

4/09/07 DRAFT

**PROPOSED AMENDMENT TO
MISSOULA COUNTY ZONING RESOLUTION**

SECTION 2.21 – STREAM SETBACKS

A. Intent

This Section creates an overlay district encompassing the whole of Missoula County in which construction of buildings and certain other uses are restricted within specified distances of rivers and streams. This Section also establishes specific review criteria for requested variances, and establishes a permit officer within the Planning Office. This Section is a supplement to the existing zoning resolution. Where this Section has more specific standards or procedures, they shall apply.

The purpose of this Section is to maintain, preserve, and enhance public safety and the environment along rivers and streams in Missoula County, to preserve natural stream function and riparian vegetation, to protect private property from erosion and flooding, to protect water quality, water quantity, and wildlife habitat, to preserve scenic open space, and to promote the quality of life and general welfare of the residents of Missoula County.

B. Definitions

In addition to other definitions in Section 1.05, the following definitions apply to this Section:

Agricultural Uses Grazing and cropping to produce food, feed, and fiber commodities. The definition of “agricultural uses” does not include residences, nor does it include commercial, retail, or other structures.

Area of Riparian Vegetation Any land area directly adjacent to a stream, containing any of the habitat or community types listed in Appendix V to the Missoula County subdivision regulations. Where there is evidence that riparian vegetation has been mowed, cleared, or otherwise destroyed, the area of riparian vegetation shall extend to the edge of the area that has been cleared.

Existing Land Use A land use that prior to the effective date of this Section was a lawful land use, and is:

- 1) completed;
- 2) ongoing, as in the case of agricultural activity; or
- 3) under construction (with all applicable approvals for such construction).

100-Year Floodplain. The area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency

Impervious Surface. Any paved, hardened, or structural surface which does not allow for complete on-site infiltration of precipitation. Such surfaces include but are not limited to buildings, driveways, streets, parking lots, swimming pools, dams, tennis courts, and any other structures that meet the above definition.

Intermittent Stream. A stream or reach of stream that flows for only part of the year in a well-defined natural channel.

Nonconforming Use. See Existing Land Use.

Noxious weeds. Any plant species appearing on the Montana noxious weed list published by the Montana Department of Agriculture.

Ordinary High Water Mark: The line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. (Mont. Code Ann. § 23-2-301(9))

River: See Stream.

Stream: Any perennial or intermittent stream, including its flood channels, overflow channels, and braided channels.

C. Setback Widths

1. Intent. The following setback widths are generally intended to keep development out of the riparian zone that typically extends between the terraces on either side of a stream, and is roughly coterminous with the stream's floodplain. This is the area where structures and other development are most likely to interfere with natural stream function, and where life and property are most at risk from catastrophic flooding. It is anticipated that in most cases, the setback width will be controlled by the extent of the area of riparian vegetation, although on the relatively few stream segments that are FEMA-mapped, the setback will extend to the edge of the mapped floodplain where it is wider than the area of riparian vegetation.

The numeric setbacks in section 2(c) are not expected to control the setback width in most cases, but rather are intended to establish a bare minimum level of protection to preserve habitat corridors and water quality in rare cases where the area of riparian vegetation is unusually narrow, or has been destroyed and it is not possible to determine its original extent prior to destruction.

2. Setback widths. The setback area shall include the stream itself, and shall extend to whichever of the points described in (a) through (c), below, is farthest from the stream:

- (a) The edge of the 100-year floodplain shown on a FEMA map;
- (b) The outer edge of the area of riparian vegetation; or
- (c) A minimum width defined as a horizontal map distance from the ordinary high water mark, as follows:
 - (i) on the Clark Fork River, Bitterroot River, and Swan River, 200 feet;
 - (ii) on Rock Creek (near Clinton), the Clearwater River, and the Blackfoot River, 150 feet;
 - (iii) on Ninemile Creek, Rattlesnake Creek, Petty Creek, Morrell Creek, and Lolo Creek, 100 feet; and
 - (iv) on all streams and stream reaches not named above, 75 feet.

3. Although this section does not regulate uses outside the setback, it shall be the responsibility of the landowner to ensure that any structures and other uses outside the setback are appropriately located and designed such that they will not require prohibited uses within the setback to protect them erosion, fire, or other hazards. *See* E.1(d), below.

D. Permitted Uses

1. The following uses are permitted by right within the setback area without prior approval. No use permitted under these regulations shall be construed as allowing trespass on privately held lands.

- (a) Recreational activity. Passive recreational uses such as hiking, fishing, hunting, picnicking and similar uses.
- (b) Weed control. Measures taken to eradicate noxious weeds within the guidelines of the Missoula County Weed Plan.
- (c) Agricultural uses. Agricultural uses, other than buildings, on lands assessed for tax purposes as agricultural.
- (d) Forest resource development. Forest resource development on lands assessed for tax purposes as forest/timber.

(e) Existing uses including expansion of a residential structure or use that existed within the setback on the effective date of these regulations, provided that the expansion does not exceed an area of 15% of the footprint of existing structure(s) or use that lies within the setback. Only one such expansion of a particular structure or use is allowed as a matter of right. Any subsequent or larger expansions must be approved through the variance process.

Exceptions to existing uses are as follows:

- i. When the existing land use, or any building or structure involved in that use, is moved (in whole or in part) to any other portion of the property;
- ii. When the existing land use ceases for a period of more than one year;
- iii. When an existing building is damaged or destroyed, and is not repaired or restored within three years from the date of damage/destruction or the adoption of these regulations, whichever is later; or

E. Prohibited Uses

1. The following uses are specifically prohibited within the setback:

- (a) Construction and new structures. There shall be no structures of any kind, including residential buildings, outbuildings, sewage disposal systems, sewer pipes, rock or earthen fill, recreational camping vehicles, mobile homes, other buildings, or accessory structures, except as permitted under these regulations. Riprap, rock vanes, weirs, and other bank stabilization structures, except as limited under (d) below, are allowed only if permitted under the County floodplain ordinance, the Montana Natural Land and Streambed Preservation Act, and other applicable laws.
- (b) Roads, driveways, and impervious services. There shall be no roads, driveways, or impervious services, such as parking lots, except as permitted under this Section.
- (c) Destruction of riparian vegetation. There shall be no mowing, removal, or other destruction of native riparian vegetation, other than minimal removal to establish foot paths or dispersed recreation areas (e.g., tent sites, benches, picnic tables). Noxious weeds may be removed or destroyed, provided that where large areas of weeds are destroyed they are re-vegetated with native vegetation to prevent the re-growth of weeds. Upon approval of a variance, selected removal or trimming of trees may be permitted for the following purposes: (1) non-motorized access, (2) public utility lines to service dwellings, or (3) fire clearance for dwellings pre-dating the enactment of this section.

- (d) Protection of poorly-sited structures. No structure of any kind shall be placed within the setback to prevent bank erosion from threatening a structure or use outside the setback, that was commenced after the effective date of this section.

F. Variances

1. The property owner or designated representative may seek variances from the requirements of this Section by written application to the Board of Adjustment pursuant to Section 8.14(D) of this Resolution.
2. The Board of Adjustment may only approve a variance if it finds, addition to the criteria set forth in Section 8.14(D), that:
 - (a) No reasonable alternative location for the use outside the setback area is available;
 - (b) Neither the lack of alternative locations, nor any other claimed special condition, circumstance, or hardship giving rise to the variance request results from a division of land occurring after the effective date of this Section; and
 - (c) Granting the variance will not affect upstream or downstream hydrologic conditions that could cause damage from flooding or streambank erosion to landowners in those areas.
3. Upon the Zoning Officer's receipt of an application for a variance, staff shall have 30 working days to review the application to determine if the information adequately addresses all applicable variance criteria. If staff determines the application to be incomplete, staff shall notify the applicant of the deficiencies, and the applicant may correct them and re-submit the application. Once the application is deemed complete, staff shall prepare a written report to the Board addressing the technical merits of the variance request. In preparing this report, staff shall consult with the Department of Fish, Wildlife and Parks, the Department of Natural Resources and Conservation, and other state or federal agencies that may provide any helpful technical assistance.
4. Neither the permitted nor nonconforming use of other lands, structures, or buildings in the jurisdiction are grounds for the issuance of a variance.

G. Coordination with Other Regulations and Separability

1. Where this Section imposes a greater restriction upon land than is imposed or required by any other provision of law or regulation, the provisions of these regulations shall control.

2. Where the setback established by this Section is less protective than the setback determined pursuant to any other provision of law or regulation, including but not limited to subdivision regulations, the setback width established by the other law or regulation shall be established as the setback width for purposes of this Section.
3. These regulations shall not limit or restrict the application of other provisions of law, regulation, contract, or deed, or the legal remedies available there under.
4. If any clause, section, or provision of these regulations is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected thereby.

For Any Questions or Comments Please Contact:

Mel Waggy
Missoula County Rural Initiatives
200 W. Broadway
Missoula, Montana 59802

Phone: 406-258-3707

Email: mwaggy@co.missoula.mt.us

Rural Initiatives Website: <http://www.co.missoula.mt.us/Rural/>

ATTACHMENT II:

Press Release Announcing Missoula County Public Meetings

FOR IMMEDIATE RELEASE – March 28, 2007

Contacts: Matt Clifford, Clark Fork Coalition 542-0539, 370-9431 (cell)
Mel Waggy, Missoula County 258-3707

County to unveil draft setback ordinance at Ninemile meeting

The Missoula County Office of Rural Initiatives and the Clark Fork Coalition will unveil a proposed ordinance establishing streamside setbacks at the first in a series of informal public meetings on Monday, April 9, at 7 p.m. at the Nine Mile Community Center. The County and the Coalition have been working to develop the proposed ordinance for the past 12 months.

The proposed ordinance would add Missoula County to the growing list of Montana counties with laws protecting rivers and streams from development too close to their banks. At least five other counties have enacted such ordinances, and a state-wide setback law is currently under consideration at the state legislature.

“There’s a growing recognition that too much of the rapid development we’re seeing in western Montana is occurring too close to our rivers and streams,” said Matt Clifford, conservation director and staff counsel for the nonprofit Clark Fork Coalition. “It’s understandable that people want to live as close as they can to our spectacular rivers, but too often they don’t realize that they are destroying the things that make these waters so special – particularly their ability to move and function over time, and to provide habitat for fish and wildlife.”

In addition, Clifford said, development too close to rivers and streams can be dangerous and expensive for both homeowners and the public. “We see a lot of homes being built in places where it’s not a matter of if they will be threatened by floods, but when,” he said. “People forget that, because we have not seen a truly major flood around here in decades. But sooner or later, it will happen. And the costs will be huge”

The proposed Missoula County ordinance would use an innovative approach to identify the areas along streams where development would be harmful. Rather than setting an arbitrary fixed distance stated as a number of feet, it would define the setback area based on the extent of streamside riparian vegetation, which scientists and floodplain specialists say roughly corresponds to the areas of flood risk, future channel migration, and high-value habitat. This approach is intended to avoid one of the most common complaints about setback ordinances – that they fail to account for the fact that streams differ enormously from place to place.

“Fixed, ‘one-size-fits-all’ setbacks often end up being more restrictive than necessary in some places, and not protective enough in others,” said Clifford. “They can end up failing to protect both private property rights and streams. We are determined to do better than that.”

The proposed ordinance would include minimum setbacks to cover situations where no riparian vegetation exists, and to provide minimum habitat protection, but these are intended to apply in relatively rare circumstances. The ordinance also contains a provision for variances, which the county believes provide important additional protection for private property rights.

The County and the Coalition hope to get public feedback on the proposed ordinance at the April 9 meeting, said Melissa Waggy of the Missoula County Office of Rural Initiatives. The meetings will offer the public a chance to see what the County is proposing and offer comments, but will not take the place of the formal public hearing that the Commissioners would hold prior to voting on any ordinance, she added.

Additional informal meetings are scheduled at the Lolo School on April 11, the Evaro Community Center on April 16, the Frenchtown Fire Station on April 17, the Clinton Women's Club on April 19, the Missoula Extension office on April 23, the Swan Community Center on April 24, the Lubrecht Experimental Forest on April 26, and the Seeley Lake Chamber of Commerce on May 8. Directions may be obtained from Mel Waggy at Missoula County, 258-3707

ATTACHMENT III:

Clark Fork Chronicle Article About Public Hearing

Rural residents speak out against proposed setbacks

Wednesday, April 18 2007 @ 03:14 PM MDT

Contributed by: Admin

by John Q. Murray

Rural residents reacted angrily to Missoula County's proposed stream setback ordinance during a meeting in Frenchtown Tuesday night.

While existing structures would be "grandfathered in" and allowed to remain in place, the ordinance would prohibit new construction, clearing of vegetation, or any new roads within 75 to 200 horizontal feet of the bank.

That distance would vary depending on the size of the river, stream, or creek, with 200 feet for such large rivers as the Clark Fork, 100 feet for Petty Creek and Nine Mile Creek, and 75 feet for all other smaller streams.

The majority of the 40 people in attendance at Frenchtown opposed the proposal. Similar meetings were held in in Evaro and Lolo earlier this week.

The proposed ordinance was likely the "biggest taking since the Indians lost their land," said Petty Creek resident Larry Hayden.

Ray Boyer of Petty Creek said he did not intend to donate part of his property to government control. "If they want it, they can buy it," he said. "Bring your checkbook."

Mel Waggy of the county's rural planning department, named "Rural Initiatives," described the importance of riparian areas for wildlife and water quality, and the damage that rip-rap--large rocks set along the bank to provide stabilization--can cause downstream. Vegetation is hundreds of times stronger than rip-rap, while also effective in filtering pollutants, she said.

Keith Jutila suggested that Missoula city and county "look in the mirror" before they start looking at small rural landowners. Rip-rap lines the banks of the Clark Fork River all through downtown Missoula. Where is the county using vegetation? he asked. The city and county shouldn't use their own different set of standards while pushing the more restrictive regulations on us, he said.

Bob Anderson said the state and county should look at the salt and gravel thrown on Montana's highways every winter. Those hundreds of thousands of gallons of sediment affect water quality much more than rural landowners, he said.

Sharon Grindell suggested that local property owners who live in the area, know it, and love it, are the best and most effective way of protecting the local area. Education is the key, she said.

Doug Hunter recommended tracking the percentage of waterfront landowners who favor and oppose the ordinance.

One Trout Unlimited member said he strongly objected to the "demonization" of rural residents. He read an email from the organization urging its members to attend public meetings to counter opponents who are "falsely claiming to be property owners."

Other local property owners pointed out that the largest threat in the valley is Missoula's sewage treatment plant, expressed concern that water and irrigation rights would be protected, and wondered what the county would do to continue expanding its reach after establishing streamside setbacks.

Several also expressed a sense that rural landowners were being unfairly singled out. All of our neighbors are good stewards of the land, they said.

Compliance with the ordinance should be voluntary, some suggested.

The county has contracted with the Clark Fork Coalition to work on the setback ordinance, Mel explained. She said county commissioners took up the issue after hearing concerns from rural residents.

The commissioners' options, she said, are: (1) take no action, (2) provide education, (3) establish setbacks to protect property and streams. They prefer option (4): a combination of setbacks and education.

Rural Initiatives director Pat O'Herren attended the Frenchtown meeting and noted residents' concerns on a flipchart. He said that public comment from the nine informational meetings throughout the county would be considered in shaping the final ordinance. Additional public hearings and public meetings would be publicized when the commissioners formally take up the issue, he said.

On Wednesday, Rep. Gordon Hendrick (R-Superior) told the Chronicle he had been contacted by concerned residents. He is working with Rep. Rick Jore (C-Ronan) to determine whether the state legislature can take action to block the proposed ordinance.

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Comments (0)

The Clark Fork Chronicle

<http://www.clarkforkchronicle.com/article.php/20070418151432137>

Missoula County

Spring 2007 Stream Protection Meetings

Summary of Comments

Available Science:

- Comment that the public needs to see the science used to develop this proposal
- Comment that science may have been misused in the development of this proposal and may not support all of this proposed regulation
- Suggestion that the County utilize the same data used to develop Streamside Management Zones (regulate commercial timber harvest) to develop this regulation
- Suggestion that other accepted data, like Streamside Management Zones, should be incorporate into proposal
- Comment that flood data is incorrect
- Comment that FEMA maps are outdated

Enforcement:

- Comment that the County can not enforce many of the regulations that are currently on the books
- Question about how this regulation would be enforced and who would be responsible

Expansion of Regulation:

- Concern that initial setback regulations will grow over time to prevent other activities in the riparian area
- Suggestion that regulations should be expanded gradually overtime, not initiated all at once
- Question as to how the Milltown Dam project will be affected
- Question whether stream side property owners will have to allow recreation on their property
- Concern that this regulation will limit agricultural use

Existing Regulations:

- Comment that current regulations are enough to protect our streams and water quality (i.e. floodplain, septic, 310 permits, stream management zones (SMZ))
- Suggestion that stream protection should be incorporated with the existing permit system (i.e. building permits, septic)

Existing Stewardship on Land:

- Comment that landowners are already good stewards of riparian areas and love their land so no regulations are needed to protect streams and water quality
- Comment that this regulation insults property owners

Flexibility of Setback Standards:

- Concern that minimum setbacks distances are not flexible enough or are too extreme
- Concern that one size fits all setback does not work
- Suggestion that sites should be dealt with on an individual basis, taking in to account site specific characteristics (e.g. slope, terrace, development pressure)
- Suggestion to keep only larger setbacks on larger rivers
- Suggestion that setbacks should consider channel type (i.e. migrating channel, stationary channel)
- Concern that a riparian corridor is difficult to define

Fuels Reduction:

- Concern that these regulations will inhibit a landowner's ability to conduct fuel reduction measures in the riparian area
- Comment that it is unfair that commercial timber harvest could occur in riparian areas but individuals can not log or clear vegetation for safety

Government Process and Involvement:

- Comments from those in attendance that citizens do not want this regulation
- Comment that Board of County Commissioners (BCC) does not understand problems faced by rural landowners or how emotional they feel about this issue
- Concern that comments given at these meetings will not be considered by the BCC
- Suggestion that the BCC needs to use community councils more
- Comment that the County is just doing this to get more tax revenue
- Comment that this is just an open space issue in disguise
- Comment that this regulation is already a done deal
- Comment that this regulation is communistic in nature
- Comment that the County needs to re-evaluate the partnerships it has created in relationship to these efforts
- Comment that it is unfair that landowners inside city limits would not have to follow regulations
- Comment that County has a do as I say not as I do attitude
- Concern that tax payers will have to pay for the enforcement of such regulations
- Concern that lawsuits, generated from a setback regulation, will cost the taxpayers
- Comment that the Board of County Commissioners and individual employees will be sued if this regulation is put in place and the County will lose
- Comment that stream setbacks are the state's responsibility
- Comment that the state has already rejected the idea of setbacks - the County should too

Non-conforming Lots:

- Concern that smaller lots (lots too small to meet setback standards) will no longer be buildable
- Concern that some people will be forced to build right next to the road if they have a small lot
- Suggestion that non-conforming lots should be "grandfathered" in
- Comment that it is hard to conform to regulations when you have 2 creeks on 1 piece of property
- Concern that this proposal may be in conflict with existing regulations

Other Approaches to Regulation:

- Suggestion that setbacks be voluntary
- Suggestion to provide incentives for people to protect or restore stream segments on their property
- Suggestion that education would be an acceptable and effective way to protect streams
- Suggestion that the County try an education program before pursuing a regulatory approach
- Suggestion that County needs to work with folks, not regulate them
- Suggestion that emphasis of stream protection should be on flood protection
- Suggestion to hold community meetings where various agencies, involved in stream protection, provide information and answer questions
- Comment that some landowners could use some help in improving their property
- Suggestion that more information needs to be collected about how much development is occurring on streams, how many properties would be affected by this regulation, and what, if any, types of impacts are resulting from development
- Suggestion that developers should have to go through an educational program
- Suggestion that the County purchase riparian property to protect it

Private Property Rights and Property Values:

- Concern that private property rights will be diminished
- Concern that this regulation is a “takings” by the government
- Comment that stream front property is expensive and this regulation will inhibit an owner from fully enjoying it
- Comment that this proposal is an infringement of constitutional rights and is communistic in nature
- Suggestion that landowners affected by this regulation should be compensated through a reduction in taxes
- Suggestion that county should have to purchase lands affected by regulation
- Comment that with private property rights comes responsibility
- Comment that this regulation is not a “takings” issue
- Concern that this regulation will devalue property when properties are passed on to children
- Concern that regulations would cause lost production from land, income, and livelihood
- Suggestion that property values should go up on streams that are protected
- Concern that this regulation will affect small property owners disproportionately
- Comment that family member’s houses downstream have been damaged due to upstream development
- Comment that the threat of these regulations will force landowners to sell, subdivide, or develop streamside properties before these regulations go into place
- Comment that if the County passes this regulation, people who would otherwise be good stewards, will feel penalized and will go out and purposefully harm riparian areas on their land

Public Meeting Format:

- Suggestion that public meetings should have been better advertised
- Suggestion that a public address system, minutes, and recorder should be used at future public meetings
- Comment that resident did not feel comfortable speaking up in favor of proposal at the meeting for fear of retaliation by neighbors
- Suggestion that all material discussed at the meeting should be handed out prior to the meeting
- Suggestion that meetings should be longer

Public Process:

- Suggestion that citizens should be allowed to vote on this issue
- Suggestion that only affected property owners should be allowed to vote on this issue
- Suggestion that Missoula City residents should not have a say in this matter
- Suggestion that all landowners should have a say on this matter, not just individuals living on rivers
- Informal vote was taken in Frenchtown and no one present raised their hand in favor of proposal
- Comment that taking a vote at a meeting was polarizing
- Suggestion that a citizens advisory group be formed to look at this issue

Recommended Changes to the Proposed Regulation:

- Suggestions regarding other activities that should be regulated along streams include: agricultural practices, recreational uses, lake shore and wetland development, protection of fish spawning habitat, and removal of junk vehicles
- Suggestion to expand on or provide better definitions for perennial streams, intermittent streams, native species, variance, and grandfathering
- Suggestion that regulation should consider how streams migrate
- Suggestion that ascetics along river corridors should be considered by this regulation
- Suggestion that the regulation document include a needs statement
- Suggestion that Plum Creek lands should be included under these regulations
- Suggestion that regulations should allow the erecting of small structures (e.g. cabins, tool sheds, RVs, bridges, gazebo), placement of riprap, fences, and parking of RV vehicles
- Comment that the proposal does not address other water features like ditches or wetlands
- Comment that this regulation may have unintended consequences
- Suggestion that regulations should not interfere with any existing structures, or the replacement of such structures that are designed to legally divert/obtain water (i.e. pumps, pump houses, water diversion screens)
- Suggested activities that should be allowed in the setback include: riprap, riprap maintenance, some native vegetation reduction, mowing, and bike paths
- Suggestion that regulations should only apply to new development
- Suggestion to include only the major rivers in the setback regulations
- Question as to whether this regulation will prohibit the paving of Petty Creek Road
- Suggestion that introduction to regulation needs some re-wording
- Suggestion that existing structures should be allowed to be expanded to greater than 15%

Recommended Changes to the Proposed Regulation continued:

- Suggestion that agricultural use needs to be better defined in the regulation
- Question about if this regulation would affect water rights

Streams and Water Quality:

- Comment that there are greater problems than development (e.g. roads, septic, car-riprap, recreational use, city/industrial effluence, agriculture, logging) causing water quality issues in the County - these problems should be addressed first before development
- Comment that was in full support of conservation for a healthy future
- Concern about wasteful ways waterways are treated
- Comment that existing lots along the river are too small; better planning is needed
- Comment that there is a need to protect our streams for future generations; water belongs to everyone
- Comment that we have a responsibility to keep streams healthy
- Comment that water belongs to everyone, not just those living on streams
- Comment that riprap is bad; Comment that riprap is good
- Suggestion that County act now to protect our streams
- Concern that water quality is declining in the Seeley Valley so this proposal should be supported
- Comment that these efforts will be supported by many who are not attending the meetings
- Comment that the proposed regulation needs some work but the County is headed in the right direction
- Comment that to ensure that everyone behaves responsibly there needs to be a law
- Request for support for this proposal
- Comment that our constitution gives citizens the right to a clean and healthy environment

Variance Process:

- Concern that the variance process will be too costly and time consuming
- Concern that the variance process does not guarantee that someone can build on their lot
- Concern that landowners might have to give up something (e.g. right-of-way) in exchange for a variance
- Suggestion that variance process needs to be described in detail
- Question about if a variance could be passed on to new owners if the property sells

ATTACHMENT V
Flathead County Subdivision Regulations
July 12, 2007 DRAFT

4.7.13 Stream Riparian Protection Requirements

The maintenance and integrity of natural river systems is crucial to the quality and quantity of water resources in Flathead County. The Commission shall require a system of stream riparian setbacks or management plans for the protection and maintenance of the stream corridor and to protect public safety and welfare. This system is needed to maintain and create conditions for enhanced water quality, wildlife corridors, watershed management, and enhance recreational opportunities along stream systems while protecting persons and property. The area of riparian resource may be available to the subdivision proposal for purposes of determining density allocations or number of lots and to satisfy parks and open space requirements. Riparian setbacks are not intended to provide public access or easements of any kind and shall not do so unless expressly authorized by the subdivider.

1. The stream setback shall be clearly delineated on the preliminary plat and on the final plat and designated as a riparian setback. Each setback shall include a natural vegetative buffer. There shall be no removal of natural vegetation in the vegetative buffer area, except as permitted under these Regulations and using best management practices. The natural vegetative buffer shall also be clearly delineated on all plats. For the purposes of this section a stream is defined as a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks that confines and conducts continuously or intermittently flowing water.
2. Setback widths. The setback area shall extend from the high water mark to whichever of the points described below, is farthest from the stream:
 - a. The edge of the 100-year floodplain shown on a FEMA map;
 - b. A minimum width defined as a horizontal map distance from the ordinary high water mark, as follows:
 - A. Flathead River and its three forks: the Stillwater River, the Swan River and the Whitefish River, 250 feet with a vegetative buffer of 100 feet.
 - B. Ashley Creek from Smith Lake to Flathead River and Pleasant Valley Fisher River, 200 feet with a vegetative buffer of 75 feet.
 - C. All other streams, as identified not listed above shall have a setback of 60 feet with a vegetative buffer of 50 feet.
3. For any stream or river covered under these Regulations, when a slope adjacent to the stream rises at a grade of 50 percent or greater for at least 20 feet above the ordinary high-water mark and no historic evidence of bank erosion exists the setback from a stream shall be at

least 100 feet from the top of the slope, with a vegetative buffer of 75 feet. This requirement supersedes other setback requirements.

4. A Riparian Resource Management Plan may be submitted with the subdivision proposal in lieu of meeting the setback requirements. Approval of the management plan by the governing body is required as a condition of subdivision approval. The plan shall include, but not be limited to the following:
 - a. A site map showing the following:
 - A. Location of vegetation types and any and all riparian resource areas and associated 100-Year floodplain.
 - B. Vegetative Buffer areas.
 - C. Drainage, slope and topography.
 - b. A description of the following:
 - A. Abundance of vegetation types.
 - B. Contribution of the vegetative type to stream bank stabilization.
 - C. Susceptibility of soil in the vegetative type to compaction.
 - D. Contribution of the vegetative type in preventing erosion.
 - E. Contribution of the type to fish and wildlife habitat, including big game species, upland game bird species, non-game bird species, fisheries, and threatened or endangered species.
 - F. Hydrological analysis of the site and potential impacts of the proposed uses.
 - c. A mitigation plan outlining how the area of riparian resource will be restored maintained or enhanced. The plan shall include, at a minimum, the following:
 - A. Proposed disturbance of the area of riparian resource.
 - B. Alteration, enhancement and restoration plan.
 - C. Planting plan.
 - D. Streambank stabilization plan.
 - E. Discussion of proposed land uses their intensities and potential effects on riparian resources.

- d. A maintenance and monitoring plan outlining how the area of riparian resource will be cared for after occupancy.
- e. Agricultural and forest management uses not in conflict with and that will ensure the function of the vegetative buffer and in compliance with all pertinent state rules, regulations, and best management practices that govern such activities are encouraged. The following uses are allowed in a riparian setback area and exempt from these Regulations, provided, if regulated, these uses are permitted under applicable local, state and/or federal regulations.
 - i. Recreational structures such as docks, boat ramps, pathways or unimproved picnic areas. Pedestrian and bike trails may be allowed within the setback areas but not within the vegetated buffer areas.
 - ii. Revegetation and/or reforestation to stabilize flood prone areas.
 - iii. Stream bank stabilization/erosion control measures and stream restoration projects that have obtained any required permits.
 - iv. Limited crossings of designated streams through the riparian setback by highways, roads, driveways, sewer and water lines, and public utility lines.
 - v. Reconstruction, replacement or repair of an on-site septic system provided the new improvements are no closer to the ordinary high water mark of the stream.
 - vi. Agricultural and forest management uses not in conflict with the vegetative buffer area, including facilities not requiring electricity.
 - vii. Hydro-electric facilities licensed by the Federal Energy Regulatory Commission.
 - viii. Grassy swales, roadside ditches, drainage ditches created to convey storm water, tile drainage systems and stream culverts are exempt from the setback requirements.
- f. The following uses are specifically prohibited within the setback and must be clearly shown on the face of the plat:
 - i. Construction and new structures. There shall be no structures of any kind, including residential buildings, outbuildings, sewage disposal systems, sewer pipes, rock or earthen fill, recreational camping vehicles, mobile homes, other buildings, or accessory structures, except as permitted under these regulations. Riprap, rock vanes, weirs, and other bank stabilization structures, except as limited under (d) below, are allowed only if permitted under the County floodplain ordinance, the Montana Natural Land and Streambed Preservation Act, and other applicable laws.
 - ii. Roads, driveways, and impervious services. There shall be no roads, driveways, or impervious services, such as parking lots, except as permitted under this Section.

- iii. Protection of poorly-sited structures. No structure of any kind shall be placed within the setback to prevent bank erosion from threatening a structure or use outside the setback that was commenced after the effective date of this section.
- g. No proposed road shall be approved for construction if located in an area of riparian resource unless there is no other possible route to access the subdivision.
 - i. The side casting of road material into a stream, lake, wetland, or other body of water during road construction or maintenance is prohibited. The following additional standards shall apply to roads in these areas:
 - A. Effective erosion and sedimentation control practices shall be conducted during all clearing, construction or reconstruction operations.
 - B. Road fill material shall not be deposited in the areas of riparian resource or in such a location or manner to that adverse impacts will result to the area.
 - C. All crossings of streams, lakes, wetlands or other water bodies must occur at a perpendicular angle and in such a manner as to mitigate disturbance of the riparian area.
 - ii. The following guidelines for placement and construction of roads shall be considered in areas of riparian resource but may be waived with the consent of the governing body.
 - A. In the event it is necessary to route a road through an area of riparian resource, then open areas should be utilized in order to minimize impact on vegetated areas.
 - B. Roads should not be constructed in areas where soils have a high susceptibility to erosion which would create sedimentation and pollution problems during and after construction.
 - C. Roads should not intrude into areas adjacent to open exposures of water and should avoid scenic intrusion by building below ridge crests and high points.
- h. The Commission may grant a variance as part of the subdivision process if the subdivider can demonstrate that an unnecessary hardship would result of circumstances unique to the parcel, including but not limited to size, shape, topography or location.
 - i. A variance request must include information necessary to evaluate the variance request, including plans, maps, specifications, topography and floodplain boundaries.
 - ii. The variance must be supported by a finding that:
 - A. The hardship is not created through the actions of the subdivider.

- B. The variance is not likely to:
 - 1. Adversely impact water quality.
 - 2. Increase stream bank erosion.
 - 3. Increase flood heights or the velocity of flood water.
 - 4. Impair the function of the riparian area.
 - C. The variance is as small as reasonably possible to accommodate the proposed use while preserving the intent of the setback provisions.
- iii. The conditions of each variance request will be considered unique and not applicable to adjoining or other properties.

COUNTY COMMISSION "LAND GRAB"

140,000 ACRES OF PRIVATE LAND!

At the insistence of Flathead County Commissioners Gary Hall, Joe Brenneman and Dale Lauman, the County Commission's proposed new "STREAM RIPARIAN SETBACK REQUIREMENTS" are to be considered by the Flathead County Planning Board for addition to the County's new Subdivision Regulations. If adopted, the proposal will represent the largest illegal "TAKING OF PRIVATE PROPERTY" ever proposed by any County in the state of Montana!

FLATHEAD COUNTY PROPERTY OWNERS - IF THE COUNTY COMMISSION HAS ITS WAY - YOUR FUTURE RIGHT TO USE YOUR PROPERTY WILL BE SEVERELY RESTRICTED, IF YOUR PROPERTY:

- IS WITHIN 250 FEET OF THE FLATHEAD RIVER INCLUDING ITS THREE MAJOR FORKS.
- IS WITHIN 200 FEET OF ASHLEY CREEK FROM SMITH LAKE TO THE FLATHEAD RIVER.
- IS WITHIN 100 FEET OF ANY PERENNIAL STREAMS.
- IF ANY PART OF YOUR PROPERTY IS WITHIN THE 100 - YEAR FLOODPLAIN. (ALL OF EVERGREEN?)

**THE COUNTY COMMISSION'S PLAN
REPRESENTS THE LARGEST TAKING OF
PRIVATE PROPERTY EVER PROPOSED BY
A COUNTY IN MONTANA!**

The 2007 Montana Legislature considered Senate Bill 345 that would have given cities & counties the authority to enact local setback regulations on selected rivers and streams. THE MONTANA LEGISLATURE SAID NO !!! The result of the failure of SB345 is that the county has no statutory authority, either specific or implied, to enact these draconian setback requirements and the "TAKING OF PRIVATE PROPERTY WITHOUT COMPENSATION", that it represents. THE COUNTY COMMISSION'S PROPOSAL IS AGAINST THE LAW, but that is not stopping them!

PROPERTY OWNERS: ITS YOUR PROPERTY!

**ATTEND THE FLATHEAD COUNTY PLANNING BOARD MEETING
AND DEFEND YOUR PROPERTY RIGHTS!!!**

SAY NO TO THE COUNTY LAND GRAB

**WHERE: FLATHEAD COUNTY FAIRGROUNDS
WHEN: THURSDAY, OCTOBER 18 • 6 PM**

Paid For By:
American Dream Montana
P.O. Box 8061
Kalispell, MT. 59904



Newspaper Article on One of Several Pro-Stream Forums, Daily Inter Lake,
February 11, 2008



Setbacks lauded as low-cost protection

By MICHAEL RICHESON The Daily Inter Lake

February 11, 2008

Mark Twain, as always, said it best: "Whiskey's for drinking; water's for fighting."

Flathead County's proposed subdivision regulations regarding stream setbacks have plenty of people in a fighting mood, but land-use specialists maintain setbacks are a vital and low-cost approach to maintaining valuable riparian areas.

"As they are stated, they are illegal," said Russ Crowder, chairman of American Dream Montana. "If they are adopted in practically any form I've heard proposed, we will be filing a lawsuit."

Crowder said that peer-reviewed scientific studies are required to enact the setbacks based on his reading of state law, which says that if local regulations are more stringent than state regulations or guidelines "the written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion."

"The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement," the law states. "Of course they aren't going to follow the law," Crowder said.

At a meeting on Thursday night hosted by the Flathead Basin Commission, Stephanie Kruer, a nationally known attorney who specializes in land-use law, said that Flathead County's setback regulations would survive a legal challenge, especially if the lawsuit charged a taking of private-property rights.

"A taking is not where you wanted to build a two-story house, and now you can only build a one-story house," Kruer said. "A taking is a total deprivation of all economic use. There will be a lot of rhetoric with people saying setbacks are an illegal act of government, but takings claims just aren't applicable in this case." The proposed regulations, which only will affect new subdivisions, call for different setback and vegetative buffer distances depending on the water source.

For the Flathead River and its three forks, Stillwater River, Swan River and Whitefish River, the setback is 250 feet with a buffer of 100 feet. On Ashley Creek from Smith Lake to the Flathead River and the Pleasant Valley Fisher River, the setback is 200 feet with a 75-foot buffer. All other streams identified on the latest U.S. Geological Survey maps will have a setback of 60 feet with a buffer of 50 feet.

SETBACKS deal with how close a structure can be built to the river, and the vegetative buffer keeps people from placing their lawn up to the river banks. The loss of woody vegetation allows the river or stream to speed up, which increases the water's ability to do damage to property downstream.

Paul Hansen, a former University of Montana professor, called setbacks a vital and low-cost approach to maintaining valuable riparian areas. Hansen, who spoke during the presentation, offered some startling statistics about the costs associated with cleaning up spoiled water sources. A 6,000-acre wildlife refuge in California recently looked at how it could restore ruined riparian areas upstream, and the price tag came to more than \$6 billion.

"We can't afford to do that," Hansen said. "We can't continue to spend huge amounts of money to solve problems we have created. It costs 10 cents on the dollar to be proactive than to fix problems on the other end."

According to Hansen, Montana is in a unique position because the state still has about 73 percent of its wetlands left compared to California, where just nine percent remain. By enacting setbacks, vegetative buffers and keeping development out of flood plains, Hansen said communities can reduce flood damage and increase property values.

"Think of a river and its flood plain as one unit," he said. "It's called flood plain and not a drought plain for a reason. Building in a flood plain is like setting up your tent on the highway just because there are no cars coming at that particular moment and then being surprised when you get run over."

Kruer and Hansen both contend that the science is available to show that setbacks work. Other areas such as Beaverhead County have successfully enacted setbacks. Madison County requires 500-foot setbacks along the Madison River and 250-foot setbacks along other rivers.

"No one has to lose," Hansen said. "It's a win-win for everybody."

Reporter Michael Richeso may be reached at 758-4459 or by E-mail at mrcheson@dailyinterlake.com

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NEWS > LOCAL MONTANA

Setback hearing draws 65

[Print Page](#)

Published: Saturday, November 1, 2008 8:18 AM CDT

Proposed rules now in hands of commissioners

By JOHN STANG/Daily Inter Lake

The majority of speakers supported proposed stream setbacks for new Flathead County subdivisions at a Thursday hearing.

It was the second of two hearings on streamside setbacks. The proposed regulations do not apply to existing property as long as it is not subdivided.

The commissioners plan to discuss the proposed subdivision regulations on Nov. 10, with an actual vote yet to be scheduled.

At the latest hearing, roughly 48 of the 65 people in attendance testified. Thirty backed the proposed setbacks or wanted them tougher.

They included Democratic county commissioner candidate Steve Qunell.

"You're on the right track, making sure all of us are protected," Qunell told the commissioners.

Fourteen people opposed the proposed regulations, including Sen. Verdell Jackson, R-Kalispell.

Jackson said the state Legislature voted against streamside setbacks in its last session and likely will vote against them in the upcoming session, unless scientific evidence surfaces that shows they are effective in protecting water quality.

"I have seen no evidence that this [current water] pollution is human-caused," Jackson said.

And four speakers did not give a clear indication of where they stood.

"The county has a legitimate interest in protecting that riparian area," said Richard Kuhl of Kalispell.

However, Corinne Johnson of Bigfork told the commissioners: "I feel my right to divide my property and remove vegetation should be my own. ... I feel my property becomes yours and I just live there."

After scrutinizing numerous studies and receiving public input, the county planning staff and board tried to achieve middle ground in the setbacks recommended by various scientists.

Proposed setback widths will be measured from the high-water mark to the edge of the 100-year flood plain as shown on a Federal Emergency Management Agency map or:

- The Flathead River and its three forks, Stillwater River, Whitefish River and Swan River, would have 250-foot setbacks with 100-foot vegetative buffers.

- Ashley Creek (from Smith Lake to the Flathead River) and the Fisher River would have 200-foot setbacks with 75-foot vegetative buffers.
- All other streams would have 60-foot setbacks with 50-foot vegetative buffers. Eight people on Thursday wanted to increase that distance to 100 feet.

Because of public complaints about a "one size fits all" policy, the county is proposing a riparian management plan that would allow a developer to request some flexibility with setback requirements.

At the first hearing on Oct. 23, 15 people opposed the proposed setbacks, including at least six who spoke again on Thursday. And 10 people supported them, including at least one who spoke again on Thursday.

Organizations opposing the proposed setbacks include American Dream Montana, the Montana Environmental Consultants Association, the Flathead Building Association, Flathead Business and Industry Association and the Northwest Montana Association of Realtors.

Supporters included the University of Montana's Flathead Lake Biological Station, the U.S. Fish and Wildlife Service, Montana Department of Fish, Wildlife and Parks, the Montana Backcountry Hunters and Anglers, Flathead Wildlife Inc., Flathead Ducks Unlimited, Flathead Trout Unlimited, the Flathead chapter of the Audubon Society, Montana Conservation Voters, Flathead Lakers, Flathead Basin Commission and Citizens for a Better Flathead.

In fact, the biological station believes great setbacks are needed.

In a letter to the commissioners, the station also contended that setbacks would help cut back on nutrient concentrations in the Flathead's rivers and lakes. In a few years, the federal government will limit nutrient concentrations in stream and lakes, which will require expensive improvements on sewage treatment plants.

Supporters' main points included:

- Huge numbers of studies back the proposed setbacks.
- The water quality in streams needs strong protection for ecological, quality-of-life and tourism reasons.
- The commissioners legally can install stricter setbacks than the state has.
- The proposed revisions include some flexibility for case-by case approaches.
- Wildlife tends to move along streams, and the buffers are needed to help that movement.

"Everyone in the room respects property rights. ... In Montana, rivers belong to everybody. Wildlife belongs to everybody. Water quality belongs to everybody," Kalispell resident Ben Long said.

Ben Cavin of Whitefish said: "Once water quality becomes degraded, it too late to recover what is lost."

The opponent's main points included:

- A strongly felt view that the setbacks would take away control of their own lands, and essentially would turn those plots into government-controlled preserves.
- Lawsuits likely will be filed if the current proposed setbacks are adopted.

- Feelings that the regulations would be a "one-size-fits-all" law, when subdivided streamside lands should be addressed on a case-by-case basis.
- Complaints that the proposed county setbacks are greater and stricter than corresponding state laws.
- Contentions that the science behind the proposed setbacks should be re-examined.

"I find it a blatant abuse of our constitution," Richard Stevens said.

William Myers Jr. has waterfront development plans in Bigfork, and argued that the proposed setbacks would deny him use of his land.

"That's the uncompensated taking of property. That's the definition of communism. ..If you want to take it, bring a check," he said.

Reporter John Stang may be reached at 758-4429 or by e-mail at jstang@dailyinterlake.com

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FLATHEAD COUNTY DEVELOPMENT CODE

SUBDIVISION REGULATIONS

ADOPTED JULY 12, 2007
RESOLUTION NO. 2077

EFFECTIVE AUGUST 1, 2007

ON FILE PERMANENT FILE NO. 200700021530
RECORDS OF FLATHEAD COUNTY, MONTANA
AND AS AMENDED

REVISED: 12/8/2008
EFFECTIVE: 1/15/2009
(Res. 2077A)

Prepared by:



Flathead County Planning & Zoning Office
Earl Bennett Building
1035 First Avenue West
Kalispell, MT 59901
406.751.8200

circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil condition. (40 CFR Part 230.41(a)(1)). Wetlands are determined based on the following:

- a. The duration the area is inundated or saturated by surface or ground water and under normal circumstances support a prevalence of vegetation typically adapted for life in saturated soil condition;
- b. If vegetation is absent, soils or hydrology that indicate wetland areas.

4.7.12 Stream Riparian Protection Requirements

The maintenance and integrity of natural river systems is crucial to the quality and quantity of the water resources in Flathead County. The Commission shall require a system of streamside vegetative buffers and management plans for the protection and maintenance of the stream corridor and to protect public safety and welfare in the Riparian Protection Zone. This system is needed to maintain and create conditions for enhanced water quality; wildlife corridors, watershed management, and enhance recreational opportunities along stream systems while protecting persons and property. The area of riparian resource may be available, if developable, to the subdivision proposal for purposes of determining density allocations or number of lots and to satisfy parks and open space requirements. Riparian protection requirements are not intended to provide public access or easements of any kind and shall not do so unless expressly authorized by the subdivider.

- a. The vegetative buffer shall be clearly delineated on the preliminary plat and on the final plat and designated as the Riparian Protection Zone. There is to be no removal of natural vegetation in the Riparian Protection Zone except as permitted under these Regulations and using best management practices;
- b. If the proposed subdivision contains a natural water course of perceptible extent that has a generally sandy or rocky bottom or definite banks that confines and conducts continuously or intermittently flowing water a Riparian Resource Management Plan shall be submitted with the subdivision proposal. Approval of the plan by the Commission is required as a condition of subdivision approval. The plan shall demonstrate that the proposed subdivision will not involve unnecessary environmental degradation and will include but not be limited to:
 - i. A site map showing the following:
 - A. Location of vegetation types and any and all riparian resource areas and associated 100-Year floodplain;
 - B. Vegetative Buffer areas;
 - C. Drainage, slope and topography.
 - ii. A description of the following:
 - A. Abundance of vegetation types;

- B. Contribution of the vegetative type in preventing erosion;
 - C. Contribution of the type to fish and wildlife habitat, including big game species, upland game bird species, non-game bird species, fisheries, and threatened or endangered species;
 - D. The boundary and area identified as the Riparian Protection Zone based on the analysis of site.
 - iii. A mitigation plan outlining how the Riparian Protection Zone will be restored maintained or enhanced. The plan shall include, at a minimum, the following:
 - A. Proposed disturbance of resources within the Riparian Protection Zone;
 - B. Alteration, enhancement and restoration plans;
 - C. Planting plan;
 - D. Stream bank stabilization plan;
 - E. Discussion of proposed land uses their intensities and potential effects on riparian resources.
 - iv. A maintenance and monitoring plan outlining how the Riparian Protection Zone will be cared for after occupancy.
- c. The following uses are allowed in a Riparian Protection Zone and exempt from these Regulations, provided, if regulated, these uses are permitted under applicable local, state and/or federal regulations:
 - i. Recreational structures such as docks, boat ramps, pathways or unimproved picnic areas. Pedestrian and bike trails may be allowed but not within the vegetated buffer areas;
 - ii. Revegetation and/or reforestation to stabilize flood prone areas;
 - iii. Stream bank stabilization/erosion control measures and stream restoration projects that have obtained any required permits. Riprap, rock vanes, weirs, and other bank stabilization structures are allowed if permitted under the County floodplain ordinance, the Montana Natural Land and Streambed Preservation Act, and other applicable laws;
 - iv. Limited crossings of designated streams through the Riparian Protection Zone by highways, roads, driveways, sewer and water lines, and public utility lines;

- v. Reconstruction, replacement or repair of an on-site septic system provided the new improvements are no closer to the ordinary high water mark of the stream;
 - vi. Agricultural and forest management uses not in conflict with the vegetative buffer area, including facilities not requiring electricity;
 - vi. Hydro-electric facilities licensed by the Federal Energy Regulatory Commission;
 - vii. Grassy swales, roadside ditches, drainage ditches created to convey storm water, tile drainage systems and stream culverts are exempt from the Riparian Protection Zone requirements.
 - viii. Agricultural and forest management uses not in conflict with and that will ensure the function of the Riparian Protection Zone and in compliance with all pertinent state rules, regulations, and best management practices that govern such activities.
- d. The following uses are specifically prohibited within the Riparian Protection Zone and must be clearly shown on the face of the plat:
 - i. Construction and new structures. There shall be no structures of any kind, including residential buildings, outbuildings, sewage disposal systems, sewer pipes, rock or earthen fill, recreational camping vehicles, mobile homes, other buildings, or accessory structures, except as permitted under these Regulations.
 - ii. Roads, driveways, and impervious services. There shall be no roads, driveways, or impervious services, such as parking lots, except as permitted under this Section;
- e. No proposed road shall be approved for construction if located in the Riparian Protection Zone unless there is no other possible route to access the subdivision:
 - i. The side casting of road material into a stream, lake, wetland, or other body of water during road construction or maintenance is prohibited. The following additional standards shall apply to roads in these areas:
 - A. Effective erosion and sedimentation control practices shall be conducted during all clearing, construction or reconstruction operations;
 - B. Road fill material shall not be deposited in the areas of riparian resource or in such a location or manner to that adverse impacts will result to the area;
 - C. All crossings of streams, lakes, wetlands or other water bodies must occur at a perpendicular angle and in such a manner as to mitigate disturbance of the Riparian Protection Zone.

- ii. The following guidelines for placement and construction of roads shall be considered in the Riparian Protection Zone but may be waived with the consent of the Commission:
 - A. In the event it is necessary to route a road through the Riparian Protection Zone, then open areas should be utilized in order to minimize impact on vegetated areas;
 - B. Roads should not be constructed in areas where soils have a high susceptibility to erosion which would create sedimentation and pollution problems during and after construction;
 - C. Roads should not intrude into areas adjacent to open exposures of water and should avoid scenic intrusion by building below ridge crests and high points.
- f. The Commission may grant a Riparian Protection Variance to this Section as part of the subdivision process if the subdivider can demonstrate that an unnecessary hardship would result of circumstances unique to the parcel, including but not limited to size, shape, topography or location:
 - i. A Riparian Protection Variance request must include information necessary to evaluate the variance request, including plans, maps, specifications, topography and floodplain boundaries;
 - ii. The Riparian Protection Variance must be supported by a finding that:
 - A. The hardship is not created through the actions of the subdivider;
 - B. The Riparian Protection Variance is not likely to:
 - 1. Adversely impact water quality;
 - 2. Increase stream bank erosion;
 - 3. Increase flood heights or the velocity of flood water;
 - 4. Impair the function of the riparian area;
 - C. The Riparian Protection Variance is as small as reasonably possible to accommodate the proposed use while preserving the intent of the stream riparian protection provisions.
 - iii. The conditions of each Riparian Protection Variance request will be considered unique and not applicable to adjoining or other properties.