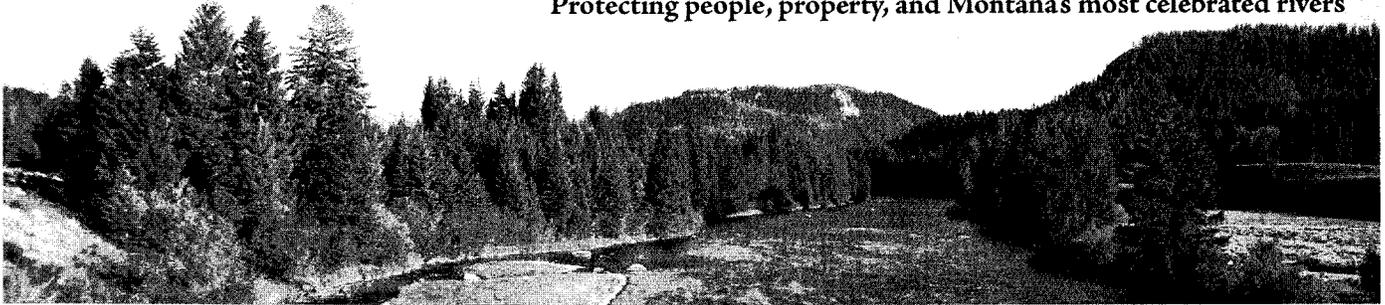


BIG SKY RIVERS ACT — House Bill 455

Protecting people, property, and Montana's most celebrated rivers



The Big Sky Rivers Act ensures that new buildings are set back a safe distance from the banks of 10 Big Sky rivers in order to protect people and property and the rivers' outstanding economic, biological and recreational values (see map and list of rivers on reverse side). The Act creates 250-foot wide "streamside management areas" on either side of designated rivers within which the construction of new homes and commercial buildings, or the installation of septic tanks and drainfields, is prohibited. It also limits the removal of riparian vegetation within 150 feet of designated rivers in order to minimize erosion and protect water quality.

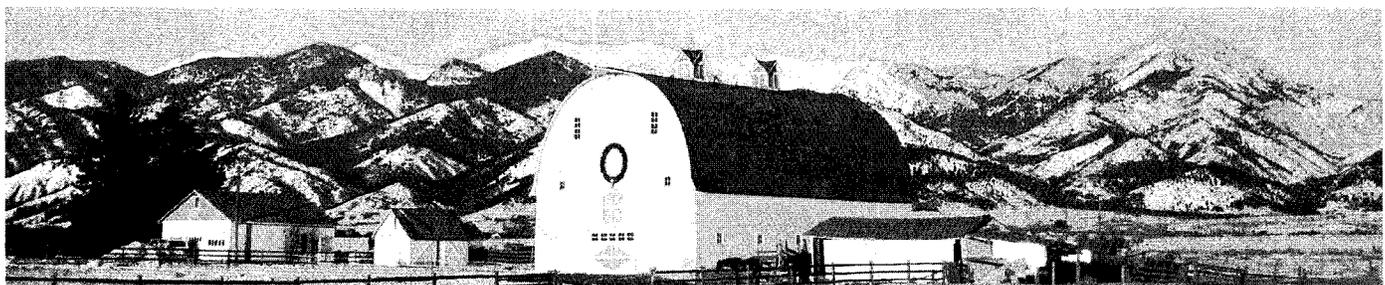
All but one of the Big Sky rivers cross county lines. Because unwise riverside development in upstream counties can have profound impacts on property in downstream counties, it is appropriate for the Montana Legislature to set up a consistent system of streamside protections on these large and important rivers.

WHAT THE BIG SKY RIVERS ACT DOES:

- It reduces costly flood and erosion damage by steering development away from known flood hazard areas;
- It protects private property rights by ensuring that actions of upstream landowners do not harm downstream landowners;
- It gives local governments control over the tools they need to manage their rivers;
- It prevents water pollution from stormwater runoff, lawn chemicals, and individual wastewater systems;
- It shields local governments from lawsuits brought by homeowners whose homes are damaged by flooding and erosion;
- It preserves critical fish and wildlife habitat;
- It ensures high-quality recreational opportunities for anglers and boaters who value scenery and solitude;
- It includes a variance process to make sure no one loses the ability to build on an existing lot, and a grandfather clause to ensure that existing homes are not impacted.

WHAT THE BIG SKY RIVERS ACT DOES NOT DO:

- It does NOT take away the authority of local governments to create their own streamside development standards;
- It does NOT deprive riverfront landowners of the opportunity to build on their lots if their entire lot is located within a streamside management area;
- It does NOT apply within incorporated cities, towns or sanitary sewer districts;
- It does NOT prohibit property owners from rebuilding their home if it is destroyed by causes other than flooding;
- It does NOT grant public access to private property;
- It does NOT affect agricultural-related buildings.



WHAT ABOUT THE ISSUE OF LOCAL CONTROL?

Section 9 of this bill provides local control options in two important ways:

- If local governments want to increase or decrease the size of the streamside management area on designated rivers, the legislation outlines a process for them to use. Local streamside management areas would replace the state streamside management areas in the bill.
- If local governments want to protect streams or rivers not named in the bill, the legislation outlines a process that local governments can use—at the local government level—to establish streamside management areas.

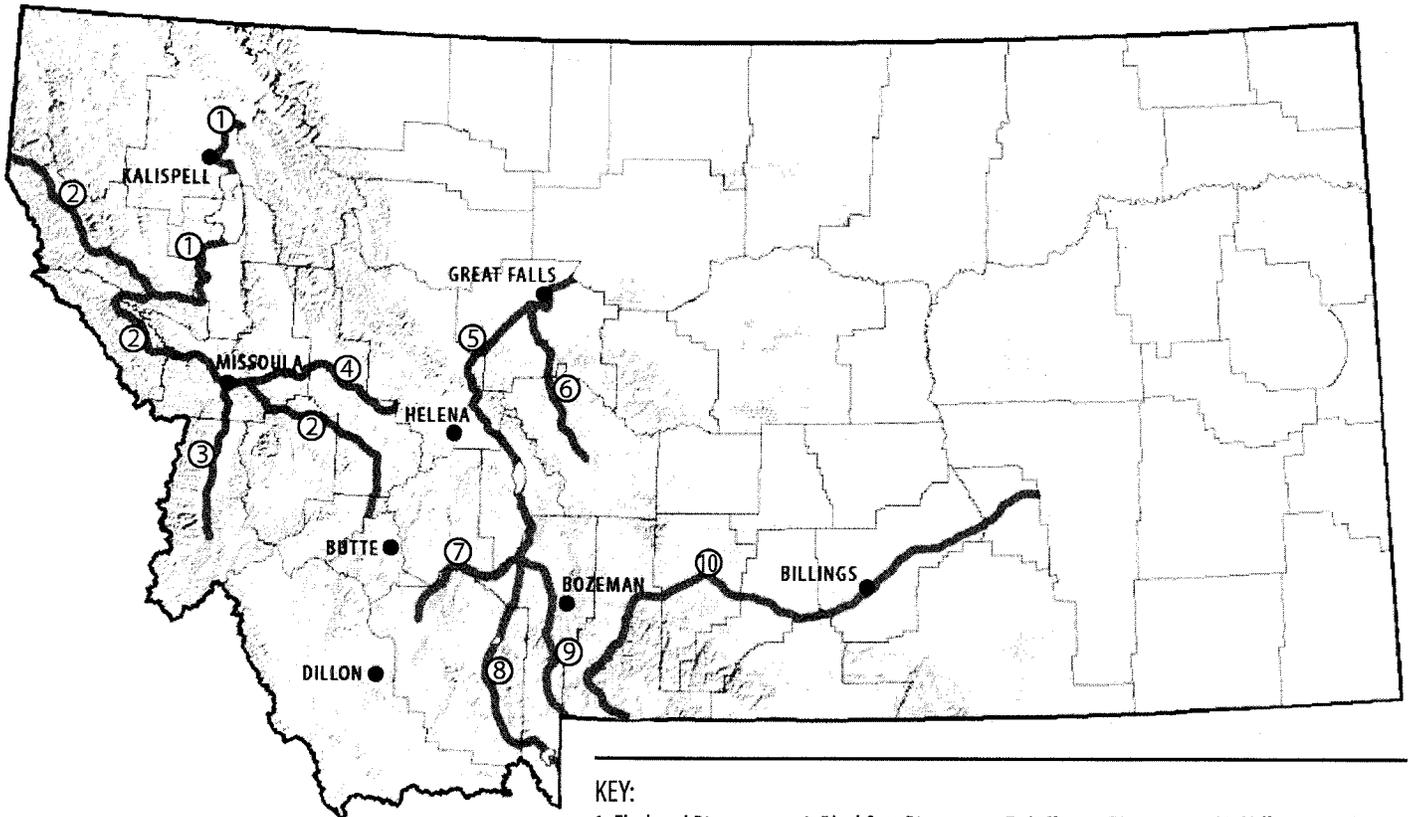


This home on the East Fork of the Bitterroot River in Ravalli County is a good example of building too close to a highly flood-prone river.

It will be up to individual county governments to decide which staff or department can best administer designated rivers within their jurisdiction. For example, they could be administered by the county floodplain manager, health department, or planning office. If a county issues building permits, the permit could include a new section that ensures the provisions of the Big Sky Rivers Act are upheld. Or, a county could develop a permit system for buildings planned near rivers that they designated.

Please support House Bill 455.

MONTANA'S BIG SKY RIVERS

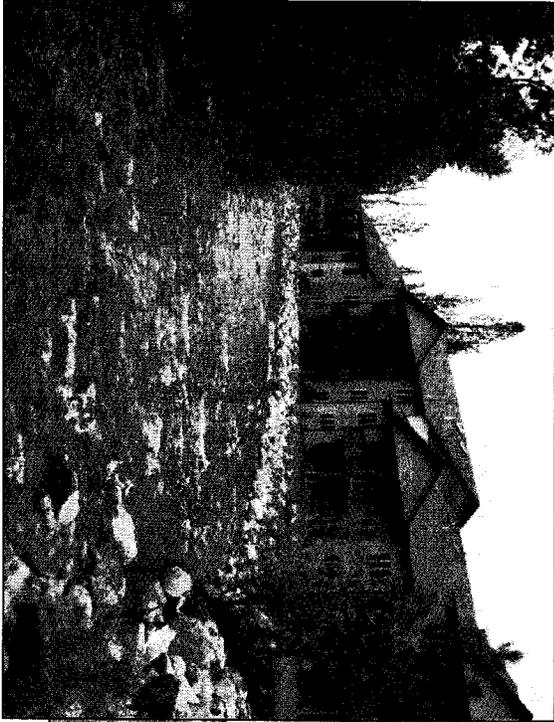


KEY:

- | | | | |
|---------------------|--------------------|--------------------|-----------------------|
| 1. Flathead River | 4. Blackfoot River | 7. Jefferson River | 10. Yellowstone River |
| 2. Clark Fork River | 5. Missouri River | 8. Madison River | |
| 3. Bitterroot River | 6. Smith River | 9. Gallatin River | |



Examples
of Poorly
Sited
Riverside
Homes in
Montana



HB 455 ~ BIG SKY RIVERS ACT A WALK THROUGH THE BILL

Bill Summary: HB 455 establishes a streamside management area along 10 “Big Sky Rivers” where new buildings are prohibited. The streamside management area is generally 250 feet, with a 150-foot vegetated buffer. The bill also sets up criteria for local governments to change the streamside management area on a Big Sky River or adopt streamside management areas for local streams and rivers that are not named in the legislation. This bill includes a variance process to ensure that no one loses the ability to build on an existing lot. Existing structures are not affected by the bill.

Section 1. Short Title ~ Big Sky Rivers Act

Section 2. Legislative Intent, Findings and Policy ~ Establishes the reasons for protecting Montana’s river and stream corridors, including protecting people and property from flooding, water quality, Montana’s economy, and more.

Section 3. Definitions:

1. **Channel Migration Zone** ~ This is the area where rivers move naturally. This definition is used in Section 9, which allows local governments to adopt local streamside management area regulations in lieu of the state standards. These local regulations should be calculated to prevent new buildings in the “channel migration zone” in most cases.
2. **Big Sky Rivers** ~ Lists the 10 Big Sky Rivers: Bitterroot River; Blackfoot River; Clark Fork River; Flathead River; Gallatin River; Jefferson River; Madison River; Missouri River, from the headwaters near Three Forks to the county line between Cascade and Choteau counties; Smith River; and Yellowstone River, from the Montana-Wyoming border to the county line between Treasurer and Rosebud counties.
3. **Flood plain** ~ Comes from the *Flood Plain and Floodway Management* statutes that are used by local governments to manage flood plains [76-5-103 MCA].
4. **Flood-prone Area** ~ This definition is used in Section 9, which allows local governments to adopt local streamside management area regulations in lieu of the state standards. These local regulations should be calculated to prevent new buildings in “flood prone areas” in most cases. It permits the use of aerial photographs of flood events.
5. **Ordinary High-water Mark** ~ Comes from Montana’s statutes on *Recreational Use of Streams* [23-2-301 MCA].
6. **Person** ~ Standard language in Montana statutes.
7. **Political subdivision** ~ Standard language in Montana statutes.
8. **Streamside Management Area** ~ The area next to a Big Sky River where certain uses (described in Section 6) are prohibited.

9. **Vegetative buffer** ~ This portion of the streamside management area closes to the stream where native vegetation is to be maintained, restored, or enhanced.

Section 4. Streamside Management Area Regulation Jurisdiction. This section spells out cities, towns and other entities where streamside management areas DO NOT apply:

- Incorporated cities and towns;
- Unincorporated cities and towns that are served by municipal sewer and water systems (a list of these communities is available);
- Zoned areas that have residential densities of at least 1 unit per acre and are served by municipal sewer and water systems; and
- Big Sky Rivers where local governments have already adopted streamside management areas that are at least 150 feet wide.

Section 5. Requirements for Streamside Management Areas and Vegetative Buffers ~ This section describes the streamside management area:

- The streamside management area is generally 250 feet from the ordinary high water mark of a Big Sky River and includes a 150-foot vegetative buffer;
- In areas with no historic evidence of bank erosion exists on high banks next to the river, the streamside management area drops to 150 feet from the ordinary high water mark of a Big Sky River; this includes a 100-foot vegetative buffer; and

Section 6. Uses Within Streamside Management Area – Authorization ~ This section:

1. Outlines what is prohibited in the Streamside Management Area:

- New buildings;
- Manufactured housing;
- New onsite wastewater disposal facilities (includes septic tanks, drain fields, etc.);
- Additions to existing buildings greater than 50% the square footage of the existing structure; and
- New construction of parking lots and roads except when necessary to cross a stream.

2. Outlines activities allowed within a streamside management area:

- Existing uses/activities;
- Repair and reconstruction of wastewater disposal facilities (includes septic tanks, drain fields, etc.);
- Repair and reconstruction of buildings not destroyed by flood;
- Hydroelectric-related buildings and facilities;
- Agricultural uses that are not residences;
- Irrigation and water pumping-related buildings and facilities;
- Structures for water-related recreation, including boat docks, boat ramps, etc.;
- Repair and improvement of existing roads;
- Limited filing for road projects; and
- Commercial forest practices subject to Streamside Management Zones (77-5-301 to 77-5-307 MCA).

Section 7. Political Subdivision Administration – Requirements – Fees ~ This section:

- Requires local governments to set up a permit/certification process by January 1, 2011 for anyone who wants to build a home near a Big Sky River;
- Gives guidance to local governments on where they can insert the streamside management area program (= anywhere that works for them): (The permit or certification program may be adopted as a local ordinance or be part of local subdivision, zoning, sanitation, floodplain, or other appropriate local review process);
- Require the local governments to establish an appeals process for developers; and
- Gives local governments permission to collect a fee from the developer to pay for costs related to permitting/certification.

Section 8. Variances ~ This section requires local governments to establish a variance process. Specifically it:

1. Allows a local government to grant a variance when compliance with the law would “result in unnecessary or undue hardship” for a landowner and establishes criteria that local governments should use to approve variances;
2. Specifies that a variance granted should be “as small as reasonably possible” to allow the proposed use but meet the intentions of the Big Sky Rivers Act; and
3. Automatically grants a variance if “an otherwise developable parcel in existence on [the effective date of this act]” entirely precludes construction of structures.

Section 9. Local Streamside Management Area Standards Authorized – Minimum

Requirements ~ This section spells out the criteria that local governments must use if they choose to develop local streamside management area regulations:

1. Streamside management areas can be established on any river or stream within a political subdivision’s jurisdiction.
2. Streamside management areas on the 10 Big Sky Rivers can be altered if the requirements of this section [Section 9] are met.
3. Locally adopted streamside management areas must prohibit new buildings, septic systems, etc.(the prohibited uses identified in Section 6) from occurring
4. Locally adopted streamside management areas must be “reasonably calculated to encompass” the following areas:
 - Wetlands adjacent to rivers or streams;
 - Flood-prone areas;
 - Areas adjacent to the stream with steep slopes greater than 25%; and
 - For a river, the channel migration zone.
5. Local streamside management area regulations must have vegetative buffers that are based on peer-reviewed scientific studies and “generally” be wide enough to prevent unnatural rates of erosion, protect water quality and maintain native riparian vegetation..
6. Locally adopted streamside management areas may be:
 - Fixed or variable width;
 - Larger or smaller than the streamside management areas established under LC 1032; and
 - A numerical distance or a narrative reference to topography.
7. The local government must prepare a written record to support its local regulations.

Section 10. Enforcement – Penalties ~ This section requires that individuals who do not comply with this statute restore the streamside management area to its original condition. A knowing violation is a misdemeanor punishable by a fine not to exceed \$500 a day.

Section 11. Notification to Tribal Governments ~ The bill will not affect tribal lands on reservations. However, each tribal government will be notified that the act is in effect.

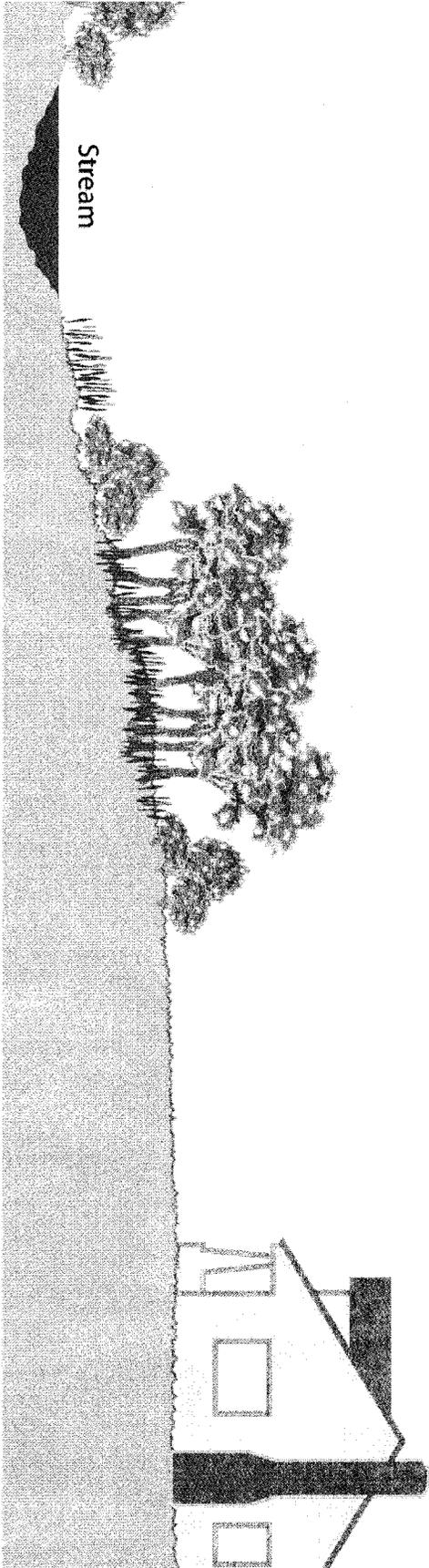
Section 12. Codification Instructions ~ Codified within *Land Resources and Use* statutes, which is where all land use planning statutes are found in the Montana Code Annotated.

Section 13. Savings Clause ~ Standard language. When the bill goes into effect, it will not impair 'rights' that may have already been granted. For example, if a subdivision was already approved by a local government but has not been built when this law goes into effect, the subdivision would be able to proceed without changes.

Section 14. Severability ~ Standard language. If any part of the statute is ruled invalid by a court, the court is asked to retain the portion of the law that is still valid.

Section 15. Effective Date ~ Passage and approval.

Section 16. Applicability ~ The Big Sky Rivers Act applies only to construction projects or activities for which a completed application for a permit is filed after the Act takes effect.



Vegetated Buffer

Streamside Management Area

Streamside Management Area = 250 feet
Vegetated Buffer = 150 feet

Big Sky Rivers Act - Exempt and Nonexempt Cities and Towns			
<i>Census-Designated Palces with and without Sewer Districts</i>			
KEY			
	= incorporated cities and towns are exempt from Big Sky Rivers Act		
	= within a reservation - so Big Sky Rivers Act does NOT apply		
	= unincorporated area with a sewer district - so they are exempt from Big Sky Rivers Act		
	= unincorporated area served by both sewer district and septic - so local government will determine areas		
	= unincorporated area that does NOT have a sewer district - so these would have to comply with Big Sky		
Town/City	County	Sewer	River
Hamilton	Ravalli	Incorporated	Bitterroot
Orchard Homes	Missoula	Part has sewer district	Bitterroot
Lolo	Missoula	Part has sewer district	Bitterroot
Bonner	Missoula	Septic	Blackfoot
Lincoln	Lewis & Clark	Sewer District	Blackfoot
Ovando	Powell	Septic	Blackfoot
Alberton	Mineral	Incorporated	Clark Fork
Deer Lodge	Powell	Incorporated	Clark Fork
Drummond	Granite	Incorporated	Clark Fork
Missoula	Missoula	Incorporated	Clark Fork
Plains	Sanders	Incorporated	Clark Fork
Superior	Mineral	Incorporated	Clark Fork
Thompson Falls	Sanders	Incorporated	Clark Fork
Paradise	Sanders	Septic	Clark Fork
Bonner (mill)	Missoula	Sewer District	Clark Fork
East Missoula	Missoula	Part has sewer district	Clark Fork
Clinton	Missoula	Septic	Clark Fork
Saint Regis	Mineral	Sewer District	Clark Fork
Heron	Sanders	Septic	Clark Fork
Trout Creek	Sanders	Septic	Clark Fork
Garrison	Powell	Septic	Clark Fork
Columbia Falls	Flathead	Incorporated	Flathead
Polson	Lake	Incorporated	Flathead
Kerr	Lake	Sewer District	Flathead
Coram	Flathead	Septic	Flathead
Dixon	Sanders	Flathead Reservation	Flathead
Martin City	Flathead	Sewer District	Flathead
Hungry Horse	Flathead	Sewer District	Flathead
Bigfork	Flathead	Sewer District	Flathead
Evergreen	Flathead	Sewer District-Kalispell	Flathead
Big Sky	Gallatin	Sewer District	Gallatin
Four Corners	Gallatin	Septic	Gallatin
Cardwell	Jefferson	Septic	Jefferson
Ennis	Madison	Incorporated	Madison
Cascade	Cascade	Incorporated	Missouri
Great Falls	Cascade	Incorporated	Missouri
Townsend	Broadwater	Incorporated	Missouri
Black Eagle	Cascade	Sewer District	Missouri

Ulm	Cascade	Sewer District	Missouri
Tosten	Broadwater	Septic	Missouri
Big Timber	Sweet Grass	Incorporated	Yellowstone
Billings	Yellowstone	Incorporated	Yellowstone
Columbus	Stillwater	Incorporated	Yellowstone
Livingston	Park	Incorporated	Yellowstone
Gardiner	Park	Sewer District	Yellowstone
Reed Point	Stillwater	Sewer District	Yellowstone
Huntley	Yellowstone	Septic	Yellowstone

OPINION

WEDNESDAY, FEBRUARY 11, 2009

OUR OPINION

Protect our rivers from development

Montana is a state of big rivers. If that wasn't apparent before — when it was the last state with significant picturesque and globally heralded trout streams — it became clear with the release of the movie "A River Runs Through It" in the 1990s and the subsequent, and continuing, rush of tourists looking for a piece of the experience those big rivers offer.

That rush created a market for real estate on those rivers, a market that is — if anything — growing, and that threatens to destroy the rivers it thrives on.

Advocates for stemming this tide have been proposing statewide controls on development within the state's rivers' floodplains for some time now. They were rebuffed during the 2007 Legislature when a bill that was, by some measures, too ambitious was defeated on the strength of arguments from property rights advocates who fired up enough legislators to defeat the measure.

The river-protection advocates are back again, this time with a measure that is modest enough in scope that it should garner widespread bipartisan support to be enacted into law. It makes sense for all Montanans who are interested in conserving what's best about our state.

The Big Sky Rivers Act creates a 250-foot riverside zone where building is banned on just 10 Montana rivers. That's badly needed, because the many new riverside landowners whose homes and outbuildings are threatened by flooding take drastic measures to protect their property. These actions — including the dumping of large amounts of concrete slabs for bank protection — raise serious issues. They raise issues for landowners downstream whose riverbanks are affected by an artificially altered river current, and they raise issues for the integrity of the rivers themselves, in which the altered water currents threaten fish and wildlife habitat.

The rivers affected by this proposal include: the Clark Fork, the Flathead, the Bitterroot, the Blackfoot, the Missouri, the Smith, the Jefferson, the Madison, the Gallatin and the Yellowstone.

That's it. It also allows for local governments to supersede these state protections where those local governments decide to enact less stringent prohibitions. That's important, because individual rivers, and stretches of those rivers, have different floodplains and needs for protection.

The bill also allows landowners whose entire lot lies within the 250-foot, no-development zone, to build or rebuild buildings or homes destroyed by flooding.

This is a simple, commonsense, first step toward protecting what has clearly emerged as one of this state's greatest assets.

House Bill 455 has bipartisan sponsors who recognize that these protections are needed — at a minimum — to get a handle of riverside development.

Thirty-four states — including Idaho, which protects some 2,000 miles of river from development — have some sort of riverside development controls. Certainly Montana, home to some of the greatest unfettered rivers remaining in the nation, deserves these modest river protections.

Buffers will preserve rivers for future

Over the next 15 years, Missoula County will probably add another 35,000 residents, based on our current growth rates. Many of these people want to live here because of our spectacular scenery and beautiful rivers.

That's why we need science-based streamside protections to make sure we don't love our rivers to death by building too close to them. The Big Sky Rivers Act will keep our big rivers spectacular by avoiding water pollution, conserving riparian areas, and protecting the views we all enjoy.

Plus, creating buffers for new development along powerful rivers like the Bitterroot and Blackfoot will also prevent costly flood damage to new homeowners, who often get a chilly, wet surprise when ice jams cause flooding in the winter or a big snowmelt year pushes high water into too-close living rooms. I understand that managing growth in Missoula County is not always easy. That's why the Big Sky Rivers Act will help all of us out by making sure development is done right in the first place, saving us money by avoiding expensive flood repairs and river restoration down the road.

Let's make sure that the new house near the river doesn't become the new house "in" the river. Let's enact common-sense legislation that protects all Montanans' natural resources and communities by making sure new development is a safe distance from our rivers. Please tell your lawmakers to enact this legislation!

Alex Taft, Missoula (This item originally appeared in: The Missoulian)

Editor,

Riparian corridors - the wet, green ribbons along our rivers and streams - make up less than five percent of Montana's landscape. Yet over 85% of wildlife species depend on our river corridors. People definitely fall in that category, too. Can you imagine living in western Montana without being able to use and enjoy our fabulous rivers

The Big Sky Rivers Act will make sure that the economically and ecologically important corridors along Montana's "Big 10" rivers will be protected for the long haul. This proposed legislation will give local counties up to two years to implement streamside management areas along rivers like the Clark Fork, Bitterroot, Blackfoot and the Flathead.

Because these valuable rivers cross plenty of different city and county lines, it makes sense to have a statewide approach that thoughtfully guides where new buildings are constructed in the "Big 10" rivers" riparian areas.

Now is the chance to speak up for the future of our rivers. Tell your legislators how important it is to protect the water, wildlife, and private property in Sanders County.

Bill Eckloff

Heron (This item originally appeared in: Sanders County Ledger)

Letter: River setback bill would protect resources

I am writing in support of House Bill 455 and would like to raise awareness of our community on this important bill that will ensure safe distance setbacks from 10 Big Sky rivers, including the Yellowstone River, in order to protect people, property, and the rivers' outstanding economic, biologic, and recreational values for years to come. As a community we must work together to support efforts to minimize damage to our rivers and protect our precious resources.

People who choose to live in this great state have an obligation to take care of its resources and I urge you to write your legislator in support of this bill.

Chuck Aragon, Billings (This item originally appeared in the Billings Gazette)