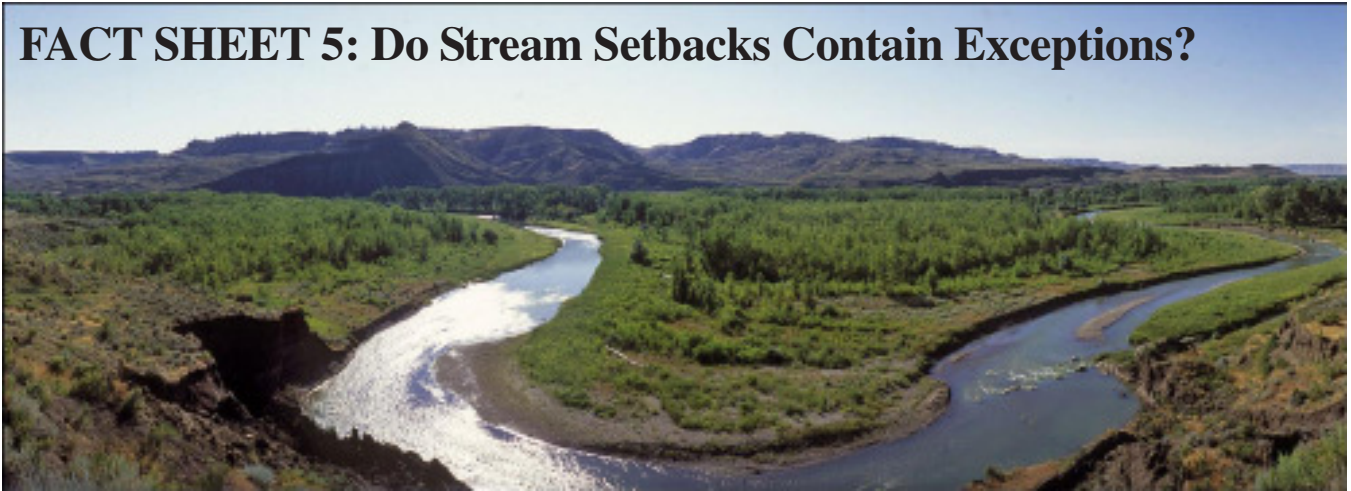


## FACT SHEET 5: Do Stream Setbacks Contain Exceptions?



This fact sheet explains how local governments manage the following issues: what happens when an existing lot does not contain any acceptable building sites; why do regulations apply to high bluffs located high above the floodplain; and how are existing structures generally treated in setback regulations?

### **5.1. What if setback requirements eliminate all the good building sites on my property?**

As with any regulation, there will always be individual cases that are unique and require special consideration. Stream setback regulations—like other local government regulations guiding development—always provide for a variance procedure to help landowners who doesn't have any good building options on a property.<sup>5</sup>

### **5.2. What if my lot isn't deep enough to allow for a setback and a building site?**

Typically a variance process is used to review and evaluate site-specific situations and arrive at an acceptable compromise that supports the intent of the regulation while protecting the property owner's right to reasonable use of the land.<sup>6</sup>

### **5.3. How are existing structures affected by setback regulations?**

Pre-existing buildings or structures are generally not impacted by stream setback regulations. Additionally, regulations generally allow existing buildings or structures to rebuild or expanded as long as the new construction does not encroach further toward the river or stream. Additionally, if an existing structure is somehow destroyed or damaged by any event other than a flood, it usually can be repaired or replaced. One exception to these statements may result from national flood insurance, which may have requirements and limitation regarding rebuilding in flood prone areas.<sup>5</sup>

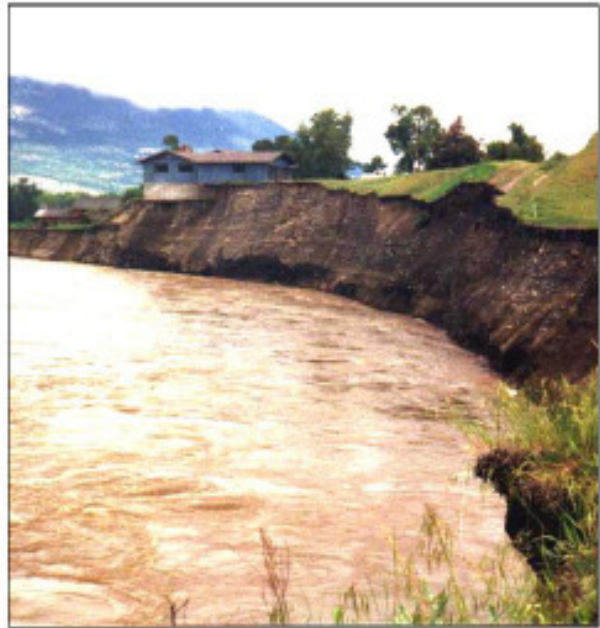
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<sup>5</sup> Adapted from Ravalli County Streamside Setback Committee: *Frequently Asked Questions on Draft Interim Streamside Setback Zoning Regulations*, Approved 1/15/08

<sup>6</sup> Adapted from Madison County *Streamside Protection: Frequently Asked Questions*, Update August 27, 2008

#### **5.4. Does the stability or height of a stream bank affect the setback? Why?**

From a flooding perspective, a structure on a high streambank may be secure. However, these structures can be placed in danger from the erosive processes that accompany floods and channel migration (*see Figure 1*). In areas where streams are known to meander, setbacks should incorporate floodplains, as well as non-floodplain areas overlooking the stream—because problems arise when homes are built perched above a stream or river: as stream channels naturally move, the bank is undercut, and homes can become vulnerable to falling into the water. Certainly there are instances where a structure is on top of a rocky point and the home is safe from stream processes. Regulations are too general to address these limited situations, which is why the variance process is available.



**Figure 1. This home on the Yellowstone River in Park County did not need a floodplain permit. The house is shown after the 1996-97 100-year floods. Many Montana's streams located in valley bottoms meander. A flood can shift the main stem of these streams hundreds of feet. DNRC photo library.**