

SMZ LAW

STREAMSIDE MANAGEMENT ZONES

77-5-301. Findings and purpose. (1) The legislature finds that the streamside management zone:

- (a) acts as an effective sediment filter to maintain water quality;
- (b) provides shade to regulate stream temperature;
- (c) supports diverse and productive aquatic and terrestrial riparian habitats;
- (d) protects the stream channel and banks;
- (e) provides large, woody debris that is eventually recruited into a stream to maintain riffles, pools, and other elements of channel structure; and
- (f) promotes floodplain stability.

(2) The legislature further finds that maintaining the integrity of forest streams is crucial to the quality and quantity of water available to Montanans for domestic, agricultural, industrial, and recreational use.

(3) The legislature further finds that forest streams are highly susceptible to impacts from land development and that in many cases forest practices in streamside zones in Montana are causing excessive and unnecessary damage to the banks, beds, and protective vegetation of forest streams.

(4) The legislature further finds that, through careful management in the streamside zone, owners and operators can achieve timber harvest goals without sacrificing water quality or impairing the beneficial uses of the water.

(5) The purposes of this part are:

- (a) to protect the legitimate public interest in the quality and quantity of forest waters;
- (b) to provide for standards, oversight, rehabilitation, and penalties to ensure that forest practices are conducted in a manner that conserves the integrity of Montana's streamside zones;
- (c) to provide guidelines for the management of wildlife habitat in streamside zones; and
- (d) to allow operators necessary flexibility to use practices appropriate to site-specific conditions in the streamside management zone.

History: En. Sec. 1, Ch. 608, L. 1991.

77-5-302. Definitions. As used in this part, the following definitions apply:

- (1) "Alternative practices" means forest practices:
 - (a) conducted in the streamside management zone that are different from practices required by rules adopted under this part;

(b) that are designed for site-specific conditions encountered during a timber sale; and

(c) that are subject to department approval under 77-5-303.

(2) "Department" means the department of state lands provided for in 2-15-3201.

(3) "Forest practices" means, within a timber sale, the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and management of logging slash. The term does not include activities related to the operation of a Christmas tree farm or nursery that do not involve new road construction.

(4) "Operator" means a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.

(5) "Owner" means an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber.

(6) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.

(7) "Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.

(8) "Streamside management zone" or "zone" means the stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils.

(9) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area for commercial purposes.

History: En. Sec. 2, Ch. 608, L. 1991.

77-5-303. Standards for forest practices in streamside management zones. (1) The following practices are prohibited in a streamside management zone:

(a) broadcast burning;

(b) the operation of wheeled or tracked vehicles except on established roads;

(c) the forest practice of clearcutting;

(d) the construction of roads except when necessary to cross a stream or wetland;

(e) the handling, storage, application, or disposal of hazardous or toxic materials in a manner that pollutes streams, lakes, or wetlands or that may cause damage or injury to humans, land, animals, or plants;

(f) the side-casting of road material into a stream, wetland, or watercourse; and

(g) the deposit of slash in streams or other water bodies.

(2) The department shall publish and distribute the rules implementing the streamside management standards.

History: En. Sec. 3, Ch. 608, L. 1991.

77-5-304. Inspection--onsite consultation. (1) The department may inspect forest practices on any federal, state, or private land in this state to assess compliance with the provisions of this part and rules adopted pursuant to this part.

(2) The department may conduct an onsite consultation with an owner or operator to review harvest plans and watershed conditions. During the onsite consultation, the department may review and, if appropriate, approve the proposed use of alternative streamside management practices, as provided in 77-5-303.

History: En. Sec. 4, Ch. 608, L. 1991.

77-5-305. Responsibility for compliance--penalties--administrative orders. (1) (a) Except as provided in subsection (1)(b), it is the responsibility of the owner to ensure compliance with the provisions of this part and rules adopted pursuant to this part.

(b) If a written contract between an owner and an operator specifies that the operator is responsible for compliance with laws relating to forest practices, the operator is considered the responsible party for all enforcement actions taken by the department under this section.

(2) A person who violates a provision of this part, a rule adopted pursuant to this part, or an order issued under this section shall be subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation.

(3) (a) When the department determines that an owner or operator has violated a provision of this part or a rule adopted pursuant to this part and has caused damage to watershed or wildlife resources, the department may serve an order requiring the person responsible for the conduct of forest practices to undertake necessary site rehabilitation within a reasonable period of time stated in the order. The order must specify the nature of the violation and the damage or unsatisfactory condition resulting from the violation.

(b) The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the department. On receipt of the request, the department shall schedule a hearing. Service by mail is complete on the date of mailing.

(c) If, after a hearing, the department finds that a violation has occurred and the watershed or wildlife habitat damage warrants site rehabilitation, it shall affirm or modify the order previously issued. If the department finds that a violation has not occurred or that site rehabilitation is not warranted, it shall rescind the order.

(d) The department may include in an order a provision that the owner or operator immediately cease causing further damage and take immediate action to alleviate the damage or to prevent future damage. The department may institute an action for injunctive relief under Title 27, chapter 19, if the recipient of the order does not comply with it.

(4) Subsection (3) does not prevent the department from seeking voluntary compliance and site rehabilitation through warning, conference, or any other appropriate means.

History: En. Sec. 5, Ch. 608, L. 1991.

77-5-306. Forest stewardship special revenue account.

(1) There is a forest stewardship special revenue account.

(2) All fines and penalties levied under 77-5-305 must be deposited in the forest stewardship special revenue account.

(3) The department shall spend funds deposited in the account on activities and programs that promote the stewardship of forest resources.

History: En. Sec. 6, Ch. 608, L. 1991.

77-5-307. Rulemaking. The department shall adopt rules:

(1) implementing each of the management standards provided in 77-5-303;

(2) providing specific direction necessary for owners and operators to understand and comply with the management standards, including additional definition of the streamside management zone and the forest practices permissible within the zone;

(3) providing alternative practices for the standards provided for in 77-5-303; and

(4) regulating the harvest in timber in streamside management zones.

History: En. Sec. 7, Ch. 608, L. 1991.

STREAMSIDE MANAGEMENT ZONE RULES

RULE 1: (26.6.601) APPLICABILITY - DEFINITIONS - EFFECTIVE DATE

(1) This subchapter applies to forest practices conducted within a timber sale in the streamside management zone. Such practices, as defined at 77-5-302(3), MCA, include the following activities when conducted within a "timber sale" as that term is defined below:

- (a) the harvesting of trees;
- (b) road construction or reconstruction associated with harvesting and accessing trees;
- (c) site preparation for regeneration of a timber stand;
- (d) reforestation;
- (e) management of logging slash.

(2) Wherever used in this subchapter, unless a different meaning clearly appears from the context:

(a) "Alternative practices" means forest practices conducted in the SMZ that are different from the practices required by the standards provided in 77-5-303, MCA, and are approved by the department either by adoption of this subchapter or on a site-specific basis upon application of the operator.

(b) "Broadcast burning" means spreading fire through a continuous fuel cover. The fuels consist of slash resulting from forest practices, surface litter, and duff. Fuels are left in place, fairly uniform, and ignited under certain conditions with the intent to meet planned management objectives in the desired area.

(c) "Class 1 stream segment" means a portion of stream that supports fish; or a portion of stream that normally has surface flow during 6 months of the year or more; and that contributes surface flow to another stream, lake, or other body of water.

(d) "Class 2 stream segment" means a portion of stream that is not a class 1 or class 3 stream segment. Two common examples of class 2 stream segments are:

(i) A portion of stream which does not support fish; normally has surface flow during less than 6 months of the year; and contributes surface flow to another stream, lake, or other body of water; or

(ii) A portion of stream that does not support fish; normally has surface flow during 6 months of the year or more; and does not contribute surface flow to another stream lake, or other body of water.

(e) "Class 3 stream segment" means a portion of a stream that does not support fish; normally has surface flow during less than 6 months of the year; and rarely contributes surface flow to another stream, lake, or other body of water.

(f) "Clearcutting" means removal of virtually all the trees, large and small, in a stand in one cutting operation. Virtually all woody vegetation is removed from the site preparatory to establishment of new trees.

(g) "Construction" means cutting and filling of earthen material that results in a travel-way for wheeled vehicles.

(h) "Diameter at breast height" (abbreviated "dbh") means the diameter of a tree measured 4½ feet from the ground level. Ground level is the highest point of the ground touching the stem.

(i) "Eastern Zone" means the counties of Big Horn, Blaine, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Liberty, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Toole, Treasure, Valley, Wibaux, and Yellowstone.

(j) "Established road" means an existing access or haul route for highway vehicles that is passable under one or more of the following circumstances:

- (i) without any work;
- (ii) with clearing of windfall or small woody vegetation;
- (iii) with surface blading;
- (iv) with replacement of stream crossing structures and drainage structures that were removed to restrict access; or
- (v) with removal of constructed access barriers.

(k) "Hazardous or toxic material" means substances which by their nature are dangerous to handle or dispose of, or a potential environmental contaminant, and includes petroleum products, pesticides, herbicides, chemicals, and biological wastes.

(l) "Lake" means a body of water where the surface water is retained by either natural or artificial means, where the natural flow of water is substantially impeded, and which supports fish.

(m) "Ordinary high water mark" means the stage regularly reached by a body of water at the peak of fluctuation in its water level. The ordinary high water mark is generally observable as a clear, natural line impressed on the bank. It may be indicated by such characteristics as terracing, changes in soil characteristics, destruction of vegetation, presence or absence of litter or debris, or other similar characteristics.

(n) "Other body of water" means ponds and reservoirs greater than 1/10th acre that do not support fish; and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

(o) "Road" means a travel-way suitable for highway vehicles.

(p) "Salvage" means harvesting trees that have been killed or damaged or are in imminent danger of being killed or damaged by injurious agents other than competition between trees.

(q) "Sidecasting" means the act of moving excess earthen material over the side of a road during road maintenance operations.

(r) "Slash" means the woody debris that is dropped to the forest floor during forest practices. Timber slash consists of stems, branches, and twigs left behind after forest practices.

(s) "Slope distance" means the length of a line between two points on the land surface.

(t) "Stream", as defined at 77-5-302(7), MCA, means "a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water."

(u) "Streamside management zone" or "zone" (abbreviated "SMZ"), as defined at 77-5-302(8), MCA, means "the stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils."

(v) "Timber sale", as defined at 77-5-302(9), MCA, means "a series of forest practices designed to access, harvest, and regenerate trees on a defined land area for commercial purposes."

(w) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas.

(3) This subchapter shall become effective March 15, 1993. (History: Sec. 77-5-307, MCA; IMP, Sec. 77-5-307, MCA; NEW, 1993 MAR p. 14, Eff. 3/15/93.)

RULE 2: (26.6.602) WIDTH OF STREAMSIDE MANAGEMENT ZONE - MARKING BOUNDARY

(1) The slope of the SMZ is measured perpendicular to the stream or lake from the ordinary high water mark to a point 50 feet slope distance from the ordinary high water mark.

(2) The SMZ width is 50 feet slope distance on each side of streams, lakes, and other bodies of water measured from the ordinary high water mark, in all cases except:

(a) Where wetlands exist adjacent to the stream, lake, or other body of water, the SMZ extends to include the wetlands;

(b) On class 1 and 2 stream segments and lakes where the slope of the SMZ is greater than 35%, the SMZ width is 100 feet, except:

(i) where an established road exists between 50 and 100 feet from the ordinary high water mark, the SMZ boundary is located at the toe of the road fill; or

(ii) where the slope of the SMZ decreases to 15% or less to form a bench that is 50 to 100 feet from the ordinary high water mark and at least 30 feet wide, the SMZ boundary is located at the edge of the bench nearest the stream.

(3) Where forest practices that are prohibited in the SMZ will be conducted adjacent to the SMZ boundary on a class 1 or class 2 stream segment, the SMZ boundary must be clearly marked prior to conducting such practices. (History: Sec. 77-5-307, MCA; IMP, Sec. 77-5-301, 302(8), MCA; NEW, 1993 MAR p. 14, Eff. 3/15/93.)

RULE 3: (26.6.603) BROADCAST BURNING

(1) Broadcast burning in the SMZ is prohibited unless approved by the department under a site-specific alternative practice. (History: Sec. 77-5-307, MCA; IMP, Sec. 77-5-303, MCA; NEW, 1993 MAR p. 14, Eff. 3/15/93.)

RULE 4: (26.6.604) EQUIPMENT OPERATION IN THE SMZ

(1) Operation of wheeled or tracked equipment in the SMZ except on established roads is prohibited except as provided in this rule.

(2) In order to permit timber harvest on wetlands under conditions that protect the integrity of the SMZ, an operator may, as an alternative practice without site-specific approval, operate wheeled or tracked equipment from the outside edge of an SMZ to within 50 feet of the ordinary high water mark wherever:

(a) the SMZ extends beyond 50 feet from the ordinary high water mark to include adjacent wetlands;

(b) there exist winter conditions with adequate snow or frozen ground; and

(c) operation of the wheeled or tracked equipment:

(i) does not cause rutting or displacement of the soil;

(ii) protects and retains shrubs and submerchantable trees to the fullest extent possible;

(iii) does not remove stumps; and

(iv) otherwise conserves the integrity of the SMZ.

(3) In order to minimize road construction and skid trails necessary for timber harvest on lands adjacent to the SMZ, an operator may, as an alternative practice without site-specific approval, cross the SMZ and the stream or other body of water with wheeled or tracked equipment on a class 3 stream segment or other body of water at locations spaced approximately 200 feet apart or more provided that:

(a) crossings are located in areas where the stream or other body of water is dry and the banks and bottoms are stable;

(b) excavation is minimized;

(c) the capacity of the stream channel or other body of water is maintained; and

(d) the distance travelled through the SMZ is minimized.

(4) In order to minimize road construction necessary for timber harvest on lands adjacent to the SMZ, an operator may, as an alternative practice without site-specific approval, operate wheeled or tracked equipment inside the SMZ off of established roads on the side of the road away from the stream wherever:

(a) an established road exists inside the SMZ or construction of a road inside the SMZ is authorized under ARM 26.6.606;

(b) the toe of the road fill nearest the stream is at least 25 feet from the ordinary high water mark; and

(c) operations are conducted in such a manner that:

(i) wheeled or tracked equipment stays out of wetlands except under winter conditions as provided in (2) above;

(ii) all skidding of logs takes place on designated skid trails located approximately 200 feet apart or more;

(iii) all skid trails in such areas are reclaimed by installing erosion control measures and reestablishing vegetative cover;

(iv) drainage features are established or reestablished on all roads used under this section;

(v) logs are not decked on the side of the road toward the stream; and

(vi) no landings are constructed in the SMZ.

(5) When logs are being winched or cable yarded across a class 1 or 2 stream segment by equipment located outside the SMZ, logs must be fully suspended unless otherwise authorized pursuant to the Natural Streambed and Land Preservation Act of 1975, 75-7-101 et seq., MCA.

(6) The department may also approve operation of wheeled or tracked equipment in the SMZ as a site-specific alternative practice only under conditions that:

(a) conserve the integrity of the SMZ;

(b) do not cause rutting of the soil; and

(c) protect the residual stand of shrubs and trees.

(History: Sec. 77-5-307, MCA; IMP, Sec. 77-5-301, 303, MCA; NEW, 1993 MAR p. 14, Eff. 3/15/93.)

RULE 5: (26.6.605) RETENTION OF TREES IN THE SMZ - CLEARCUTTING

(1) The forest practice of clearcutting is prohibited in the SMZ unless approved by the department under a site-specific alternative practice.

(2) Further, in order to provide large woody debris, stream shading, water filtering effects, and to protect stream channels and banks, merchantable and submerchantable trees must be retained in the first 50 feet of the SMZ beyond the ordinary high water mark and in the entire SMZ where the SMZ is extended for wetlands under ARM 26.6.602(2)(a), on each side of streams, and along lakes and other bodies of water as follows:

(a) On each side of class 1 stream segments and lakes retain 50% of the trees greater than or equal to 8 inches dbh, or 10 trees greater than or equal to 8 inches dbh in each 100 lineal feet of the SMZ, whichever is greater.

(i) If less than 10 trees greater than or equal to 8 inches dbh are present in any 100 lineal foot segment of the SMZ, then a minimum of 10 trees of the largest diameter available must be retained in that segment.

(ii) Trees retained must be representative of the species and size of trees in the pre-harvest stand.

(iii) Shrubs and submerchantable trees must be protected and retained in the entire SMZ to the fullest extent possible when conducting forest practices in the SMZ.

(b) On each side of class 2 stream segments retain 50% of the trees greater than or equal to 8 inches dbh, or 5 trees greater than or equal to 8 inches dbh in each 100 lineal feet of the SMZ, whichever is greater.

(i) If less than 5 trees greater than or equal to 8 inches dbh are present in any 100 lineal foot segment of the SMZ, then a minimum of 5 trees of the largest diameter available must be retained in that segment.

(ii) Trees retained must be representative of the species and size of trees in the pre-harvest stand.

(iii) Shrubs and submerchantable trees must be protected and retained in the entire SMZ to the fullest extent possible when conducting forest practices in the SMZ.

(c) On each side of class 3 stream segments and other bodies of water, shrubs and submerchantable trees must be protected and retained in entire SMZ to the fullest extent possible when conducting forest practices in the SMZ.

(3) Hardwood trees and snags meeting diameter standards of (2) above may be counted toward retention tree requirements in the same approximate proportion as their occurrence in the stand prior to commencement of forest practices.

(4) Trees retained pursuant to this rule must be distributed within the SMZ as guided by the following criteria:

(a) favor bank-edge trees;

(b) favor trees leaning toward the stream and those that cannot be felled without falling into the stream;

(c) where the SMZ is greater than 50 feet wide and harvesting will result in the minimum stocking of trees required to be retained under section (2)(a) and (b), concentrate retained trees within 50 feet of the stream.

(5) Trees retained pursuant to this rule may be salvaged only under the following conditions:

(a) Trees to be harvested meet the definition of salvage at ARM 26.6.601(2)(p); and

(b) The minimum tree retention requirements of section (2) are met by standing live trees, or by dead or fallen trees where sufficient standing live trees are not available; and

(c) All trees that have fallen across or in the stream must be retained, unless salvage of such trees is approved as a site-

specific alternative practice subject to other federal and state laws and regulations.

(6) All practices which deviate from the tree-distribution criteria provided in (2) and (4) above require approval as site-specific alternative practices. (History: Sec. 77-5-307, MCA; IMP, Sec. 77-5-301, 303, MCA; NEW, 1993 MAR p. 14, Eff. 3/15/93.)

RULE 6: (26.6.606) ROAD CONSTRUCTION IN THE SMZ

(1) The construction of roads in the SMZ is prohibited except when necessary to cross a stream or wetland unless approved by the department under a site-specific alternative practice or as provided in this rule. The construction of roads across streams, wetlands or other bodies of water is not regulated by these rules but may be subject to other state and federal laws and regulations.

(2) Road fill material must not be deposited into the SMZ except as needed to construct crossings.

(3) In order to minimize excavation for road construction on erosive soils characteristic of Eastern Montana, an operator may, as an alternative practice without site-specific approval, construct or locate a road inside the SMZ on class 3 stream segments in the eastern zone only wherever:

(a) the slope of the SMZ immediately adjacent to the stream is 10% or less for a distance of at least 25 feet from the ordinary high water mark;

(b) there exists in the outer portion of the SMZ a hillside with slopes in excess of 35%; and

(c) the road is constructed or located on the gentler slopes in such a manner that:

(i) cutting and filling of earthen material is minimized;

(ii) the toe of the road fill is located at least 15 feet from the ordinary high water mark;

(iii) the road is located as far away from the ordinary high water mark as is practical; and

(iv) road drainage features are installed as needed to minimize sediment delivery to streams. (History: Sec. 77-5-307, MCA; IMP, Sec. 77-5-301, 303, MCA; NEW, 1993 MAR p. 14, Eff. 3/15/93.)

RULE 7: (26.6.607) HAZARDOUS OR TOXIC MATERIALS

(1) The handling, storage, application, or disposal of hazardous or toxic materials in the SMZ in a manner that pollutes streams, lakes, or wetlands or that may cause damage or injury to humans, land, animals, or plants is prohibited.

(2) Any application of herbicides or pesticides must be done in a manner that such materials are not introduced to streams, lakes, wetlands, or other bodies of water through surface runoff or sub-surface flow.

(3) Any application of herbicides or pesticides must be done in a manner which does not destroy vegetation in the SMZ to an extent which impairs the capacity of the SMZ to provide shade or to act as an effective sediment filter.

(4) Any application of herbicides or pesticides in the SMZ must be in accordance with all label directions and in compliance with all applicable laws and regulations regarding the use of such material.

(5) Dust abatement agents which do not contain waste oil may be applied on roads in the SMZ provided that such material is not directly introduced into a stream, lake, or other body of water. (History: Sec. 77-5-307, MCA; IMP, Sec. 77-5-303, MCA; NEW, 1993 MAR p. 14, Eff. 3/15/93.)

RULE 8: (26.6.608) SIDE-CASTING OF ROAD MATERIAL

(1) The side-casting of road material into a stream, lake, wetland, or other body of water during road maintenance operations is prohibited in the SMZ. (History: Sec. 77-5-307, MCA; IMP, Sec. 77-5-303, MCA; NEW, 1993 MAR p. 14, Eff. 3/15/93.)

RULE 9: (26.6.609) DEPOSITING SLASH

(1) Depositing slash in streams, lakes, or other bodies of water is prohibited unless approved by the department under a site-specific alternative practice subject to other state and federal laws and regulations. (History: Sec. 77-5-307, MCA; IMP, Sec. 77-5-303, MCA; NEW, 1993 MAR p. 14, Eff. 3/15/93.)

RULE 10: (26.6.610) SITE-SPECIFIC ALTERNATIVE PRACTICES

(1) The owner or operator shall comply with the management standards stated in 77-5-303(1), MCA, and this subchapter, unless approval has been obtained from the department for alternative practices designed for site-specific conditions encountered during a timber sale prior to conducting such practices.

(2) The department may approve a proposed alternative practice only if such practice would be otherwise lawful and the department determines with reasonable certainty that the proposed alternative practice would conserve the integrity of the stream-side management zone and would not significantly diminish the function of the zone as stated in 77-5-301, MCA:

- (a) to act as an effective sediment filter to maintain water quality;
- (b) to provide shade to regulate stream temperature;
- (c) to support diverse and productive aquatic and terrestrial riparian habitats;
- (d) to protect stream channel and banks;

(e) to provide large, woody debris that is eventually recruited into a stream to maintain riffles, pools, and other elements of channel structure; and

(f) to promote floodplain stability.

(3) In order to obtain department approval of alternative practices, the owner or operator shall submit to the department an application describing the proposed practices and location. Applications must provide all data specified by the department and must be submitted on forms provided or approved by the department.

(4) Within 10 working days of receipt of the application for approval of alternative practices the department shall determine if the application is approved, approved with modification, disapproved, incomplete, requires additional information or environmental analysis, or requires a field review. The department shall notify the owner and the applicant of its decision in writing.

(5) If the department determines a field review is necessary, the field review must be made at a mutually agreeable time. The owner or his designee must be present at the field review.

(6) Within 10 working days after all necessary field review is complete, the department shall determine whether the application is approved, approved with modification, disapproved, incomplete, or requires additional information or environmental analysis. The department shall notify the owner and the applicant of its decision in writing.

(7) The department may notify the applicant in writing that it declines to conduct further environmental analysis of an application if it determines that the proposed alternative practices are complex, or affect an environmentally sensitive area, or involve a high degree of uncertainty that the proposed alternative practices will have a significant impact on the quality of the human environment. The notice must briefly describe the department's reasons for declining to conduct further analysis. In this case, the applicant may conduct further environmental analysis and submit documentation to the department. The department shall independently review any further environmental analysis and documentation of the proposed alternative practices provided by the applicant and may adopt such documentation if it is adequate under the Montana Environmental Policy Act (75-1-101 et seq., MCA) and rules adopted thereunder (ARM 26.2.628-663). If so adopted, the department may utilize such environmental documentation in further consideration of the application for alternative practices.

(8) In the event the department determines that an application for alternative practices may be of significant interest to the public, the time provided in this rule for considering such application may be extended in order to allow time for the public to be notified and participate in the department's decision pursuant to 2-3-101 et seq., MCA, and ARM 26.2.701-707.

(9) Persons applying for approval of alternative practices shall agree in writing that approved alternative practices, in-

cluding any additional conditions imposed by the department, shall have the same force and authority as the standards contained in 77-5-303, MCA, and shall be enforceable by the department under 77-5-305, MCA, to the same extent as such standards. Persons responsible for conducting alternative practices shall comply with all conditions of such practices. In determining whether to approve applications for alternative practices, the department may consider past violations of such standards or of the requirements of previously approved alternative practices by the applicant.

(10) Authorization to conduct alternative practices is valid for 2 years from the date of approval or for such period as may be specified by the department. (History: Sec. 77-5-307, MCA; IMP, Sec. 77-5-302, 307, MCA; NEW, 1993 MAR p. 14, Eff. 3/15/93.)

SMZ Rules Summarized for Field Use

The 7 SMZ Prohibitions

1. Broadcast burning.
2. Equipment operations.
3. Clearcutting.
4. Road construction, except to cross stream or wetland.
5. Hazardous or toxic materials.
6. Sidcasting of road material into stream, wetland or other body of water during road maintenance.
7. Slash in streams or other water bodies.

Stream Segment Classes

- | | |
|---|------------|
| A. Stream segment supports fish | —> Class 1 |
| A. Does not support fish | |
| B. Has surface flow 6 months or more | |
| a. Contributes surface flow to stream, lake, or other body of water | —> Class 1 |
| b. No surface flow contribution | —> Class 2 |
| B. Surface flow less than 6 months | |
| a. Contributes surface flow to stream, lake or other body of water | —> Class 2 |
| b. Rarely contributes to surface flow | —> Class 3 |

"Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.

NOTE: This key is not intended to replace the rules, but to serve as reference for the broad points of them. The definitions and specific conditions detailed in the rules are essential for proper SMZ implementation.

SMZ Width

- | | |
|--|------------------------------------|
| A. SMZ slope is $\leq 35\%$, no associated wetlands | —> 50 feet |
| A. Wetlands in SMZ extend beyond 50 feet from stream | —> extend to outer edge of wetland |
| A. SMZ slope $> 35\%$ | |
| B. Class 3 stream segment, other body of water | —> 50 feet |
| B. Class 1 or 2 stream segment, lake | |
| a. Bench occurs between 50 & 100 feet | —> edge of bench |
| b. Road occurs between 50 & 100 feet | —> toe of road fill |
| c. No road, no bench | —> 100 feet |

Tree Retention in SMZ

- | |
|---|
| A. For Class 1 streams and lakes, at least 50% of trees $\geq 8"$ dbh must be retained on each side of stream or 10 trees per 100', whichever is greater. |
| A. For Class 2 streams, at least 50% of trees $\geq 8"$ dbh must be retained on each side of stream or 5 trees per 100', whichever is greater. |
| A. For Class 1, 2 & 3 streams, lakes, and other bodies of water, shrubs and submerchantable trees must be retained for the full width of the SMZ. |
| B. Extended for wetlands —> retention requirements for entire SMZ |
| B. Extended for slope —> retention requirements first 50' |
| B. In addition, for Class 1 & 2 stream segments |

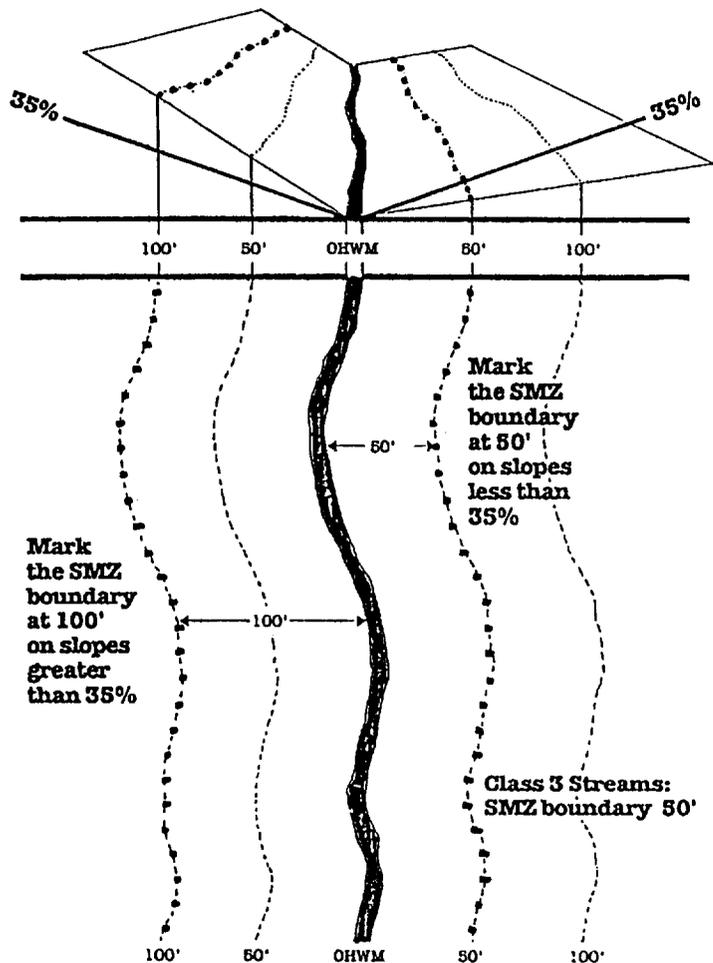
If the minimum # of trees $\geq 8"$ DBH are not present, then retain the minimum # of trees with the largest DBH available.

Retain trees representative of the size and species of the pre-harvest stand, favor leaving bank-edge trees, those leaning toward stream, those that will fall into stream and concentrate retained trees within 50' of the stream.

Rule Two: 26.6.602

SMZ Widths for Different Slopes

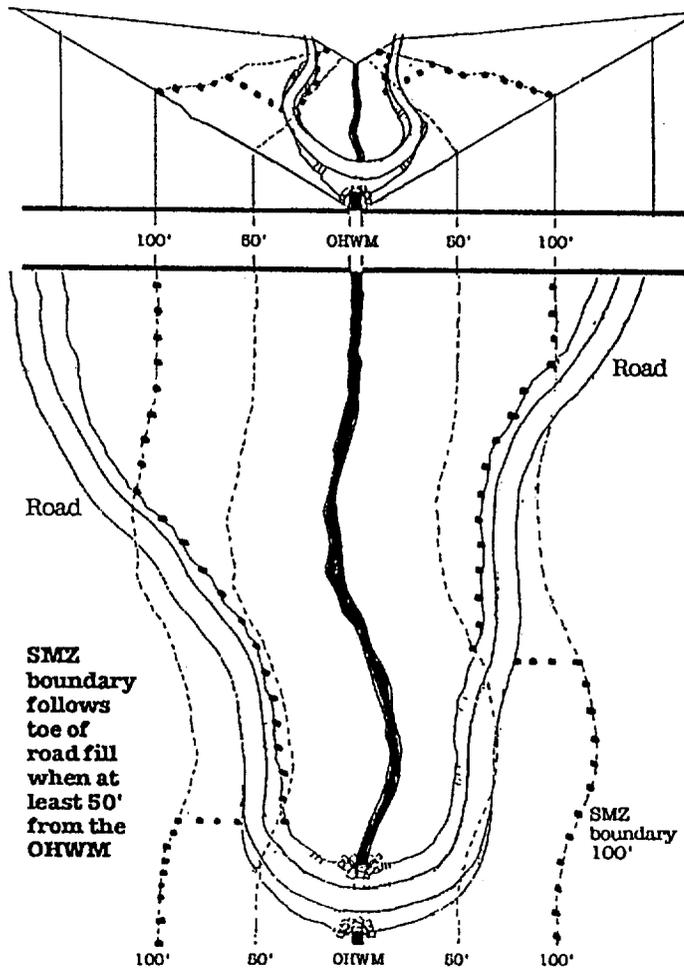
Class 1 and 2 Streams



Rule Two: 26.6.602

SMZ Width to Established Roads

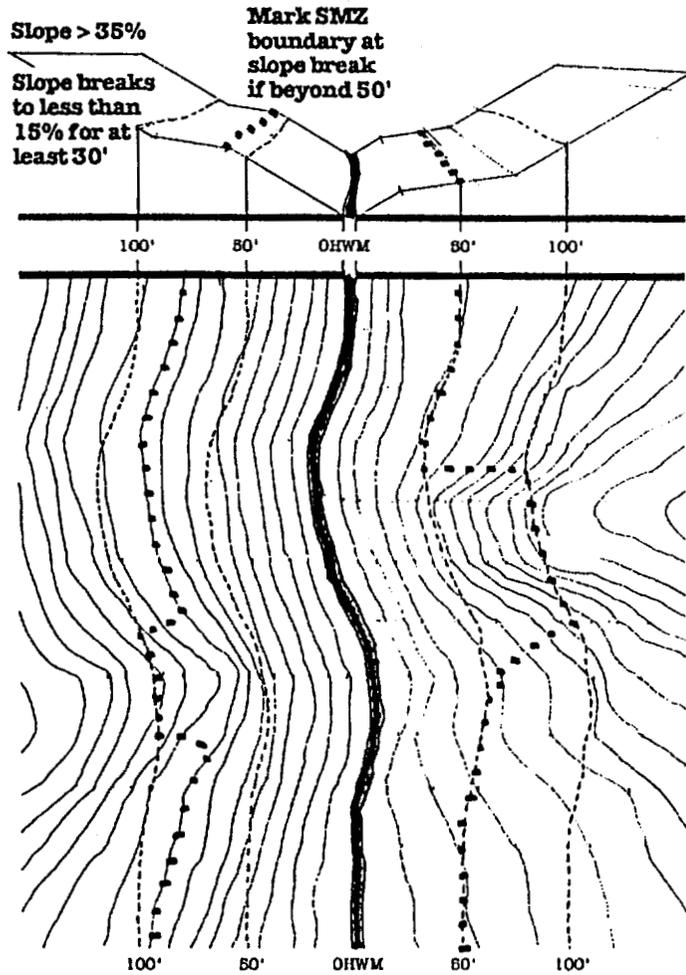
For slopes steeper than 35%
next to Class 1 and 2 Streams



Rule Two: 26.6.602

SMZ Widths to Slope Breaks

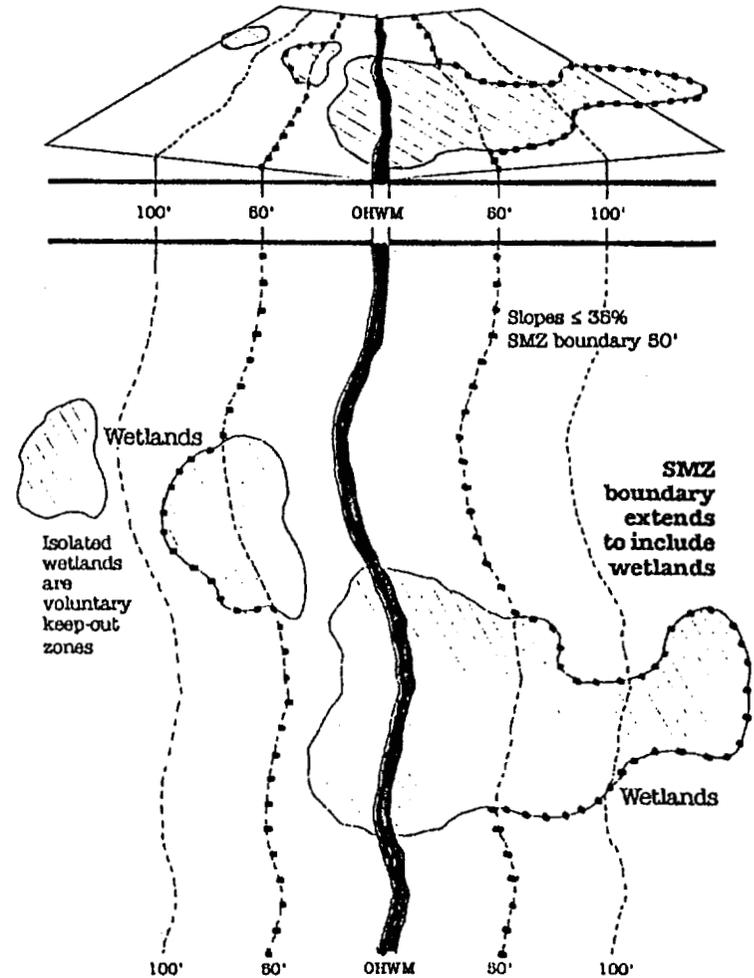
Class 1 and 2 Streams



Rule Two: 26.6.602

SMZ Widths for Wetlands

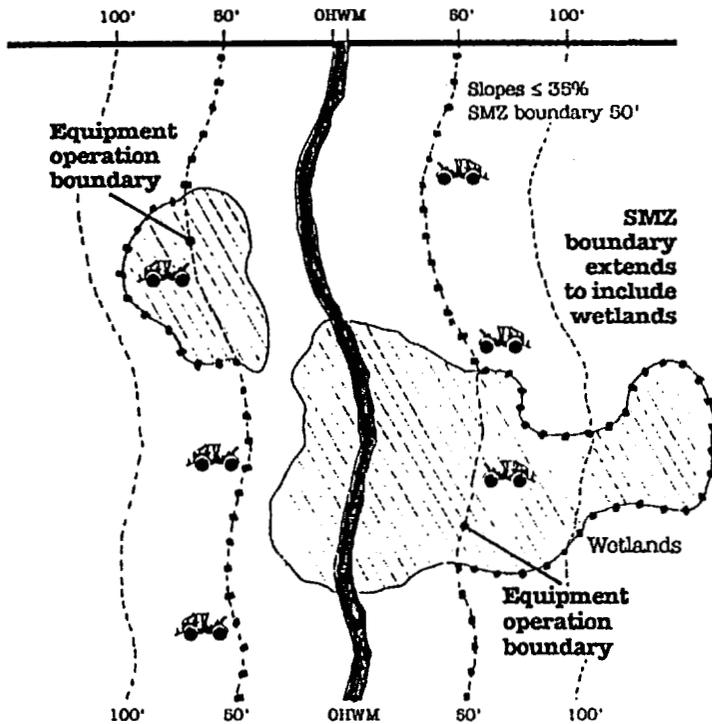
Class 1, 2 and 3 Streams



Rule Four: 26.6.604

Equipment Operation in Wetlands

Class 1, 2 and 3 Streams



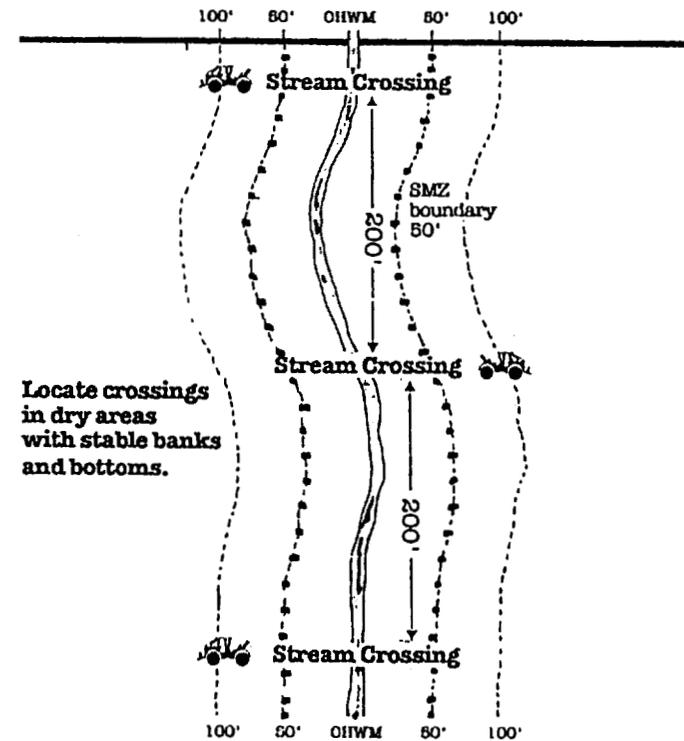
Operate under the following conditions:

- Winter conditions with adequate snow or frozen ground.
- No rutting or displacement of soil.
- Protect/retain shrubs and submerchantable trees.
- Do not remove stumps.

Rule Four: 26.6.604

Equipment Operation across Class 3 Streams

And other Bodies of Water



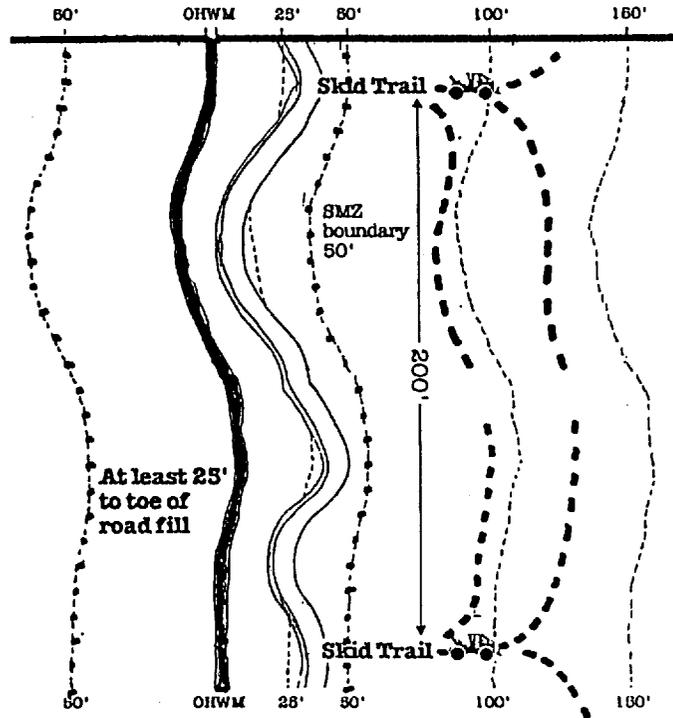
Locate crossings in dry areas with stable banks and bottoms.

Operate under the following conditions:

- Crossings are to be approximately 200' apart.
- Minimize excavation.
- Minimize the distance traveled through the SMZ.

Rule Four: 28.6.604

Equipment Operation from Established Roads



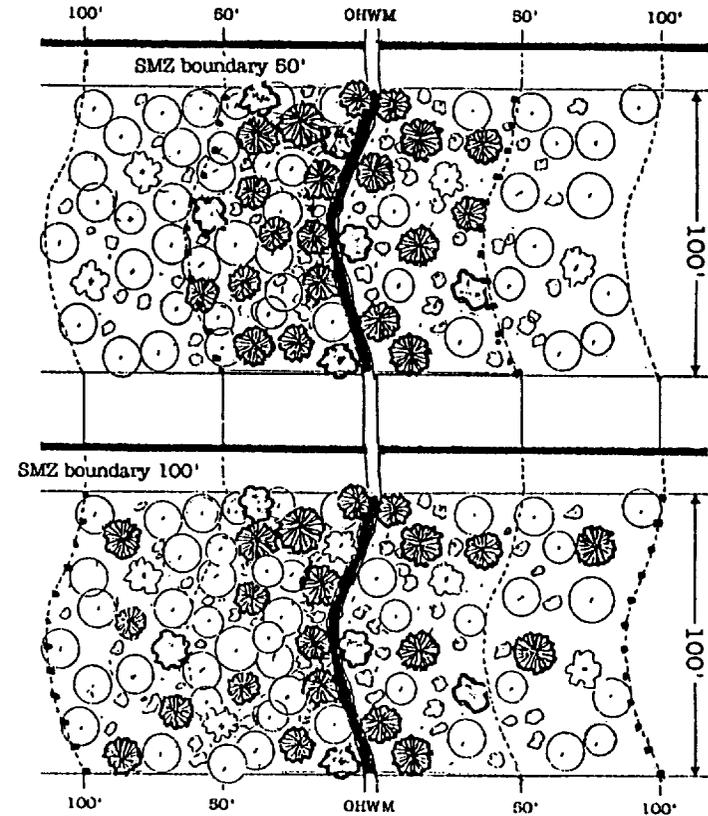
Operate under the following conditions:

- Toe of road fill at least 25' from OHWM.
- Designate skid trails approximately 200' apart.
- No landings in SMZ.
- Deck logs on side of road away from the stream.
- Keep out of wetlands.
- Establish or re-establish road drainage features.
- Reclaim skid trails with erosion control and reseeded.

Rule Five: 28.6.605

Tree Retention

100' Stream Segment Class 1 Stream

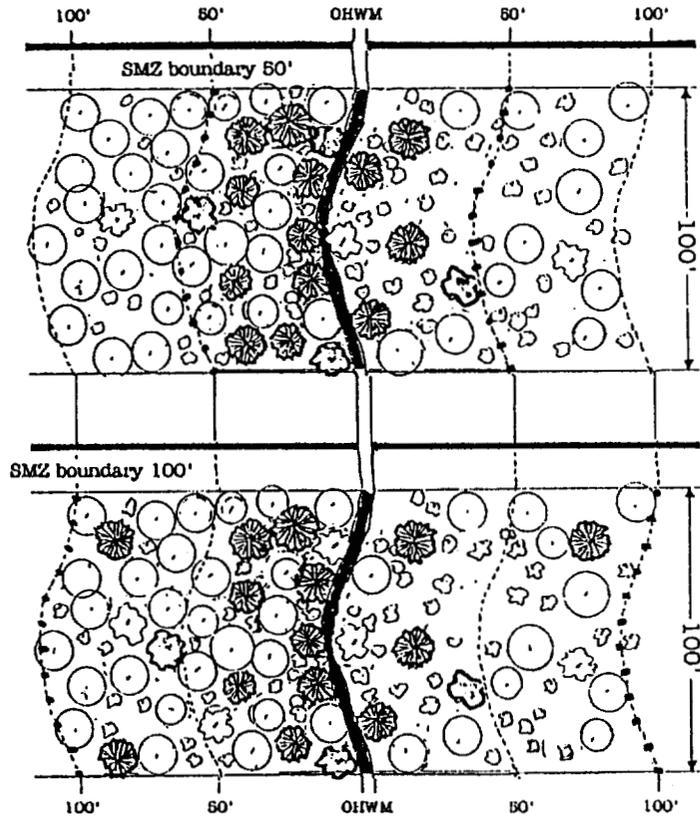


- Retain 50% or at least 10 trees $\geq 8"$ DBH.
- The number of retention trees is based on the number of existing trees in the first 50' of the SMZ.
- If the minimum number of trees $\geq 8"$ DBH is not present, then retain the minimum number of trees with the largest diameters available.

Rule Five: 26.6.605

Tree Retention

100' Stream Segment Class 2 Stream

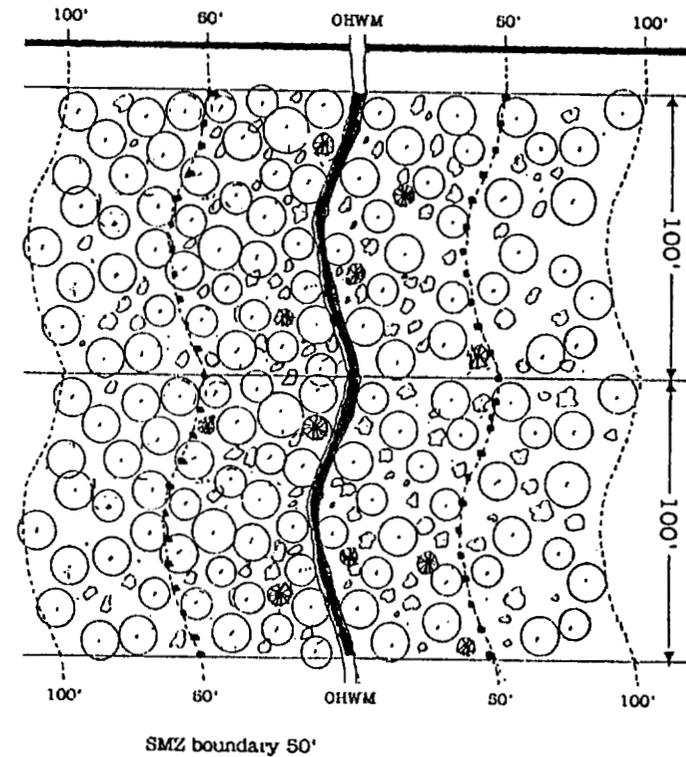


- Retain 50% or at least 5 trees $\geq 8"$ DBH.
- The number of retention trees is based on the number of existing trees in the first 50' of the SMZ.
- If the minimum number of trees $\geq 8"$ DBH is not present, then retain the minimum number of trees with the largest diameters available.

Rule Five: 26.6.605

Tree Retention in a 50' SMZ

Class 3 Streams
and other Bodies of Water

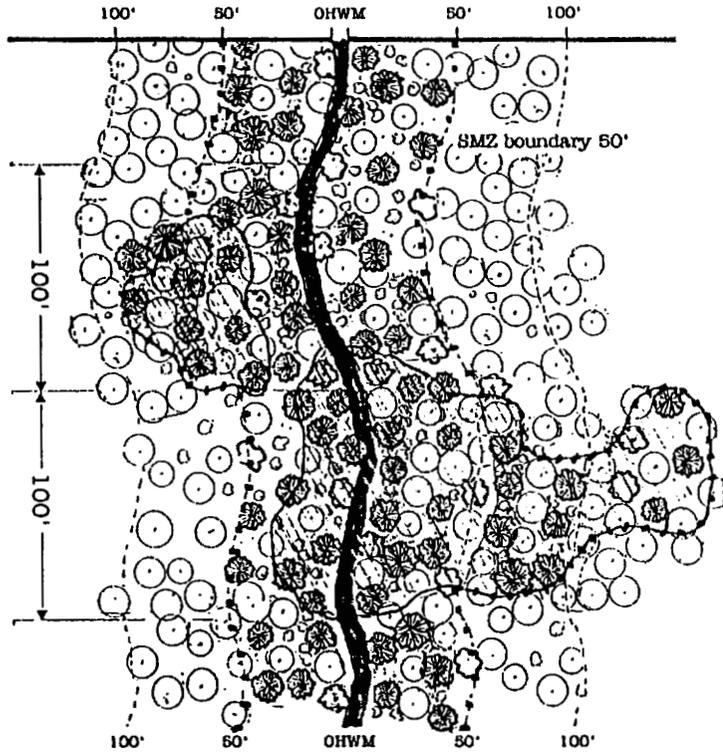


**Protect and retain
shrubs and
submerchantable
trees**

Rule Five: 26.6.605

Tree Retention in a SMZ Extended for Wetlands

100' Stream Segment

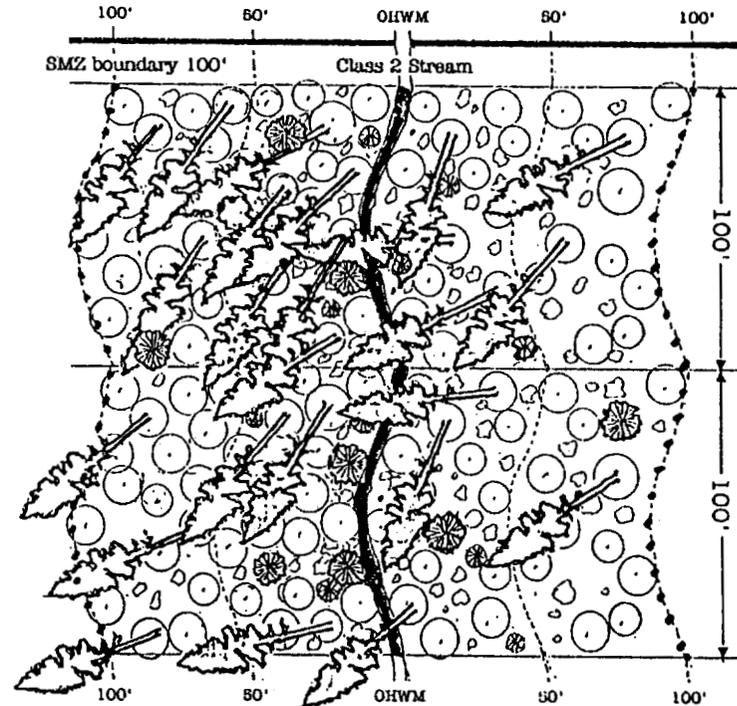


- Retain 50% or the minimum number of trees ≥ 8 " DBH.
- The number of retention trees is based on the number of existing trees in the SMZ.
- If the minimum number of trees ≥ 8 " DBH is not present, then retain the minimum number of trees with the largest diameters available.

Rule Five: 26.6.605

Salvage of Retention Trees

100' Stream Segment
Class 1 and 2 Streams



Operate under the following condition:

- Meet minimum tree retention requirements.
- Count standing live trees.
- Count dead or fallen trees when sufficient live trees are not available.
- Trees fallen across or in streams must be retained.