood/yard waste facility.

Helpful Links

Waste Management/Debris Removal: <https://deq.mt.gov/twr/index>

Debris Burning Guidance: <https://deq.mt.gov/air/Programs/burning>

Asbestos: <https://deq.mt.gov/cleanupandrec/programs/asbestos>

Household Hazard Waste: <https://deq.mt.gov/twr/Programs/recyclingandwaste>

EPA Transformer PCB Guidance: <https://www.epa.gov/pcbs/managing-remediation-waste-polychlorinated-biphenyls-pcbs-cleanups>

Temporary Staging of Debris

For temporary storage of debris outside of licensed or approved landfills, applicants must contact MT DEQ and FEMA for site approval. Prior to setting up a household hazardous waste collection (Clean Sweep), notify DEQ staff and follow their guidance. Staging of debris must be on previously disturbed land such as a parking lot, roadway, public park, or ball field, etc. If staging occurs on non-disturbed land, FEMA will have to consult with the SHPO, THPO, USFWS, etc. for potential cultural/environmental surveys **before staging occurs**. Staging debris in the floodplain is to be avoided. If staging occurs within a floodplain, it can only be temporary and will need to be removed for final disposal.

Special Conditions Required on Implementation of Projects:

- Special conditions are added to specific projects on a case-by-case basis for specific laws and executive orders that apply to the scope of work for that project. These can be found at the bottom of a project's Record of Environmental Consideration (REC).
- Special conditions may state the Applicant is responsible for obtaining material/fill from an approved source and/or the project may require permitting from a regulatory agency, etc.
- At project closeout, the Applicant must produce any permits, correspondence, and/or state how special conditions were met. EHP staff will review and verify the documentation provided to ensure it meets the requirements for any special conditions placed on the project.
- It is the responsibility of the Applicant to follow any special conditions that were applied to a project and provide documentation demonstrating compliance. Failure to follow special conditions can result in a determination of non-compliance and jeopardize federal funding.

Table 1: Overview of Permits That May Be Required in Montana

PERMIT/ WHO MUST APPLY	PERMIT GRANTING AGENCY	AGENCY CONTACTS / ADDRESSES AND ADDITIONAL INFORMATION	APPROX. REVIEW TIME	FEE
310 Permit Private citizens and companies working in or near perennial streams.	Local Conservation District	Submit application, maps, and plans to conservation district. To locate local office, call MT Assoc. of Conservation Districts (406) 443-5711 or Conservation Districts Bureau, DNRC (406) 444-6667, or visit https://dnrc.mt.gov/Conservation/Conservation-Programs/Conservation-Districts/	30 – 60 days	No fee
SPA 124 Permit Governmental entities working in any stream.	Montana Department of Fish, Wildlife & Parks (FWP)	Submit a set of preliminary plans or sketches with application. To locate appropriate office, call DFWP in Helena (406) 444-2449. For projects sponsored by DOT, send two sets of plans to Helena DFWP, Box 200701, Helena, MT 59620-0701.	30 days	No fee
Floodplain Permit Applicants proposing new construction within designated floodplains.	City or County Floodplain Administrator	All required local, state, and federal permits must be issued before a floodplain permit can be issued. An applicant may be required to hire a professional engineer. Prior to submitting this application form, contact the local floodplain administrator at the city or county office. To locate the appropriate office, contact DNRC Water Resources Division (406) 444-0860 or visit: http://dnrc.mt.gov/divisions/water/operations/floodplain-management	60 days	Varies by city or county. Inquire locally. (\$25-\$500+)
Section 404 Permit Applicants working in any stream and in wetlands. Section 10 Permit Applicants working on Yellowstone, Missouri, or Kootenai Rivers or their reservoirs.	U.S. Army Corps of Engineers (USACE)	Submit one copy of application plus a set of construction plans or sketches of the proposed project, if available. See special signature requirements following “Information for Applicant”. Submit to montana.reg@usace.army.mil or US Army Corps of Engineers, 100 Neill Avenue, Helena, Montana 59601; (406) 441-1375.	30 – 120 days	Varies (\$0 -\$100) You will be contacted if fee applies.

PERMIT/ WHO MUST APPLY	PERMIT GRANTING AGENCY	AGENCY CONTACTS / ADDRESSES AND ADDITIONAL INFORMATION	APPROX. REVIEW TIME	FEE
318 Authorization Activities that cause temporary turbidity in any state water. Applies only for work carried out in water.	Montana Department of Environmental Quality (DEQ)	Do not send this form directly to DEQ if applying for a 310 or 124 permit. You will be notified if you must apply directly to DEQ during the 310 or 124 permit review. If you are not applying for a 310 or 124 permit, apply directly to DEQ with \$250 fee enclosed. Dept. of Environmental Quality, Permitting and Compliance Division, Water Protection Bureau, Box 200901, Helena MT 59620-0901; (406) 444-3080.	30 days after application and fee are received	\$250 Fees do not apply to Conservation Districts, Counties or Municipalities
401 Certification Activities that may adversely affect state water quality standards.	Montana Department of Environmental Quality (DEQ)	Depending on the type of 404 permit you may have obtained from the U.S. Army Corps of Engineers, a 401 Water Quality Certification of that 404 permit by DEQ might be necessary. To determine if a 401 Certification is necessary, contact the U.S. Army Corps of Engineers (406) 441-1375 or DEQ (406) 444-3080.	30 days after application and fee are received	\$400 - \$20,000 Fees do not apply to Conservation Districts, Counties or Municipalities
Navigable Rivers Land Use License/Lease/Easement – Projects in, on, under, or over navigable waters.	Montana Department of Natural Resources and Conservation (DNRC)	Additional fees, a land survey, and other information will be required. Contact the local DNRC land office for information about whether a waterway is navigable. To locate appropriate Land Office, call (406) 444-2074.	License – up to 60 days. Lease or Easements – up to 90 days.	\$50, plus additional fee

Table 2: Federal and State Contacts

Agency	Contact Info
FEMA Region 8 – EHP	Kyle Cheeseman, DR-4901-MT EHAD Cell: 202-808-6632 Email: Kyle.cheeseman@fema.dhs.gov
FEMA Region 8– Floodplain	Matthew Piscopo, FEMA R8 Floodplain Management & Insurance Cell: 202-431-3670 Email: Matthew.piscopo@fema.dhs.gov
US Fish and Wildlife Service	Amity Bass, Montana Field Supervisor Office: 406-422-3163 Email: Amity_bass@fws.gov
US Army Corps of Engineers	Sage Joyce, Montana Branch Chief Office: 406-441-1375 ext. 1375 Email: Montana.Reg@usace.army.mil
State Historic Preservation Office	Jessica Bush, State Archaeologist Office: 406-444-0388 Email: jbush2@mt.gov Damon Murdo, Cultural Records/Data Manager (material source searches) Office: 406-444-7767 Email: dmurdo@mt.gov RJ Hillman, Review and Compliance Officer Office: 406-444-7719 Email: Robert.hillman@mt.gov
Montana Dep. Of Natural Resources and Conservation (DNRC) Water Resources Division	Traci Sears, CFM Montana NFIP/CAP Coordinator Office: 406-444-6654 Email: tsears@mt.gov
Montana Department of Environmental Quality	Keenan Storrar, 401 Certification/Dredge and Fill Permit Office: 406 444-2734 Email: Keenan.storrar@mt.gov
Montana Department of Fish, Wildlife and Parks	Region 1 Office Office: 406-752-5501 Email: fwprg12@mt.gov Brian Stephens, Fisheries Biologist Office: 406-416-1204 Email: Bstephens@mt.gov Jason Garber, FWP Stream Protection Coordinator Office: 406-444-3175 Email: Jason.Garber@mt.gov Adam Strainer, FWP Habitat Bureau Chief Office: 406-444-2447 Email: Astrainer@mt.gov