# Ordinance No: 2005-1

## BIG HOLE RIVER CONSERVATION DEVELOPMENT STANDARDS AND PERMITTING PROCESS

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### Section 1. Purposes

1. To provide for the preservation of orderly development along the Big Hole River by establishing standards and a permitting process for new construction and the transaction of such business;
2. To protect water quality and quantity, floodplain and riparian resources;
3. To preserve an undisturbed river corridor and maintain natural resource functions and conditions; and
4. To protect the health and safety of residents and visitors of the Big Hole River watershed.

### Section 2. Authority

The general authority of county commissioners and their ability to make and enforce rules are broadly described in 7-5-2101 and 2102, MCA.

### Section 3. Definitions

For the purposes of this Ordinance, the following definitions shall apply:

*Big Hole River:* That portion of the Big Hole River – its main stem and all braids and side channels with established floodplains – which lies within Beaverhead County.

*Big Hole River Conservation Development Standards Review Board (hereinafter referred to as "the Review Board"):* A nine-member citizens advisory board made up of one representative of the Big Hole Watershed Committee and two representatives from each of the following counties: Anaconda-Deerlodge, Beaverhead, Butte-Silver Bow, and Madison. At least one of the members appointed by the County Commissioners will be a resident agricultural landowner of the Big Hole Watershed. The Review Board is charged with the task of reviewing variance requests and making recommendations to the appropriate governing body.

*FEMA:* Federal Emergency Management Agency.

*Floodplain:* The areas subject to locally adopted floodplain management ordinances. Generally, these areas adjoin a stream and would be covered by floodwater of a 100-year flood, except for sheet-flood areas that receive less than 1 foot of water per occurrence and are considered Zone B by FEMA. The floodplain consists of the floodway and flood fringe.

> The *floodway* is the higher-hazard area comprised of the stream channel and its banks. This is the area considered necessary to carry flood waters downstream and generally is subject to faster water velocities and greater floodwater depths. The *flood fringe* is a lower-hazard area outside of the floodway. It generally consists of the flood storage and backwater areas, is subject to low water depths and velocities, and usually is located on the outer part of the floodplain.

*Ordinary High Water Mark:* The line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A floodplain adjacent to surface waters is not considered to lie within the surface water's high-water marks.

*Riparian Vegetative Community:* A plant community adjacent to perennial, intermittent, and ephemeral rivers, streams, lakes, or drainageways. Riparian areas have: (1) distinctively different vegetative species than adjacent areas; and/or (2) species similar to adjacent areas but exhibiting more vigorous or robust growth forms. They are considered transitional areas between aquatic and upland habitats. Riparian vegetation is associated with the natural presence of surface waters, rather than manmade practices such as irrigation.

*Riverbank Stability:* That area from the top of the stream banks to the water's edge covered by all types of vegetation that reduces erosion and floodwater velocity, while supporting bank shear strength and stream channel morphology.

*Structure:* A building with a roof. Does not include irrigation structures, fences, etc.

*Watershed:* A geographic area in which water, sediments, and dissolved materials drain to a common outlet – a point on a larger stream, a lake, an underlying aquifer, an estuary, or an ocean. The area is also called the drainage basin of the receiving water body.

**Section 4. Jurisdictional Area**

The jurisdiction of this Ordinance shall be all of the property within five hundred feet (500') of the ordinary high water mark of the Big Hole River. Note: This is NOT a 500-foot building setback (See Section 6. below).

**Section 5. Compliance**
No structure shall be located or structurally altered without full compliance with the terms of this Ordinance.

**Section 6. General Standards**
The County Planning Office shall review each proposed structure or structural alteration for compliance with the following criteria:

A. A setback of 150 feet or more from the ordinary high water mark of the Big Hole River;
B. Compliance with state and local sanitation requirements and water quality standards (as per Title 7, Chapter 13; Title 75, Chapters 5 and 6; Title 76, Chapter 4, MCA);
C. Protection of property from riverbank instability;
D. Compliance with local, state, and federal floodplain regulations and other applicable Ordinances;
E. Protection of the riparian resources and natural resource functions; and
F. Protection of public health and safety.

A setback of more than 150 feet may be required in order to meet criteria B.-F. above. Through the variance or permitting process, a setback of less than 150 feet may be allowed if the criteria in B-F above can be met.

**Section 7. Permitting Process**
A permit must be obtained from Beaverhead County prior to construction. Applicants should use Exhibit A in preparing their permit application. Applications shall be submitted, reviewed, and acted upon as follows:

A. The permit application shall be submitted to the County Planning Office. There is no permit review fee.
B. The County planning staff will review the application for compliance with this Ordinance.
C. The County planning staff may consult with pertinent local, county, state, and federal agencies during its review of the proposed construction.
D. If a proposed structure is located outside of the floodplain but within 500 feet of the ordinary high water mark, the County planner after consultation with the County floodplain administrator may determine that an independent professional engineering review is needed. When such review is required, the applicant/property owner shall be required to pay all independent professional engineer review fees.
E. The applicant shall allow County representatives to visit the site as a part of their review as necessary.
F. Within 20 working days of receipt of a complete application, including the results of a professional engineering review if required, the County planning staff shall approve, conditionally approve, or deny a permit for any proposed structure.

G. If the application is denied, a written notice of the denial shall be mailed to the applicant and shall include an explanation of the basis for the denial.

**Section 8. Variance Process**

The applicant may appeal the County planning staff's conditional approval or denial by seeking a variance. Variance applications shall be submitted, reviewed, and acted upon as follows:

A. Twelve copies of the variance application shall be submitted to the County Planning Office, along with an application review fee of $ 100.00.
B. A variance application shall include the original permit application including the results of any required independent professional engineering review, the County planning staff's notice of conditional approval or denial, and a description of the variance request addressing the three review criteria established by the Montana Supreme Court for the granting of variances:
    1. The variance would not be contrary to public interest.
    2. Literal enforcement of the Ordinance would result in an unnecessary hardship owing to conditions unique to the property.
    3. The spirit of the Ordinance would be observed and substantial justice done.

C. The County planning staff shall distribute copies to the Review Board, as well as the governing body in the county where the subject property is located.
D. The applicant shall allow County representatives, project engineers and other involved local, state, and federal officials or Review Board members access to visit the site to review the proposed application. These onsite visits may be subject to the Montana Open Meeting Law (2-3-201, MCA).
E. The Review Board may consult with pertinent local, county, state, and federal agencies during its review of the variance application. If the initial permitting process did not include an independent professional engineering review, such review may be required by the County planning staff. When such review is required, the applicant shall be required to pay all independent professional engineer review fees.
F. The Review Board shall review the variance application based on the three review criteria established by the Montana Supreme Court for the granting of variances.
G. The Review Board shall consider any mitigation measures proposed by the applicant.
H. Within 20 working days of the County Planning Office's receipt of a completed variance application, including the results of an independent professional engineering review if required, the Review Board shall review the variance request at a public hearing and make a recommendation to the governing body.
I. One week prior to the public hearing, the County planning staff shall distribute a "Written Findings of Fact" based on the three review criteria to the applicant,

members of the Review Board, and the governing body in the county where the subject property is located.

J. The Review Board may amend, add, or delete any portion of the "Written Findings of Fact" as deemed appropriate.
K. Based on its "Written Findings of Fact", the Review Board shall make a recommendation to approve, conditionally approve, or deny the application to the County having jurisdiction, in writing within 10 working days.
L. Within 10 working days of receiving the Review Board's recommendation, the governing body shall approve, conditionally approve, or deny the variance application.
M. Written notice of the final decision shall be mailed to the applicant. If the variance application was denied, the notice shall include an explanation of the basis for the denial. In the event of conditional approval, all conditions must be met prior to the County's issuance of the permit.

**Section 9. Severability**

If any part or portions of this Ordinance shall be declared invalid or unenforceable for any reason by a court of competent jurisdiction, the remainder shall nonetheless continue in effect.

These standards shall be construed to be consistent with any federal or state regulations which pre-empt or take precedence over the standards herein. In the event that either federal or state government adopt standards more stringent than those described herein, the more stringent standards shall apply.

**Section 10. Penalties**

Any person, firm, or corporation that violates the provisions of this Ordinance shall be guilty of a misdemeanor and punishable by a fine of up to $500 and/or a jail term of not greater than six months. Criminal responsibilities of firms or corporations shall be governed by relevant provisions of 45-2-311 and 45-2-312, MCA.

PASSED BY THE BOARD OF BEAVERHEAD COUNTY COMMISSIONERS and signed after the First Reading, this _____ day of _____, 200___.

_____
Garth L. Haugland
Chairman

_____
Michael J. McGinley

_____
Donna J. Sevalstad

This Ordinance shall take effect as of _____.

PASSED BY THE BOARD OF BEAVERHEAD COUNTY COMMISSIONERS and signed after the Second Reading, this _____ day of _____, 200__.

_____
Garth L. Haugland
Chairman

_____
Michael J. McGinley

_____
Donna J. Sevalstad

_____
Rosalee B. Richardson
Beaverhead County Clerk & Recorder

[SEAL]

# EXHIBIT A.

## BIG HOLE RIVER CONSERVATION DEVELOPMENT PERMIT APPLICATION FORM

**Submit To:**

*Beaverhead County Planning Office*
*2 S. Pacific Street Cl. #7*
*Dillon, MT 59725*

*Telephone: (406) 683-3765*
*Fax: (406) 683-3769*

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**Applicant (Property Owner):**

Name(s): _____

Address: _____

Telephone and Fax Numbers: _____

Signature and Date: _____

**Property Location and Legal Description:** _____

_____

**Attach the Following Items:**

- Site plan, including distance between ordinary high water mark and proposed structure.
- Topographical map at a scale that accurately and clearly represents ground features in the vicinity of proposed structure. Proposed structure must be located on the map, and existing structures on the subject site and adjacent riverfront properties (one-half mile upstream and downstream must be identified).
- Description of riverbank condition and vegetation between riverbank and proposed structure (photos are helpful).
- Verification that proposed structure has received all necessary sanitation, water, and floodplain approvals from local, state, and federal agencies.
    - Septic and/or Wastewater Treatment Permit # _____
    - Floodplain Permit # _____
    - Other required permits (e.g., 310, 404, encroachment): _____

**Beaverhead County will complete the information below.**

**Permit Application is: Approved Conditionally Approved Denied**

_____

Beaverhead County Planner Date

**If Conditionally Approved, All Conditions Have Been Met.**

_____

Beaverhead County Planner Date

**Big Hole Conservation Development Permit #: _____**