

**APPENDIX H:
LOCAL STREAM CORRIDOR PROTECTIVE REGULATIONS AND
COVENANTS**

H-1 Missoula County Subdivision Design Standards

ARTICLE 3 - SUBDIVISION DESIGN STANDARDS

3-13 AREAS OF RIPARIAN RESOURCE:

(1) **PURPOSE:** The intent of this section is to ensure that no subdivision shall be approved which is determined by the governing body to be unsuitable by reason of flooding, erosion, inadequate drainage, or impact in areas of riparian resources or any other feature likely to be harmful to the health, safety and welfare of the future residents of the proposed subdivision and the residents of Missoula County. More specifically, it is the intent of these regulations to ensure the following:

(A) That areas of riparian resource remain available to support diverse and productive aquatic and terrestrial riparian systems and habitats and to protect water quality;

(B) That stream channels, banks and lakeshores are protected;

(C) That areas of riparian resource are preserved to act as an effective sediment filters which help to maintain water quality;

(D) That areas of riparian resource shall be protected to preserve large, woody debris that is eventually recruited into a stream to maintain riffles, pools and other elements of channel structure and further to provide shade to regulate stream temperature;

(E) That the area of riparian resource shall be preserved to promote floodplain stability;

(F) That the public interest in the quality and quantity of surface and ground waters shall be protected; and

(G) That standards for development of land in areas of riparian resource are site-specific, allowing for flexibility for development while maintaining the integrity of these areas.

(2) **DESIGNATION AS AREAS OF RIPARIAN RESOURCE:** Areas of riparian resource means a stream, lake, wetland or other body of water and land containing any of the habitat or community types listed in Appendix V and an adjacent area of varying width where development may have significant negative impacts on wildlife habitat or water quality and quantity, fish, or other aquatic resources.

(3) **MANAGEMENT PLAN:** In order to meet the purposes outlined in Section 3-13 (1), a management plan for areas of riparian resource must be submitted with the subdivision proposal. 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) Proposed access to or through the area;

(B) Proposed low-impact use of the area;

(C) Planned restoration of the area with native species;

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- (D) Planned mitigation of impacts from all proposed uses; and
- (E) Planned buffer to mitigate development adjacent to areas of riparian resources.

(4) SUBDIVISION PROHIBITION:

(A) Except as provided in Sections 5 and 6 below, no subdivision shall be approved which is determined to be wholly within areas of riparian resource. Subdivisions which encompass portions of areas of riparian resource shall provide for protection of the resource specific to the area, as outlined in the management plan and as approved by the governing body; and

(B) Subdivisions which encompass areas of riparian resource shall place development outside the areas of riparian resource. Except for road construction as provided for in (5) below, areas of "no improvements" of any kind shall be approved within the area of riparian resource, including fencing, except for those improvements which are outlined in the management plan and as approved by the governing body. 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 the parks and open space requirements.

(5) ROAD CONSTRUCTION IN AREAS OF RIPARIAN RESOURCE: No proposed road shall be approved for construction if located in an area of riparian resource unless the road is for the purpose of crossing an area of riparian resource in order to access a body of water or stream and is outlined in a management plan approved by the governing body. The following restrictions shall apply to all road construction.

(A) The intentional sidecasting 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:

- (i) Effective erosion and sedimentation control practices shall be conducted during all clearing, construction or reconstruction operations; and
- (ii) Road fill material shall not be deposited in the areas of riparian resource or in such a location or manner so that adverse impacts will result to the area.

(B) 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.

- (i) 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;

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(ii) 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; and

(iii) 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.

(6) **VARIANCE PROCEDURE:** The governing body may grant variances from the following requirements of this section if it determines that strict compliance will result in undue hardship and when compliance with the regulations is not essential to the public welfare.

(A) Designation of an area as a riparian resource;

(B) Restriction of the development, improvement or road construction in an area of riparian resource;

(C) Restrictions on the location or standards applied to the construction of roads; and

(D) The governing body shall apply the following criteria to the habitat and community types found in Appendix V, as well as those contained in Sections 3-130) and 6-1 in determining whether to grant a variance to this section:

(i) Abundance of the type;

(ii) The restoration potential of the site after disturbance and whether the type is threatened by or is the result of human disturbance;

(iii) The structural layers present in the type (short, medium or tall);

(iv) The stage of the type (early, mid or late);

(v) The contribution of the type to stream bank stabilization;

(vi) The susceptibility of the soil in the type to compaction;

(vii) The contribution of the type in offering protection from erosion;

(viii) The contribution of the type to big game habitat (forage, thermal, security cover) of the type;

(ix) The contribution of the type to upland game bird, waterfowl and small animal habitat (forage and cover);

(x) The contribution of the type to non-game bird habitat (forage, thermal and security cover and nesting, including neo-tropical migrant species);

(xi) The contribution of the type to fisheries, especially native species and species of special concern; and

(xii) The contribution of the type to wide-ranging species of limited distribution, particularly threatened or endangered species and species of special concern.

H-2 Lake County Floodplain Regulations

Lake County floodplain regulations include the following pertinent sections regarding protection of waterbodies:

IV-A-4. Floodplain Provisions

1. *Land located in the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA, or land deemed subject to flooding as determined by the governing body shall not be subdivided for building or residential purposes, or other uses that may increase or aggravate flood hazards to life, health, or property.*

2. *If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider must furnish survey data to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation. Survey data must comply with the Standards for Flood Hazard Evaluations as contained in Appendix F of these regulations. After the Floodplain Management Section of the Water Resources Division has prepared a report delineating the floodway, the subdivider must submit it to the subdivision administrator along with the Environmental Assessment required for the preliminary plat.*

3. *The governing body must waive this requirement where the subdivider contacts the Water Resources Division and that agency states in writing that available data indicated that the proposed subdivision is not in a flood hazard area.*

IV-A-21. Buffer Strips Along Waterways

The subdivider will define buffer strips along streams, rivers, or lakes by identifying buffer strip width and a plan for protection of vegetation within the buffer strip. The plan shall promote infiltration of run-off and wildlife habitat. The buffer strip plan will be included in the required information for review and be incorporated in the covenants for the proposed division.

H-3 Applicable Covenants for Land Sold by Plum Creek

Below is relevant covenant language for the PSA if the Property is within a Tier 1 Watershed or abuts a Key Migratory River.

Seller and Purchaser acknowledge and agree that Seller is subject to an “Incidental Take Permit” issued by the United States Fish and Wildlife Service (“USFWS”) pursuant to that certain Native Fish Habitat Conservation Plan dated _____, (the “NFHCP”), as such NFHCP may be updated and amended from time to time. Pursuant to the NFHCP, at such time as Seller conveys the Property, Seller is required to place restrictive deed covenants on a portion of the Property as follows:

1. *The portion of the Property which is affected by these restrictive covenants is described as an area [50] [100] [in the case of 100 feet, may be less if it reaches a flat bench of*

15% slope or less] feet wide, slope distance, as measured from the channel migration zone (“CMZ”), and shall be extended to include associated wetlands [located within the Property]. The CMZ is defined as [_____]. The area so described is hereinafter referred to as the “Restricted Zone.”

2. *Within the Restricted Zone, the following restrictions shall apply:*
 - a. *No buildings shall be constructed within the Restricted Zone.*
 - b. *No new roads shall be constructed within the Restricted Zone except where such construction is necessary to obtain access or to cross a stream or wetland. All new road construction shall be in compliance with forestry road Best Management Practices then in effect to minimize the delivery of sediment to streams.*
 - c. *No gravel pits shall be developed within the Restricted Zone.*
 - d. *The amount of impervious surface area (such as paving) shall not exceed ten percent (10%) of the total land area within the Restricted Zone.*
 - e. *No timber shall be harvested within the Restricted Zone. Shrubs and submerchantable trees must be protected and retained in the Restricted Zone to the extent practical.*
 - f. *Cultivated areas such as lawns, gardens and pastures shall not exceed twenty-five percent (25%) of the total area within the Restricted Zone. Lawns may not be created or maintained within the CMZ.*
 - g. *Broadcast burning within the Restricted Zone is prohibited.*
 - h. *The handling, storage, application, or disposal of hazardous or toxic materials within the Restricted Zone in a manner that pollutes streams, lakes or wetlands or that may cause damage or injury to humans, land, animals or plants is prohibited.*
 - i. *Any application of herbicides, pesticides, or fertilizers within the Restricted Zone must be done in a manner that such materials are not introduced into streams, lakes, wetlands, or other bodies of water through surface runoff or subsurface flow.*
 - j. *Development of private ponds for fish stocking is prohibited within the Restricted Zone.*
3. *In addition to the provisions set forth above to be applied within the Restricted Zone, any drain field for a septic system installed on the Property adjacent to the Restricted Zone shall be a minimum of 200 feet, slope distance, from a stream, and shall otherwise comply with all applicable sanitation standards; provided, however, that if an alternative can be developed and approved by the appropriate department of health or sanitation that is a lower-risk alternative for stream pollution, then the lower risk alternative may be used.*