

SENATE BILL NO. 173

INTRODUCED BY HAWKS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING WATERSIDE MANAGEMENT CORRIDORS;
5 PROVIDING MINIMUM SETBACK REQUIREMENTS FROM RIVERS AND STREAMS IN WATERSIDE
6 MANAGEMENT CORRIDORS; AUTHORIZING POLITICAL SUBDIVISIONS TO ADOPT REGULATIONS THAT
7 MAY EXCEED MINIMUM REQUIREMENTS; AUTHORIZING POLITICAL SUBDIVISIONS TO ISSUE
8 ~~VARIANCE PERMITS FOR NONCONFORMING USES~~ VARIANCES WITHIN WATERSIDE MANAGEMENT
9 CORRIDORS; AUTHORIZING POLITICAL SUBDIVISIONS TO COLLECT A FEE TO OFFSET COSTS OF
10 REVIEWING VARIANCE APPLICATIONS; AND PROVIDING CRITERIA FOR ~~PERMITS FOR~~
11 ~~NONCONFORMING USES; AND PROVIDING AN EFFECTIVE DATE~~ VARIANCES."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 NEW SECTION. **Section 1. Legislative findings and purpose.** (1) The legislature finds that a
16 waterside management corridor:

- 17 (a) protects people and private property by reducing property loss from erosion or flooding; AND
- 18 (b) promotes flood plain stability;
- 19 ~~———— (c) acts as an effective sediment filter to maintain water quality;~~
- 20 ~~———— (d) provides shade to regulate stream temperature;~~
- 21 ~~———— (e) supports diverse and productive aquatic and terrestrial riparian habitats;~~
- 22 ~~———— (f) protects stream and river channels and banks from erosion;~~
- 23 ~~———— (g) promotes the accumulation of woody debris that is eventually recruited into a stream or river to~~
24 ~~maintain riffles, pools, and other elements of channel structure.~~

25 (2) The legislature further finds that:

- 26 (A) WATERS FLOWING WITHIN MONTANA'S PERENNIAL RIVERS AND STREAMS BELONG TO ALL THE PEOPLE OF THE
27 STATE OF MONTANA, AS PROVIDED IN ARTICLE IX, SECTION 3, OF THE MONTANA CONSTITUTION;
- 28 (B) MONTANA'S NATURAL RIVERS AND STREAMS AND THE LANDS AND PROPERTY IMMEDIATELY ADJACENT TO THEM
29 ARE TO BE PROTECTED AND PRESERVED IN THEIR NATURAL OR EXISTING STATE, AS PROVIDED IN 75-7-102 OF THE
30 NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975;



1 (C) FISH AND WILDLIFE THAT RELY ON MONTANA'S RIVERS AND STREAMS FOR HABITAT LIKEWISE BELONG TO ALL
 2 THE PEOPLE OF THE STATE OF MONTANA;

3 (D) IMPACTS OF DEVELOPMENT ON MONTANA'S RIVERS AND STREAMS, INCLUDING INCREASED DOWNSTREAM
 4 EROSION AND DIMINISHED WATER QUALITY, ARE OFTEN MANIFESTED ACROSS LOCAL GOVERNMENT JURISDICTIONAL
 5 BOUNDARIES;

6 (E) THE STATE HAS A DUTY AND LEGITIMATE INTEREST IN PROTECTING THE INTEGRITY OF ITS RIVERS AND
 7 STREAMS ON BEHALF OF ALL ITS CITIZENS, NOT MERELY THOSE WHO LIVE IN THE LOCAL JURISDICTION WHERE A
 8 PARTICULAR REACH OF A RIVER OR STREAM MAY BE LOCATED;

9 ~~(a)~~(F) maintaining MAINTENANCE OF the integrity of streams and rivers is crucial to the quality and quantity
 10 of water available to Montanans for domestic, agricultural, industrial, and recreational use;

11 ~~(b)~~(G) streams and rivers are highly susceptible to impacts from land development ~~and in many cases;~~

12 (H) development practices in waterside management corridors in Montana IN MANY CASES are causing
 13 excessive and unnecessary damage to the banks, beds, and protective vegetation of the state's streams and
 14 rivers; and

15 ~~(e)~~(I) through careful management in the waterside management corridor, property owners and
 16 developers can achieve their goals without sacrificing water quality or impairing the beneficial uses of the water.

17 ~~(3)~~ The purposes of [sections 1 through 9] are to:

18 ~~—— (a) protect the quality and quantity of Montana's surface waters;~~

19 ~~—— (b) provide for reasonable requirements and oversight to ensure that development activities are~~
 20 ~~conducted in a manner that conserves the integrity of Montana's waterside management corridors, minimizing~~
 21 ~~the risk of flooding or erosion of downstream properties;~~

22 ~~—— (c) allow local political subdivisions flexibility to grant variances to the requirements of this chapter as~~
 23 ~~appropriate under site-specific conditions in a waterside management corridor to avoid undue hardship; and~~

24 ~~—— (d) provide local political subdivisions with minimum standards for waterside management corridors.~~
 25 ~~Local political subdivisions may adopt stricter regulations than those in this chapter.~~

26 ~~—— (4) The state recognizes its limited jurisdiction within the Indian reservations in Montana and~~
 27 ~~acknowledges and respects the government-to-government relationship between Montana and the tribes within~~
 28 ~~its borders. It is the legislature's intent that [sections 1 through 9] be implemented within current jurisdictional~~
 29 ~~limitations. The tribes are invited to enter into state-tribal cooperative agreements with Montana to provide for~~
 30 ~~broader implementation.~~

1
2 **NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 9], unless the context requires
3 otherwise, the following definitions apply:

4 (1) "Flood plain" has the meaning provided in 76-5-103.

5 (2) "Flood-prone area" means any flood plain delineated by the federal emergency management agency
6 or any area adopted by the local government as an area subject to flooding on the basis of objective information.

7 (3) "Ordinary high-water mark" has the meaning provided in 23-2-301.

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

10 (5) "Political subdivision" means any incorporated city or town, a consolidated government, or a county.

11 (6) "River" means ~~surface~~ PERENNIAL FLOWING CLASS I waters, other than lakes ~~and streams, that, AS~~
12 DEFINED IN 23-2-301.

13 ~~(a) lie within the officially recorded federal government survey meander lines;~~

14 ~~———— (b) flow over lands that have been judicially determined to be owned by the state by reason of~~
15 ~~application of the federal navigability test for state streambed ownership;~~

16 ~~———— (c) are or have been capable of supporting the commercial activities of log floating, transportation of~~
17 ~~furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the~~
18 ~~transportation of merchandise, as these activities have been defined by published judicial opinion as of [the~~
19 ~~effective date of this act]; or~~

20 ~~———— (d) are or have been capable of supporting commercial activity within the meaning of the federal~~
21 ~~navigability test for state streambed ownership.~~

22 (7) "Stream" ~~has the meaning provided in 77-5-302~~ MEANS PERENNIAL FLOWING CLASS II WATERS AS
23 DEFINED BY 23-2-301.

24 (8) "Waterside management corridor" means a stream or river and an adjacent area of varying width,
25 as provided in [section 3], where certain ~~activities and~~ uses, as provided in [section 4], have the potential to
26 significantly affect private property, wildlife habitat, water quality, fish, or other aquatic resources.

27
28 **NEW SECTION. Section 3. Requirements for waterside management corridors.** (4) A waterside
29 management corridor encompasses a strip:

30 ~~(a)~~(1) 30 yards wide on each side of a stream from the edge of the ordinary high-water mark or to the

1 edge of any delineated 100-year flood plain and adjacent wetlands, whichever is greater; or
 2 ~~(b)(2)~~ 100 yards wide on each side of a river from the edge of the ordinary high-water mark or to the
 3 edge of any delineated 100-year flood plain and adjacent wetlands, whichever is greater:
 4 ~~————(2) Parking lots, streets, trails, or other impervious surfaces must be quantified and excluded from the~~
 5 ~~total measurement of a waterside management corridor under subsection (1); OR~~
 6 (3) AN AREA ESTABLISHED THROUGH A LOCALLY ADOPTED ZONING DISTRICT PURSUANT TO [SECTION 9].

7
 8 NEW SECTION. Section 4. Uses and activities within waterside management corridor --
 9 **authorization.** (1) Except as provided in subsection (2) OR (3), the following uses and activities are prohibited
 10 in a waterside management corridor:

11 (a) any type of building, including a new residential, commercial, or industrial structure and an
 12 outbuilding such as a garage, ~~barn, shed,~~ or a shop;
 13 (b) a manufactured and prefabricated building;
 14 (c) septic tanks and septic tank drain fields;
 15 (d) an addition to an existing building of more than one-third the square footage of the existing structure;
 16 ~~————(e) the construction or significant rebuilding of a road, parking lot, or other impervious surface except~~
 17 ~~when necessary to cross a stream or river.~~

18 (2) The following uses ~~or activities~~ are authorized to occur within a waterside management corridor:

19 (a) ~~a nonconforming use consistent with [sections 7 and 8];~~
 20 ~~————(b) a use or activity existing on or before [the effective date of this act]; or~~
 21 ~~————(c) in the case of damage by any means except flooding, the rebuilding or remodeling of a building that~~
 22 ~~existed on or before [the effective date of this act] or the rebuilding or remodeling of a building consistent with~~
 23 ~~[sections 7 and 8];~~ LAWFUL USE OF LAND OR BUILDINGS THAT EXISTED ON OR BEFORE [THE EFFECTIVE DATE OF THIS ACT]
 24 EVEN IF THE USE DOES NOT CONFORM TO THE PROVISIONS OF [SECTIONS 1 THROUGH 9];

25 (B) ANY USE CONDUCTED ON PROPERTY SUBJECT TO A HYDROELECTRIC PROJECT LICENSE ISSUED BY THE
 26 FEDERAL ENERGY REGULATORY COMMISSION OR OTHERWISE LOCATED WITHIN THE LICENSED PROJECT BOUNDARY AS
 27 DETERMINED BY THE FEDERAL ENERGY REGULATORY COMMISSION;

28 (C) AGRICULTURAL USES; AND

29 (D) STRUCTURES AND EQUIPMENT USED TO COLLECT AND TRANSPORT WATER FROM A STREAM OR RIVER FOR
 30 AGRICULTURAL OR INDUSTRIAL USES, INCLUDING DIVERSION AND INTAKE STRUCTURES, PIPES, PUMPS AND PUMPHOUSES,

1 AND RELATED EQUIPMENT.

2 (3) THE PROVISIONS OF [SECTIONS 1 THROUGH 9] DO NOT APPLY TO INCORPORATED CITIES AND TOWNS OR
 3 ZONING DISTRICTS THAT HAVE RESIDENTIAL DENSITIES OF AT LEAST 1 UNIT PER ACRE AND ARE SERVED BY MUNICIPAL
 4 SEWER AND WATER SYSTEMS.

5 ~~(3)~~(4) If the waterside management corridor includes a slope of 25% or greater, any use authorized
 6 under subsection (2) must include designs to prevent soil erosion and control runoff and sediment.

7
 8 NEW SECTION. Section 5. Political subdivision authority. [Sections 1 through 9] do not prohibit a
 9 political subdivision from establishing standards or regulations that meet or exceed the requirements of [sections
 10 1 through 9].

11
 12 NEW SECTION. Section 6. Political subdivision administration -- certification application fee --
 13 enforcement. (1) A political subdivision shall ensure that the provisions of [sections 1 through 9] are being met
 14 by certifying that a use or activity conforms to the requirements of [sections 1 through 9].

15 (2) Before a use or activity prohibited under ~~[section 4]~~ AS PROVIDED IN [SECTION 4(1)] may be
 16 commenced within a waterside management corridor, a person shall apply to the responsible political
 17 subdivision for a certification that the ~~prohibited use or activity~~ USE conforms with the requirements of [sections
 18 1 through 9].

19 (3) An application for certification must be accompanied by a nonrefundable application fee established
 20 by the political subdivision to defray the costs of the application review. The fee must be deposited in the
 21 responsible political subdivision's general fund.

22 (4) ~~A~~ THE PROPER AUTHORITIES OF THE COUNTY, IN ADDITION TO OTHER REMEDIES, MAY INSTITUTE ANY
 23 APPROPRIATE ACTION OR PROCEEDING TO ENSURE THAT A person who commences a prohibited use or activity after
 24 [the effective date of this act] without certification by a political subdivision or a ~~nonconforming use permit~~
 25 VARIANCE shall restore the waterside management corridor to its original condition before the person disturbed
 26 it. THE GOVERNING BODY MAY APPOINT ENFORCING OFFICERS TO SUPERVISE AND ENFORCE THE PROVISIONS OF THIS
 27 PART.

28
 29 NEW SECTION. Section 7. Variance for nonconforming uses VARIANCES. (1) A political subdivision
 30 may issue ~~permits for nonconforming uses~~ A VARIANCE FOR A USE that would otherwise violate [section 4] if

1 enforcement of the requirements in [section 4 or 5] would result in unnecessary or undue hardship as measured
 2 by ONE OR MORE OF the criteria in [section 8]. The application for the permit VARIANCE must be submitted to the
 3 responsible political subdivision and contain sufficient information to allow the political subdivision to determine
 4 whether the requirements of this chapter are met, ~~including complete maps, plans, profiles, and specifications~~
 5 ~~of the proposed nonconforming activity or use.~~

6 (2) ~~Permits for nonconforming uses~~ VARIANCES must be specifically approved, approved with conditions,
 7 or denied by the responsible political subdivision. ~~An approved permit is valid for 2 years from the date of~~
 8 ~~approval.~~

9 (3) An application for a permit VARIANCE must be accompanied by a nonrefundable application fee as
 10 provided in [section 6].

11
 12 **NEW SECTION. Section 8. Criteria to be considered for permit for nonconforming use VARIANCE.**

13 (1) The responsible political subdivision may issue a ~~permit for a nonconforming use~~ VARIANCE pursuant to
 14 [section 7] if it finds that an undue hardship exists based on one or more of the following criteria:

15 ~~(a) the location is within an incorporated city or town where most properties are developed and parcels~~
 16 ~~are generally less than 1 acre in size;~~

17 ~~(b)(A) the geometry of a parcel in existence on or before [the effective date of this act] is such that~~
 18 ~~enforcement of the provisions of [section 4 or 5] would completely eliminate~~ UNREASONABLY RESTRICT a use of
 19 the parcel that was permissible prior to [the effective date of this act];

20 ~~(c)(B) the use is for a public recreation facility determined to be a critical need and for which alternative~~
 21 ~~site locations are limited; or~~

22 ~~(d)(C) the use is for utility or equipment installations or replacement of existing installations and the~~
 23 ~~installations or replacement does not involve significant disturbance to the waterside management corridor~~
 24 ~~during construction and operation and generates only incidental human activity.~~

25 (2) Before a ~~permit for a nonconforming use~~ VARIANCE is granted, the applicant shall provide sufficient
 26 evidence to establish that:

27 (a) the encroachment of the ~~nonconforming use~~ USE ALLOWED BY THE VARIANCE into the waterside
 28 management corridor is as small as REASONABLY possible and the purposes set forth in [section 1] will be
 29 attained to the greatest degree practicable;

30 (b) the ~~permitted nonconforming use~~ USE ALLOWED BY THE VARIANCE will not significantly reduce or

1 adversely impact water quality;

2 (c) the ~~permitted nonconforming use~~ USE ALLOWED BY THE VARIANCE will not cause increased stream or
3 river bank erosion; and

4 (d) the ~~permitted nonconforming use~~ USE ALLOWED BY THE VARIANCE will not be ~~detrimental~~ or injurious
5 to adjacent or downstream properties.

6 (3) The applicant of a ~~permit for a nonconforming use~~ FOR A VARIANCE has the burden of ~~presenting~~
7 ~~sufficient~~ ESTABLISHING A PREPONDERANCE OF evidence to establish that the criteria for granting a ~~permit~~ VARIANCE
8 provided in subsection (1) are met.

9 ~~(4) A temporary use may not be permitted for longer than 24 months. One-year extensions may be~~
10 ~~granted to applicants who owned the land on or before [the effective date of this act] and continue to~~
11 ~~demonstrate hardship. Applications for extensions must be submitted annually.~~

12

13 NEW SECTION. Section 9. Locally established waterside management corridors -- authorization.

14 (1) A political subdivision may create an alternative standard for the waterside management corridor if:

15 (a) flood-prone areas are identified so that no buildings, septic systems, or structures are built within
16 a flood-prone area; AND

17 ~~(b) a zoning district consistent with the provisions of [sections 1 through 9] is adopted along the entire~~
18 ~~length of the stream or river within the jurisdictional area of the political subdivision; and~~

19 ~~—— (c) the waterside management corridor is at least 15 yards from the ordinary high-water mark in~~
20 ~~locations within an incorporated city or town where most properties are developed, parcels are generally less~~
21 ~~than 1 acre in size, and stormwater systems are in place that prevent untreated runoff from reaching a stream~~
22 ~~or river.~~

23 (B) THE POLITICAL SUBDIVISION HAS ADOPTED A ZONING DISTRICT THAT INCLUDES STANDARDS FOR SETTING NEW
24 BUILDINGS AT LEAST 50 YARDS FROM THE ORDINARY HIGH-WATER MARK ON RIVERS AND 15 YARDS FROM THE ORDINARY
25 HIGH-WATER MARK ON STREAMS.

26 (2) The alternative standard for the waterside management corridor must prohibit removal of native
27 vegetation where it occurs within the waterside management corridor except for approved ~~activities~~ USES or
28 noxious weed control and must require that new landscaping in already disturbed areas consist of native
29 vegetation compatible with the riparian corridor.

30

