

INTERIM STREAMSIDE SETBACK ZONING REGULATIONS

Dated: 11/23/07

Version 8

Page: 1 of 9

COUNTY OF RAVALLI, MONTANA
BOARD OF COUNTY COMMISSIONERS RESOLUTION
RESOLUTION _____

AN INTERIM ZONING RESOLUTION LIMITING CONSTRUCTION AND OTHER ACTIVITIES
ADJACENT TO STREAMS AND RIVERS IN RAVALLI COUNTY

WHEREAS, the Ravalli County Growth Policy adopted originally in 2002 and most recently amended in 2004 provides the following guidance regarding protection of streams and rivers and associated habitat:

COUNTYWIDE GOAL 2: PROTECT WATER QUALITY AND SUPPLY

- Countywide Policy 2.1: Encourage the collection and provision of information about the status of groundwater and surface water quality and supply.
- Countywide Policy 2.3: Encourage the protection of water quantity and quality, including the mitigation of adverse cumulative impacts.

COUNTYWIDE GOAL 5: PROTECT AND ENHANCE NATURAL RESOURCES & PUBLIC
OPEN SPACE

- Countywide Policy 5.1: While recognizing the private property rights of landowners, conserve and enhance the quality and quantity of wildlife, fisheries, forest and other natural resources in the Bitterroot Valley.
- Countywide Policy 5.3: Use planning tools to ensure consideration is given to natural resources
- Countywide Policy 5.4: Protect the Bitterroot River, its naturally flowing, perennial tributary streams and riparian areas as valuable resources for their agricultural water, scenic beauty, recreational opportunities, fisheries, and wildlife habitat.

WHEREAS, Montana Code Annotated Section 76-2-201 et seq, authorizes the Board of County Commissioners to enact zoning regulations and to provide for their administration and enforcement and amendment; and

WHEREAS, the County Commissioners deem it necessary for the purpose of promoting the health, safety, and the general welfare of the County to enact zoning regulations; and

WHEREAS, the County Commissioners have voted to establish streamside setback zones along streams in order to protect the health, safety and welfare of its citizens, to preserve important fish and wildlife habitat, and to preserve water quality.,

WHEREAS, the County Commissioners have directed the Streamside Setback Committee to commence procedures for the adoption of Permanent Streamside Setback Zoning Regulations, but that these permanent regulations may not be in place for at least one year, and

WHEREAS, the County Commissioners and County Planning Department have learned that construction in close proximity to streams and rivers has occurred and that such construction and related activities are accelerating in anticipation of the adoption of Streamside Setback Zoning Regulations; and

WHEREAS, such construction and associated activities is occurring in zones subject to flooding thereby endangering life and property and which may result in degradation and irreversible impairment of fish and wildlife habitat, water quality, and recreational activities which will be protected under Streamside Setback Zoning Regulations, and

INTERIM STREAMSIDE SETBACK ZONING REGULATIONS

Dated: 11/23/07

Version 8

Page: 2 of 9

WHEREAS, Montana Code Annotated Section 76-2-206 authorizes the County to enact interim zoning regulations as an emergency measure in order to promote the public health, safety, morals and general welfare, it is the purpose of the interim zoning regulation is to classify and regulate those uses and related matters that constitute the emergency, and the County is in the process of enacting permanent zoning regulations, and

WHEREAS, the ongoing construction and other activities in close proximity to County streams is imminent, permanent, irreversible and harmful and thereby deemed to constitute an emergency; and

WHEREAS, the County Commissioners find it urgent, necessary and appropriate to adopt interim Streamside Setback Zoning Regulations in order to achieve the following objectives until such time as the situation has been thoroughly studied and appropriate permanent zoning regulations adopted:

- Protect life and property from flooding
- Protect property due to stream migration and erosion
- Protect water quality
- Protect important groundwater recharge areas
- Protect fish habitat and spawning areas
- Protect important wildlife habitat
- Protect recreational opportunities
- Protect real personal property rights of landowners

WHEREAS, all requirements of Chapter 76 part, MCA, which regard the preparation of interim zoning resolutions have been met, and

WHEREAS, public meetings were held by the County Commissioners, on September ____ and October ____, to consider the emergency situation and notify the public of the potential for adopting interim regulations to regulate construction and activities along streams in the County, and

WHEREAS, a notice of public hearing was advertised in the Ravalli Republic newspaper on _____ and _____, for a resolution to enact the interim zoning to regulate construction and activities adjacent to County streams and rivers, and

WHEREAS, a hearing was held by the County Commissioners on _____ in order to give the public an opportunity to be heard regarding the proposed interim Streamside Setback Regulations.

NOW, THEREFORE, BE IT RESOLVED, that after consideration through the public process, as summarized above, Ravalli County hereby adopts this Interim Streamside Setback Zoning Regulation concerning construction and other activities adjacent to streams because said construction and activities are considered irreversible and thereby deemed by the Board of County Commissioners to constitute an emergency. Pursuant to Montana Code Annotated, Section 76-2-206, this Zoning Resolution shall be effective for one year from today's date, unless extended for a period not to exceed one (1) year by action of the Ravalli County Board of County Commissioners.

Signatures of Co. Commissioners

Attest by the Clerk and Recorder

**RAVALLI COUNTY STREAMSIDE
PROTECTION SETBACK INTERIM ZONING**

SECTION 1. TITLE

These regulations shall be known and shall be cited as the Ravalli County Interim Streamside Zoning Regulation Concerning Construction and other activities near streams and rivers

SECTION 2. AUTHORITY

These regulations are adapted pursuant to Sections 76-2-201 through 76-2-228, MCA, and are adopted as Interim Zoning Regulations pursuant to Section 76-2-206 MCA, in response to the emergency existing in Ravalli County as defined in resolution number xxxx.

SECTION 3. PURPOSE

The purpose of this Interim Streamside Setback Zoning Regulation is to manage the construction of permanent structures and certain other activities on land adjacent to streams and rivers in Ravalli County while Ravalli County completes development of a permanent Streamside Setback Zoning Regulation.

SECTION 4. INTENT AND SCOPE

The intent of this Interim Setback Zoning Regulation is to prevent permanent, irreversible consequences to public health and safety, water quality, stream stability, flood flow heights, and fish and wildlife habitat resulting from construction of new permanent structures and certain other activities on land adjacent to streams and rivers in Ravalli County. All structures located within the setback, and existing on the effective date of this Regulation are exempt from the provisions contained herein. All activities normally associated with agriculture, diversion and transport of irrigation water, recreation, and normal home site activities are exempt from the provisions of this Regulation.

SECTION 5. JURISDICTION

These regulations shall apply to all unincorporated areas in Ravalli County, Montana. These regulations do not apply to Federal and State lands located within the County.

SECTION 6. DEFINITIONS

Agricultural Uses: Grazing and cropping to produce food, feed and fiber commodities, including the use of all equipment normally used for such purposes, including motorized equipment. Fencing to control livestock is considered an agricultural use.

Impervious Surfaces: Any paved, hardened or structural surface, which does not allow for infiltration of precipitation at a rate equal to the infiltration rate of surrounding, undisturbed areas.

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

Irreversible Damage

Damage resulting from construction, excavation, removal of vegetation and other activities within the setback that cannot be reasonably mitigated because of technical or financial considerations and therefore is considered permanent.

Natural Pond:

Any naturally occurring water body within a setback, not defined as a wetland. Water bodies created by excavation or by construction of dams or other water retention structures are not considered natural ponds.

INTERIM STREAMSIDE SETBACK ZONING REGULATIONS

Dated: 11/23/07

Version 8

Page: 4 of 9

100 Year Flood: A flood magnitude which has a one (1) percent chance of being equaled or exceeded in any given year, commonly referred to as a base flood

100 Year Floodplain: The area of land that would be inundated by water of a 100-year flood. The 100-year floodplain consists of a floodway and a flood fringe.

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.

Perennial Stream: A stream or reach of a natural stream that, under normal precipitation conditions, flows throughout the year. Streams dewatered during part of the year by irrigation or other withdrawals, but which would flow through the year without said withdrawals, are perennial streams.

Permanent Structure Any structure, including residential structures, barns, pavement, garages and outbuildings determined to have a useful life of 20 years or longer as defined by the Federal Tax Code depreciation schedule. All irrigation related structures are exempt from these regulations.

Process of Construction:

A residential structure is determined to be in the process of construction on the effective date of this Regulation if:

- 1, There is an existing foundation, wastewater treatment system and well in the ground on the effective date of this Regulation, or,
2. A valid drainfield permit has been secured that specifies the location of the wastewater treatment system and the house is not closer to the stream than the drainfield or the appropriate minimum setback distance, whichever is less.

Residential Structure

Any structure completed or in the process of construction (see definition above), intended for human occupancy. Mobile homes and modular homes are considered residential structures.

Riparian Area

Area adjacent to rivers and streams covered by these regulations containing and defined by plant communities contiguous to and affected by surface and subsurface hydrologic conditions associated with perennial or intermittent flowing and standing water bodies. It is further defined by the U.S. Fish and Wildlife Service publication "A System for Mapping Riparian Areas in the Western United States, 1998)

Setback: An area adjacent to a stream where certain uses and activities are prohibited or controlled. Setback distance shall be measured from the ordinary high water mark on each stream bank and shall extend an equal distance on each side of said stream.

Variance

Use or activity approved by the Ravalli County Board of Adjustments that specifically permits deviation from the streamside setback requirements and restrictions included in this Regulation.

Wetland

For the purpose of this Interim Zoning Regulation, wetlands are areas where the vegetation is primarily sedges, cattails, willows or similar plants, and the soil is saturated during most of the growing season. These wetland areas extend from the edge of the stream (ordinary high water mark) to a break in slope where the ground is distinctly drier.

INTERIM STREAMSIDE SETBACK ZONING REGULATIONS

Dated: 11/23/07

Version 8

Page: 5 of 9

SECTION 7. SETBACK REQUIREMENTS

Class 1 Stream: Shall be the main stem of the Bitterroot River extending Northward from the confluence of the West Fork and the East Fork of the Bitterroot to the Ravalli County line. Setback shall correspond to the regulatory 100-year floodplain as defined by FEMA but shall be, as a minimum, 200 feet on each side of the outermost stream channel as measured from the ordinary high water mark.

Class 2 Stream: Shall be the East Fork of the Bitterroot River and the West Fork of the Bitterroot River downstream of Painted Rocks Reservoir. Setback shall extend 150 feet on each side of the stream as measured from the ordinary high water mark.

Class 3 Stream: Shall consist of all streams in Ravalli County, except those streams included in Class 1 and Class 2, draining an area equal to or greater than 25 square miles. Setback shall be 100 feet on each side of the stream as measured from the ordinary high water mark. Class 3 Streams shall consist of the following streams as identified on United States Geologic Survey topographic maps:

The West Fork of the Bitterroot River upstream of Painted Rocks Reservoir and the following tributaries of the West Fork of the Bitterroot River:

- Boulder Creek
- Hughes Creek
- Nez Perce Creek
- Overwhich Creek
- Piquett Creek
- Trapper Creek

Tributaries of the East Fork of the Bitterroot River:

- Cameron Creek
- Camp Creek
- Tolan Creek
- Warm Springs Creek

Tributaries of the main reach of the Bitterroot River:

- Bass Creek
- Bear Creek
- Big Creek
- Blodgett Creek
- Burnt Fork Creek
- Chaffin Creek
- Eight Mile Creek
- Fred Burr Creek
- Gird Creek
- Kootenai Creek
- Lost Horse Creek
- Mill Creek
- Roaring Lion Creek
- Rock Creek
- Rye Creek
- Sawtooth Creek
- Skalkaho Creek
- Sleeping Child Creek
- Sweathouse Creek
- Sweeney Creek
- Three Mile Creek
- Tin Cup Creek
- Willow Creek

INTERIM STREAMSIDE SETBACK ZONING REGULATIONS

Dated: 11/23/07

Version 8

Page: 6 of 9

Class 4 Stream: Shall consist of all perennial streams, except those listed above as Class 1, 2 and 3 streams, located in Ravalli County. Setback shall be 75 feet on each side of the stream as measured from the ordinary high water mark.

Class 5 Stream

All intermittent streams not included in Class 1 through Class 4 above. Setback shall be 50 feet on each side of the stream as measured from the ordinary high water mark.

Wetlands and natural ponds

Wetlands or natural ponds that are unconnected from a setback are exempt from this regulation. If a wetland or natural pond exists within the stream setback, the setback must extend to at least 50 feet beyond the edge of the wetland or natural pond. In some cases this may require an overall stream setback greater than the distances required if there were no ponds or wetlands.

SECTION 8. PERMITTED USES AND ACTIVITIES WITHIN THE SETBACK

The following structures, uses and activities are permitted within the setback area as defined in Section 7. No use or activity permitted under these Regulations shall be interpreted as allowing trespass on private property.

Subdivisions:

All subdivisions for which designated setbacks, no build/alteration zones or building envelopes were approved by the Ravalli County Board of County Commissioners prior to the effective date of this Regulation are permitted. Subdivisions approved without designated setbacks, no build/alteration zones or building envelopes shall be subject to all conditions contained in this Regulation.

Existing Structures

All structures existing on the effective date of this Regulation are permitted, including residential structures and associated amenities, such as lawns, gardens, outbuildings and picnic areas. This shall include all structures normally associated with production of agricultural products, such as barns, and structures required for all other commercial enterprise existing on the effective date of this regulation. Roads, trails, bridges, head gates, culverts, utilities and other structures are permitted. Motor homes, tents, campers and other temporary structures are permitted. If lateral stream migration causes an existing structure to fall within the setback, the structure is exempt from these regulations.

Expansion and Replacement of Existing Structures

Reconstruction, repair or expansion of residential structures and other structures existing on the effective date of these Regulations are permitted. The footprint of the new construction may be no more than 50 % larger, up to a maximum of 1000 square feet larger, than the footprint of the original structure on the effective date of this Regulation. Expansion of existing structures shall be allowed one time during the period this Regulation is in effect unless a Variance is granted by the Ravalli County Board of Adjustments.

Existing Structure Maintenance and Repair

Normal maintenance and repair to an existing structure and associated landscaping is permitted.

Agricultural Uses

All agricultural uses and activities are permitted.

Commercial Timber Harvest

Commercial Timber Harvest is permitted under the conditions of the Montana Streamside Management Zone regulations.

INTERIM STREAMSIDE SETBACK ZONING REGULATIONS

Dated: 11/23/07

Version 8

Page: 7 of 9

Weed Control

Activities to control noxious weeds in accordance with guidelines of the Ravalli County Weed Management District are permitted. Herbicide may be used for control of noxious weeds when the herbicide is applied in strict accordance with the Product Label and the Management District's Rules.

Recreational Activities

All recreational activities such as fishing, hunting, hiking, picnicking, and similar uses are permitted.

Vegetation

Removal of vegetation reasonably required to protect personal property from the threat of wildfire or to remove a threat to public safety is permitted.

Streamside Construction and Maintenance:

All activities done under a valid 124 permit or 310 permit issued by the Bitterroot Conservation District is permitted.

Irrigation and Other Water Uses.

All activities undertaken to divert and deliver water under a valid water right, including vegetation control or removal within the ditch or canal easement, are permitted.

Roads and Stream Crossing

Construction and use of unpaved roads and of stream crossings required to access structures or property not otherwise reasonably accessible is permitted

SECTION 9. PROHIBITED USES AND ACTIVITIES WITHIN THE SETBACK

The following structures, uses and activities are prohibited within the setback area as defined in Section 7.

New Structures

Construction of permanent structures (see definition) including residential structures, commercial and industrial structures and outbuildings, roads, utilities and all other construction not specifically authorized under a valid 310 or 124 permit is prohibited. New roads associated with permitted stream crossings are permitted but must be designed to minimize impacts to the area within the setback.

Wastewater Treatment Systems

New septic tanks, drain fields, septic lines or other structures designed to treat or discharge sewage or other waste products are prohibited unless performed under a valid Permit issued by Ravalli County prior to the effective date of this Regulation.

Impervious structures

Construction of impervious structures such as parking lots, roads and equipment or materials storage areas is prohibited.

Removal of Vegetation

Vegetation within the setback shall not be disturbed or removed except as reasonably required by permitted uses and activities as set forth in Section 8. Conversion of native shrub to domestic lawns through repeated mowing or excavation and replacement with lawn grasses is prohibited. Planting of native vegetation is permitted. Vegetation removal within irrigation and other legal easements is exempt

SECTION 10. OTHER APPLICABLE REGULATIONS

Where this Regulation imposes a greater restriction upon uses and activities within setbacks than is imposed by other Federal, State or other Ravalli County Regulations including the Ravalli County Growth Policy, these Regulations shall apply. In cases where Federal, State or other County Regulations are more restrictive, the more restrictive Regulation shall apply

SECTION 11. VARIANCES

Property owners or their designated representative may seek variances from the requirements of this Regulation by written application to the Ravalli County Board of Adjustments. The Board may approve a variance only if positive or non applicable findings are made on each of the following criteria, based on substantial credible evidence.

- There exists no reasonable alternative location on the owner's property for new construction outside of the setback, and
- The variance will not adversely affect other private property, and
- Granting of the variance does not violate existing Federal, State or County Regulations, and
- Enforcement of these Regulations would result in unreasonable hardship to the Owner as determined by the Ravalli County Board of Adjustments based on all information submitted to the Board by the property owner or their representative and
- Granting of the Variance will not permanently and adversely affect the health, safety and/or welfare of the residents of Ravalli County.

SECTION 12. INTERIM STREAMSIDE SETBACK ZONING BOARD OF ADJUSTMENTS

The Ravalli County Board of County Commissioners shall provide for a Board of Adjustments, which will be responsible for review of Applications for Variance submitted in accordance with Section 11 of this Regulation.

SECTION 13. ENFORCEMENT

This regulation will be enforced by the staff and other authorized agents of Ravalli County. The set of base line 'previously existing conditions' will be decided by comparison with dated aerial photographs, or similar detailed pictures of on-site conditions, taken at a given site. Detailed site maps prepared by a licensed surveyor or professional engineer may be used in lieu of, or in addition to, aerial photos

SECTION 14. VIOLATIONS AND PENALTIES

Penalties for Prohibited Uses and Activities carried out within the streamside setback zone without compliance with the provisions of Section 11, VARIANCES, shall be:

- Removal of structures at the expense of the owner
- Repair of damage caused by construction and other activities defined in SECTION 9 at owner's expense
- Any construction of residences and other permanent structures, including but not limited to, excavation or site preparation for construction of said structures, within the setback zone without a valid drain field permit, where applicable, will be subject to fines of up to \$1000.00 per day of violation.
- A Misdemeanor Offense punishable by up to 6 months in the Ravalli County Jail and/or a fine of up to \$500. Each day that the Prohibited Uses and Activities occur constitutes a separate violation.

INTERIM STREAMSIDE SETBACK ZONING REGULATIONS

Dated: 11/23/07

Version 8

Page: 9 of 9

- Other penalties that are presently applicable or that may be defined and approved by authority of Federal, State or County Government during the term this Regulation is in effect.