



EXHIBIT 14  
DATE 2-19-2009  
HB HB 455

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**Testimony of Montana Association of REALTORS® (MAR)**

**Glenn Oppel, Government Affairs Director**

**House Local Government Committee**

**Feb. 19, 2009, 3:00 p.m., Rm 172**

**House Bill 455 – Big Sky Rivers Act**

**Sponsor: Rep. Michele Reinhart**

**MAR Position: Oppose**

It is clear that HB 455 is statewide zoning. Other examples of state-wide zoning in Montana exist, junked motor vehicle storage areas for example, and this fact is not necessarily enough to oppose the bill. But HB 455 is different.

Regulating waterside setbacks is a quintessential example of local land use decisions currently authorized under local governments' authority to regulate subdivision and to zone. Local governments already have the authority to accomplish everything required under HB 455 with one important difference. Existing subdivision and zoning law guarantees the public's right to adequate due process while HB 455 abrogates these rights in important ways.

Local government land use regulations, again already authorized under the subdivision and zoning statutes, require a mix of five important due process rights, including the right to:

- public notice (subdivision regulations and zoning);
- public hearing (subdivision regulations and zoning);
- protest (zoning);
- referendum (zoning and elections); and
- the right to control local regulations through the ability to vote against the local officials responsible for the regulations (elections).

These basic due process rights make government land use regulations "legal," i.e., not a takings or other constitutional violation.

HB 455 condenses the first two due process rights listed above, i.e., those of public notice and hearing, from one hearing in each county and municipality in Montana into two hearings, one before the House and one before the Senate. And HB 455 completely eliminates the remaining due process rights at the local level. Under HB 455 citizens do not have the right to protest, referendum, or to vote their local officials out of office due to the regulations. HB 455 mandates that counties adopt at least some setback.

It may be helpful to think of the current local government authority as one end of a spectrum – supreme local control. It's interesting that the complete opposite of the spectrum is where HB 455 starts – a state mandate with counterfeit local control.

Voting for HB 455 requires that the Legislature make a series of policy decisions:

- statewide regulations are necessary;
- the scope and extent of the regulations should not be left up to local government;

- the public's right to due process should be severely abrogated; and
- the Legislature knows the exact setback standard appropriate for the entire state.

HB455 attempts to regulate intensely local issues. The people living in those jurisdictions deserve to be more involved in these decisions and that can only happen, and is already authorized, at the local government level. In fact, many counties in Montana have already implemented streamside setbacks via their local land use regulations.

We have compiled a list of streamside regulations in the various counties that will be affected by HB 455:

**Counties with Streamside Regulations  
(not all streamside regulations require specific setback widths)**

Broadwater – Yes; subdivision regulations; Type 1 watercourses – 100' setback (Missouri); Type 2 watercourses – 75' setback (tributaries); Type 3 watercourses – 50' setback (intermittent streams, reservoirs); Type 4 watercourses – 30' setback (drainage canals, irrigation ditches); Source – Broadwater County Subdivision Regulations, Chapter IV-A-7.c.iv

Cascade – Yes; subdivision regulations; Type 1 watercourses – 50' setback (Missouri); Type 2 watercourses – 50' setback (tributaries); Type 3 watercourses – 50' setback (intermittent streams, reservoirs); Type 4 watercourses – 50' setback (drainage canals, irrigation ditches); Source – Cascade County Subdivision Regulations, Chapter VI-A-20.d.i

Flathead – Yes; zoning regulations; 20' setback for all rivers and streams; Source – Flathead County Zoning Regulations, Section III.3.09.040.3.C

Gallatin – Yes; subdivision regulations; 300' setback for West Gallatin, Jefferson, Madison, and Missouri; 150' setback for all other rivers in the county; Source – Gallatin County Subdivision Regulations, Section 6.A.5.a.

Lake – Yes; subdivision regulations; does not specify width but requires subdivider to define buffer strips along streams, rivers, or lakes by identifying buffer strip width and a plan for protection of vegetation within the buffer strip; Source – Lake County Subdivision Regulations, Section IV-A-21.

Lewis & Clark – Yes; subdivision regulations; Missouri – 250' setback, 100' buffer; Little Prickly Pear Creek – 200' setback, 75' buffer; All lakes and reservoirs – 100' setback, 50' buffer; Irrigation Canals – 50 setback, 30' buffer; the Development Standards Working Group is devising setback requirements for the Helena Valley Zoning Regulations. Source – Lewis & Clark County Subdivision Regulations, Chapter IX.W.2

Madison – Yes; subdivision regulations; 500' setback for Madison; 150' setback for Big Hole, Jefferson, Ruby, Beaverhead, and South Boulder; currently working on streamside setbacks for zoning regulations; Source – Madison County Subdivision Regulations, Section IV-B.1.c.(1),(2)

Mineral – Yes; subdivision regulations; 50' setback for the Clark Fork; Source – Mineral County Subdivision Regulations, Section 6.2.1.

Missoula – Yes; subdivision regulations; does not specify width but provides guidelines to protect streams/rivers; Missoula Organization of REALTORS® is working with Missoula County

on setback requirements; Source – Missoula County Subdivision Regulations, Section 3.13.1(1)-(7)

Park – Yes; East Yellowstone Zoning District; 100' setbacks from the Yellowstone River for buildings or structures with a 30 acre per unit density standard for single family dwellings; Source: Montana Conservation Voters

Powell – Yes; subdivision regulations; 25-yard setback from the Blackfoot River; Source – Montana Conservation Voters

Ravalli – None; efforts to establish streamside setbacks in zoning regulations have been underway for some time; the Bitterroot Valley Board of REALTORS® have been active in mapping setbacks for the Bitterroot River

Sanders – No information available online

Stillwater – Yes; subdivision regulations; doesn't specify width but minimum construction setbacks may be specified by the County in order to protect riparian areas, wetland, trout spawning areas, streambank stability, non-degradation of water quality, critical wildlife habitat, important historical or archaeological sites or viewsheds. The issue of setbacks must be raised at the Pre-Application Meeting; Source – Stillwater County Subdivision Regulations, Chapter IV.E

Sweet Grass – None

Treasure – No information available online

Yellowstone – Yes; subdivision regulations; doesn't specify width but requires surface water to be on the plat; description of surface water affected; description of proximity of construction to the surface water; description of shoreline alterations; and indication of water quality permits received; Source – Yellowstone County Subdivision Regulations, Section 9.3.A.1-5