



**Memorandum**

**To: Laval Means**

**From: Peter Nielsen**

**Date: December 15, 2009**

**RE: Advisory Group Draft City Subdivision Regulation Revisions**

The Missoula City-County Health Department appreciates the opportunity to comment on the Advisory Group Draft of Proposed Revisions to City Subdivision Regulations. Our comments pertain to the proposed amendments in the Riparian Resource Regulations, Section 3-130 and 5-020, and the Cluster and conservations development regulations, 3-150.

The Health Department has established an interdivisional group of specialists, known as the Healthy Built Environment Group (HBEG). The HBEG represents specialists in Health Promotion, Air Quality, Water Quality and Environmental Health. The Healthy Built Environment Group has a keen interest in pedestrian trails and non-motorized transportation as part of a healthy built environment in Missoula.

Pedestrian walkways and trails are a popular amenity in communities. These assets provide public health and safety benefits for community residents. They also make communities more livable, and enhance the economic values of properties.

A primary public health concern nationally is the steady increase in obesity with long term health implications and costs, including a diabetes epidemic. Increasing physical activity has many community benefits.

The riverfront trail in Missoula is a prime example of a community asset that benefits all of those who live nearby. People love to walk by the water, observe wildlife, natural vegetation, and scenery. People are more drawn to these environments for walking than sidewalks along busy roads. Providing more appealing destinations for walking and bicycling increases the value of the walkways to the community and local residents, and enhances the associated public health benefits.

The proposed revisions to the subdivision regulations in 3-130 would prohibit the location of pedestrian trails within riparian resource areas unless a trail existed prior to the creation of the subdivision. We believe this would be too restrictive, and counter to the goals of providing desirable pedestrian walkways in our community and access to recreational resources. Please consider amending the proposed revisions as follows (proposed amendment shown in underline text format):

**.7 Trail Construction in Resource**

~~Trails can be shared or classified for specific use. Trails may provide opportunities for recreational, educational, aesthetic, experiential and transportation purposes. Trails have long term beneficial impact upon livability: improved air quality, less traffic congestion and access to open spaces. Trail design should reflect the character of the surrounding area. Various methods may be used to provide buffering, including trail location and physical buffers such as plants, distance, grade separation or other means, as deemed appropriate by the city council. Trails can be shared or classified for specific use, and designed to enhance public enjoyment of riparian resources while avoiding significant impacts on those resources. Trails provide opportunities for recreational, educational, aesthetic, experiential and transportation purposes. Trails have long term beneficial impact upon livability: improved air quality, less traffic congestion and access to open spaces and streams. Trail design should reflect the character of the surrounding area. Various methods may be used to provide buffering, including trail location and physical buffers such as plants, distance, grade separation or other means, as deemed appropriate by the city council. Trails are permitted in riparian resource areas outside the riparian buffer area only if there is an existing trail within that area. Trails in the riparian resource area or riparian buffer shall be designed to minimize impacts on natural vegetation, to provide occasional stream access in appropriate locations, to avoid steep stream banks, to provide buffering from streams, to direct public use to avoid impacts on sensitive environments, and to make appropriate connections to trails in adjacent subdivisions, open space or public park areas.~~

~~A. Trails are permitted in the riparian buffer area.~~

In consideration of these proposed amendments, please consider the following points:

1. Pedestrian trails in riparian resource areas and associated riparian buffers may come in various shapes and sizes. The impacts of a 12 foot wide trail such as the Missoula Riverfront or Kim Williams Trail would be very different than the impacts of a more narrow footpath such as those in Greenough Park. Most riparian areas have a diversity of habitats, including more open areas in which a trail can be located without causing significant damage to riparian vegetation. But the proposed regulations would prohibit any trail, regardless of its design.
2. It is not feasible or desirable to close a riparian area in a subdivision to pedestrian access. People will inevitably find their way to the river whether established trails are provided or not. This is especially true during the hot summer months. It is preferable to create acceptable and well designed access, directing the use in a manner that is less damaging to the resource. Otherwise people will find their own way to the river and along it, on multiple trails that may impact sensitive environments, potentially trampling or removing riparian vegetation and causing more damage to the resource.
3. The proposed restrictions are not consistent with the pattern of development promoted by the City, State and Federal government at established recreational sites along rivers and streams. For example the trails in Greenough Park, The Tower Street Open Space area Rattlesnake Recreation area, Kelly Island Fishing Access, Council Grove State Park and MClay Flats recreation sites all have established pedestrian trails located within areas that would be classified as riparian resource areas as defined in the subdivision regulations. Pedestrian trails are also proposed in the new Two Rivers State Park along the Blackfoot and Clark Fork Rivers. In the Two Rivers Park, trails are being carefully designed to complement riparian resource restoration and protect sensitive environments from public use.
4. As the City grows, City subdivisions will be developed adjacent to these already established parks and recreation areas. It will be desirable to connect pedestrian trails to those located within these areas, and it will not make sense to expressly prohibit these connections. In fact, the

subdivision regulations in Article 3-2(15)E require connections to be made to existing parks, open space and recreation areas. In the absence of appropriately designed trails, people will walk wherever it is convenient for them, perhaps creating multiple trails through sensitive environments and damaging the resources significantly.

5. The definition of riparian resource areas is based on vegetation community types. The area of riparian resource covered by the regulations may extend across the entire floodplain. Many streams in Missoula have very wide floodplains. Subdivisions along the lower Bitterroot or Clark Fork River may have riparian resource areas that extend a half mile or more from the streambank. In such locations trails could not be located within site of the river. Do we really intend to restrict people to walking on trails that far from the river?

6. It is difficult to anticipate the need or demand for pedestrian access in or through a riparian resource area at the time of subdivision when these regulations would be applied. For example, these rules would apply to subdivisions along the Clark Fork or Bitterroot River in areas that will be annexed into the City in the future, but are primarily undeveloped or rural today. We may not always be able to envision the need for pedestrian access to the river or along the river that may occur ten or twenty years from now as the City grows. For this reason, adopting a regulation that strictly prohibits pedestrian trails in riparian areas or buffers in these subdivisions may be overly restrictive and unrealistic in the future. The City's ability to enforce the provisions of the riparian resource area regulations following filing of the final plat of a subdivision may also be very limited.

7. The goal of this regulation should be to make it more attractive and desirable for a subdivision developer to preserve the riparian resource. Allowing residents of the subdivision to access the riparian area on appropriate pedestrian trails increases the attractiveness of the subdivision, and property values. This encourages riparian resource management plans that protect the resource, or even enhance it. Pedestrian pathways can be integrated into the design, making the development more desirable and protecting the riparian resource from uncontrolled use. The riparian area can become a source of pride, something to be protected and enjoyed. This has occurred in numerous residential and commercial developments along our rivers in recent years. Allowing people to have access to the rivers and streams, to enjoy the scenery, view the wildlife and fish creates an incentive to protect those resources. People who enjoy access to our streams and rivers are more likely to become advocates for their protection. Shutting them out is not the way to build support for resource protection.

Section 3-130.5.B proposes an amendment to clarify that "subdivisions that encompass riparian resources must place development outside the riparian resource areas." In order to improve the effectiveness of this section, please consider amending it to include the following statement:

Subdivisions that encompass riparian resource areas must designate riparian resource areas as no build zones, and designate building envelopes to prevent construction of structures in the riparian resource and buffer areas.

Enforcement of this provision would effectively be triggered at time of building permit review.

Many subdivisions have been designed to protect riparian resource areas since adoption of these regulations in the mid 1990's. Subdivision designs often protect these areas through designation as common areas. However not all subdivisions have set the riparian areas aside as common area, instead including the riparian resource area as part of individual ownership lots which may extend to the edge of a stream.

In the best examples of design to protect riparian areas, individual lots within the subdivision do not extend into the riparian area or to the river's edge and the riparian area is set aside as a common area or as part of a conservation easement. This pattern of subdivision protects riparian areas from development as building sites. Because the individual ownership lots do not extend into the riparian areas, the designation also limits such activities as livestock grazing, vegetation clearing and lawn planting. As a result, these subdivisions are designed to allow long-term protection of the riparian resources, which is the stated intent of the regulations. This pattern of development should be encouraged or more consistently required by the regulations.

We support 5-020.L.5, which requires submission of a maintenance and monitoring plan outlining how the riparian resource area will be maintained. We also support the concept stated in that the management plan must be implemented in perpetuity, and not altered without City Council approval. However, we note that this requirement is stated only in the Section of the regulation pertaining to submittal requirements. This provision would be appropriate to include in 3-130 governing riparian resource areas. It is not clear how this requirement would be practically enforced in perpetuity. How will the City monitor and enforce the provisions of riparian resource management plans? What authority will the City have to enforce the provisions of the plans on future owners, such as homeowners associations? How can we ensure that homeowners' associations are equipped to handle the responsibilities of the riparian resource management plans?

The regulations in 3-130 define a riparian resource area based on the presence of vegetation habitat or community types. If vegetation is removed from the riparian area prior to the subdivision, the area is not subject to protection under the regulations. Experience has shown that riparian vegetation can be restored in damaged areas, even if all of the habitat has been removed by grazing, excavation or other activities. Native riparian plants have emerged from the bottom of the former Milltown Reservoir more than 100 years after they were buried by up to thirty feet of toxic sediments. Damaged stream banks often retain a sufficient seed bank to allow plant regeneration if livestock grazing and other damaging activities are restricted in the riparian area. For this reason, we recommend that a minimum width of riparian resource area be designated along all streams under the subdivision regulations. The width of the area can be correlated with floodplain, or based on a minimum distance based on stream order. This will allow riparian areas to be protected, not only where they currently exist but also where they may be restored and enhanced.

We support the proposed Cluster and Conservation Development design section included in Section 3-150. These revisions address many important subjects related to land use and resource protection, including riparian resource area protection. In section 3-150-4-C these revisions would allow riparian resource areas to be dedicated as open space as part of Cluster and Conservation Subdivision Designs. We support the provisions requiring that such riparian open space areas be protected through the ownership and management provisions stated in 3-150-4.D. These provisions clearly require designation of long-term management responsibilities, maintenance, weed control, and enforcement of the management plan. We also strongly support the permanent protection of open space requirements in 3-150.5, which require that riparian areas counting toward the open space requirements be protected by dedicating them to the City through a conservation easement in favor of the City or a land trust. The requirements of this section effectively address most of the shortcomings of the existing riparian regulations and their long term monitoring, management and enforcement. We believe the form of management prescribed in these regulations will provide much more effective long-term protection of riparian resources.

Thank you again for the opportunity to comment. We would appreciate the opportunity to be involved in continued discussions related to riparian resources in the City subdivision regulations.