

June 2008 Update of Case studies for

A Planning Guide for Protecting Montana's Wetlands and Riparian Area,

Authors: Janet H. Ellis and Jim Richard; a cooperative project of Montana Audubon, Montana Watercourse, and the Montana Department of Environmental Quality. Publication date: July 2003.

Since *A Planning Guide for Protecting Montana's Wetlands and Riparian Areas* was published in 2003, several regulations have been adopted by local governments that protect wetlands and/or riparian areas. The following new case studies should be added to the guide. Janet Ellis from Montana Audubon is the author of these case studies. The new case studies also appear in the revised edition of *Planning Guide for Protecting Montana's Wetlands and Riparian Areas*, printed in June 2008.

CHAPTER 5. Using Local Land Use Planning Tools For Wetland and Riparian Protection

County or Municipal Zoning

Since *A Planning Guide for Protecting Montana's Wetlands and Riparian Areas* was published in 2003, three unique zoning regulations have been adopted that protect streams and/or wetlands at the local government level. **These case studies should be inserted into page 5-4, under County or Municipal Zoning, Montana Case Histories:**

Montana Case History: Lake County. Density standards that help protect streams, rivers, and wetlands were adopted in zoning regulations in October 2005. The county has adopted 40-acre minimum lot sizes for one-half mile on either side of the Flathead and Jocko Rivers, and one-quarter mile on either side of Mission and Crow Creeks. The pothole area surrounding Ninepipe National Wildlife Refuge is also zoned in 40-acre minimum lot sizes. Although density standards do not specifically protect wetlands and riparian areas, protection occurs as a byproduct because of the lot size for new building—which prevents houses from lining rivers, streams, and/or wetlands. Lake County also has community zoning districts around 50% of Flathead Lake that have been in place for over 10 years; these regulations require a 50-foot setback from the “highwater elevation.” Lake County is the first county to use density standards to protect both wetlands and streams. ***For more information***, contact the Lake County Planning Department, Lake County Courthouse, 106 4th Ave East Polson, MT 59860, 406-883-7235, email: planning@lakemt.gov.

Montana Case History: Big Hole River. The Big Hole River is more than 150 miles long and travels through 4 counties: Beaverhead, Deer Lodge, Madison, and Silver Bow. As part of a 4 (+) year land use project developed by two watershed groups (*see Watershed Groups, Big Hole River below*), local governments were asked to adopt setback regulations for all new structures (“structure” is defined as a building with a roof). A setback of 150-feet minimum from the Big Hole River is generally required. The setback standard is applied on a site-specific basis, taking into account the results of a basin-wide mapping project that identified the corridor needed for

natural channel migration and the approximate 100-year floodplain. Setbacks can be increased or decreased based on local circumstances such as floodplain and floodway functions, water quality, and natural streambank stability; variances are reviewed by an inter-county review board. In the spring of 2005, all 4 counties adopted the stream setback regulations: Deer Lodge and Silver Bow Counties adopted the regulations as part of zoning, and Beaverhead and Madison Counties adopted the setbacks as Conservation Development Standards through a building permit system. These 4 counties are the first local governments in Montana to cooperate through development regulations to protect a river. ***For more information***, contact the Beaverhead County Land Use and Planning Department, Beaverhead County Courthouse, 2 South Pacific Street CL #7, Dillon, MT 59725, (406) 683-3765.

Montana Case History: City of Bozeman. In 2001, the U.S. Supreme Court ruled that certain isolated wetlands may not be protected under the Clean Water Act (*Solid Waste Agency of Northern Cook County v. the U.S. Corps of Engineers* (531 U.S. 159 [2001]) (SWANCC)). Since that decision, some states and local governments have developed their own regulations as a means of “filling the gap” to protect isolated wetlands impacted by this decision. In Montana, the city of Bozeman is the only local government that has developed a program to specifically protect isolated wetlands. Bozeman’s wetland regulations are part of their zoning and subdivision regulations contained in their Unified Development Ordinance. They apply to isolated wetlands more than 400 square feet in size (20 feet X 20 feet); smaller wetlands that provide habitat for rare plants or animals may also receive protection. For projects that may impact these isolated wetlands, a functional assessment of the wetland must be completed. A Wetlands Review Board (WRB) composed of local scientists then, on a case-by-case basis, is directed to recommend site-specific wetland protection measures. The WRB does not review impacts to wetlands for which the Army Corps of Engineers has issued permits. Impacts that can be regulated include placing material in the wetland (filling), removing existing vegetation, and altering the water level (through draining or flooding). ***For more information***, contact Department of Planning and Community Development, City of Bozeman, 20 East Olive Street, P.O. Box 1230, Bozeman, MT 59771-1230, (406) 582-2260; the regulations also appear on their website: <www.bozeman.net>.

Subdivision Regulations

Since *A Planning Guide for Protecting Montana’s Wetlands and Riparian Areas* was published in 2003, two local governments have developed significant protection measures for streams and/or wetlands in their subdivision regulations. **These case studies should be inserted into page 5-11, under Subdivision Regulations, Montana Case Histories:**

Montana Case History: Gallatin County. Subdivision regulations were adopted in March 2005 in Gallatin County that contains stream setbacks for “any residential or commercial structure.” The setback is 300-feet on the East Gallatin, West Gallatin, Madison, Jefferson, and Missouri Rivers; and 150-feet on “all other watercourses.” The definition of “watercourse” includes all streams, drainages, waterways, gullies, ravines, or washes where “water flows either continuously or intermittently and has a definite channel, bed and bank.” Gallatin County’s protection of all perennial, intermittent, or ephemeral watercourses is unique in subdivision regulations. As an alternative to the setback, subdividers can develop a “watercourse mitigation

plan,” which is designed to mitigate the impacts of the subdivision on affected watercourses. **For information**, contact the Gallatin County Planning Department, Gallatin County Courthouse, 311 West Main, Room 208, Bozeman, MT 59715, (406) 582-3130.

Montana Case History: Lewis & Clark County. Setbacks for streams, rivers, and wetlands were adopted in subdivision regulations in January 2005. The setbacks classify water courses into four categories, with different setbacks and buffer areas for each water course type. Setbacks regulate the minimum distance that structures must be from the water course. In addition to commercial, residential, and industrial buildings, setbacks also apply to barns, feed lots, corrals, and communication towers. Buffers describe a portion of the setback that is supposed to be undisturbed (“buffers are areas where all natural vegetation, rocks, soil, and topography shall be maintained in their original state, or enhanced by the additional planting of native plants”). The setbacks and buffer for each water course category appears below:

Water Course Designation	Description	Setback	Buffer
Type I	Major rivers, specifically the Missouri River (excluding the reservoirs), Dearborn River, Sun River, and the Big Blackfoot River.	250 feet	100 feet
Type II	Major streams, generally defined as all main tributaries of Type I water courses. These streams are identified in an appendix of regulations.	200 feet	75 feet
Type III	Generally all tributaries of type II water courses (identified in an appendix of the regulations); all intermittent streams; Missouri River Reservoirs; Lake Helena; and the Helena Valley Regulating Reservoir.	100 feet	50 feet
Type IV	Drainage channels "capable of carrying or collecting stormwater and snowmelt runoff," and Helena Valley Irrigation District canals.	50 feet	30 feet

All setbacks must extend to the edge of adjacent wetlands and the 100-year floodplain, if designated. Lewis and Clark County’s subdivision regulations are the most comprehensive in the state, protecting wetlands and all watercourses (including irrigation ditches), with both a setback and a vegetative buffer. **For information**, contact the Lewis and Clark County Community Development and Planning Department, City County Building, 316 North Park, Helena, MT 59623, (406) 447-8374.

CHAPTER 6. Other Tools and Resources to Know About

Natural Streambed and Land Preservation Act (310 Permit Program)

Since *A Planning Guide for Protecting Montana’s Wetlands and Riparian Areas* was published in 2003, Conservation Districts have begun to develop regulations that help protect streams and adjacent wetlands from bank stabilization projects. **This case study should be inserted into page 6-8, under Natural Streambed and Land Preservation Act (310 Permit Program), Montana Case Histories:**

Montana Case History: Bitterroot Conservation District. In 2003, the Bitterroot Conservation District (CD) in Ravalli County became the first CD in Montana to develop regulations on bank stabilization structures. Before riprap or other hard bank stabilization methods can be used, the applicant is required to show that organic materials (e.g., root wads, riparian vegetation, biodegradable geotextile fabrics, etc.) is inadequate because an organic material alternative is 1) less durable, 2) likely to fail because of local water flows, 3) economically not feasible, or 4) likely to have the “same or greater impact on channel stability, flooding, erosion, and/or aquatic habitat.” Additionally, new bridges must at least span the bank-full width of the stream to help maintain natural channel stability so that less bank stabilization will be needed; and riparian vegetation used in a project is not considered successful unless the vegetation survives for one year after the project is completed. These requirements have been inserted into model regulations circulated statewide to all Conservation Districts. As a result, several additional CDs have adopted them. *For information*, contact the Bitterroot Conservation District, 1709 North First Street Hamilton, MT 59840, (406) 363-5010, email: bcd@bitterroot.net.

Watershed Groups

Since *A Planning Guide for Protecting Montana’s Wetlands and Riparian Areas* was published in 2003, two watershed groups finalized regulations adopted on the Big Hole River. **This case study should be inserted into page 6-9, under Watershed Groups, Montana Case Histories:**

Montana Case History: Big Hole River. Two watershed groups, the Big Hole Watershed Committee (website: <www.bhwc.org>) and the Big Hole River Foundation (website: <www.bhrf.org>), initiated a cooperative project to coordinate land use planning on the Big Hole River. As part of that project, setback regulations were developed for the Big Hole River. These regulations were adopted by all four counties that the Big Hole River travels through. The regulations are described under *County or Municipal Zoning: Big Hole River* above.