

Stillwater County

ORDINANCE NO. 2007- 01

NO PARKING ORDINANCE
on portion of North Stillwater Road

AN ORDINANCE DESIGNATING A PORTION OF THE NORTH STILLWATER ROAD LOCATED IN STILLWATER COUNTY, MONTANA, AS "NO-PARKING", AND TO PROVIDE PENALTIES FOR VIOLATION THEREOF.

WHEREAS, the Stillwater Board of County Commissioners (Commission) may contract to have work performed that is necessary to the care and management of the business and affairs of the county; and

WHEREAS, in cooperation with the Montana Fish, Wildlife and Parks, the Stillwater Conservation District and landowner, Mr. Richard Bridges, and the Commission entered into a cooperative agreement. This agreement was entered into to address problems associated with recreation on the Stillwater River and traffic congestion on the North Stillwater Road. Said agreement is titled **COOPERATIVE AGREEMENT CONCERNING ACCESS /ISSUES RELATED TO THE NORTH STILLWATER ROAD**, and was entered into on the 2nd day of May, 2007 (SEE EXHIBIT "A"); and

WHEREAS, the legal description of the area of the road in question is: that portion of the North Stillwater Road directly North of the Stillwater River and more specifically located in Township 3 South, Range 18 East, Sections 35 and 36, Stillwater County, Montana; and

WHEREAS, the *RECITALS* of said Agreement clearly state the reasons for entering into said Agreement and those reasons are incorporated by reference herein; and

WHEREAS, section VIII of said Agreement sets forth the obligations of all parties to the Agreement; and

WHEREAS, Stillwater County, as part of the Agreement, has agreed to establish a No-Parking Ordinance to avoid future problems; to reduce traffic congestion and river bank erosion on the North Stillwater Road; and for the safety of citizens who use said road; and

WHEREAS, a public hearing was conducted by the Stillwater Conservation District on the 2nd day of May, 2007 wherein the agreement was discussed with the attending public; and

WHEREAS, following said public hearing, it was found and recommended that the said Agreement be entered and parties proceed according to its terms.

NOW THEREFORE, BE IT ORDAINED, by the Commission of Stillwater County, Montana that a no-parking ordinance be enacted designating the below described portion of North Stillwater Road as a no-parking area:

Section 1: Legal Description. For the section of road legally described as: that portion of the North Stillwater Road directly North of the Stillwater River and more specifically located in Township 3 South, Range 18 East, Sections 35 and 36, Stillwater County, Montana. It is hereby determined that said portion of the road is to be designated as a No-Parking Area EXCEPT those areas where permissive parking is designated by signs that are conspicuously displayed.

Section 2. Posting. The no-parking area shall be posted as required by law or applicable regulation.

Section 3: Penalties. Persons determined to be in violation of this ordinance may be fined up to \$100.00 and their vehicle may be towed. Costs associated with towing and storage of the vehicle will be paid by the owner of the vehicle in violation.

Date of First Reading and Approval: July 25, 2007.

PASSED BY THE BOARD OF COUNTY COMMISSIONERS OF STILLWATER COUNTY, MONTANA, this 25th day of July, 2007.

By: ~~Dennis R. Hoyem~~ ~~DO NOT Copy~~ Hoyem

Dennis R. Hoyem, Chairman

7-25-07

Date

By: ~~Jerry L. Friend~~ ~~DO NOT Copy~~ Jerry Friend

Jerry L. Friend, Member

July 25 2007

Date

By: ~~Maureen Davey~~ ~~DO NOT Copy~~ Maureen Davey

Maureen Davey, Member

7-25-07

Date

Date of Second Reading and Approval: August 8, 2007.

PASSED BY THE BOARD OF COUNTY COMMISSIONERS OF STILLWATER COUNTY, MONTANA, this 8th day of August, 2007.

By: ~~Dennis R. Hoyem~~ ~~DO NOT Copy~~ Hoyem

Dennis R. Hoyem, Chairman

8-8-07

Date

By: ~~Jerry L. Friend~~ ~~DO NOT Copy~~ Jerry Friend

Jerry L. Friend, Member

8-8-07

Date

By: ~~Maureen Davey~~ ~~DO NOT Copy~~ Maureen Davey

Maureen Davey, Member

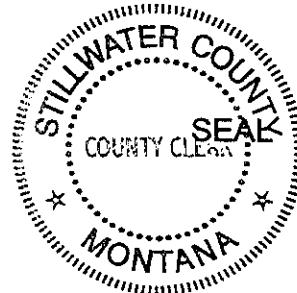
8-8-07

Date

ATTEST:

~~Pauline Mishler~~ ~~DO NOT Copy~~ Pauline Mishler

Pauline Mishler, Clerk and Recorder



THIS ORDINANCE shall be in full force and effect thirty (30) days after the date of the Second Reading and approval by the Board of County Commissioners of Stillwater County.

**COOPERATIVE AGREEMENT
CONCERNING ACCESS ISSUES RELATED TO THE
NORTH STILLWATER ROAD**

March 21, 2007

I.

RECITALS:

WHEREAS, Richard Bridges (Landowner), has alleged that he is frequently prevented from accessing his fields due to recreationists blocking the North Stillwater Road. Said road is located due east of the Johnson Bridge in Stillwater County, Montana. The problem occurs when the recreationists launch their rafts and other water craft at one of three "non-designated" locations along the Stillwater River on property belonging to the Landowner; and

WHEREAS, said launching has decreased the stability of the river bank, debris has allegedly been knocked into the river, and some river rock has been moved by hand in an effort to improve the said launch site(s) on private property; and

WHEREAS, in an effort to prevent these activities from continuing, the landowner placed material on his property to block recreationists' trailers from creating further damage;

WHEREAS, review of the records filed with the Stillwater County Clerk and Recorder's office indicates the land in question is, in fact, owned by Richard Bridges and is not part of any easement or right-of-way owned by the County. The County has only a prescriptive easement on and within the boundaries of the North Stillwater Road and, in fact, maintains said road; and

WHEREAS, the placement of materials in a stream or on the bed or immediate banks of a stream requires the written consent of the board of supervisors of a conservation district pursuant

to the Montana Natural Streambed and Land Preservation Act, Mont. Code Ann. § 75-7-101 *et seq.*

WHEREAS, it is understood between the parties that the Landowner is not against continued access to the river for *FOOT TRAFFIC*, but is concerned about the erosion caused by vehicles and trailers backing over the stream bank and the blocking of the county road by recreationists' vehicles launching boats in the said non-designated areas; and

WHEREAS, it is mutually understood and agreed the Landowner requires clear passage for access to fields and stock; and

WHEREAS, it is mutually understood and agreed the pressure on the North Stillwater Road increased dramatically with increased popularity of commercial/personal float trips; and

WHEREAS, it is mutually understood and agreed that the Absaroka Fishing Access below Johnson Bridge is rudimentary in nature, lacking good ramp and parking. Also, signage is present but minimal; and

WHEREAS, it is mutually understood and agreed that the said access is particularly congested on weekends from Memorial Day through Labor Day; many people prefer to launch rafts at the non-designated locations due to congestion and because of less desirable flows from the access site to the confluence with the Rosebud Creek; natural and man-made obstructions in the river make it difficult to float that particular stretch; and some people look for alternative launch points where the county road is close to the river just above or below the confluence of the Rosebud Creek; and

WHEREAS, it is mutually understood and agreed that a public hearing shall be required, and the public shall be invited to participate in said hearing, pursuant to the public participation statutes.

Montana Code Annotated § 2-3-101 *et seq.*; and

WHEREAS, implementation of the provisions of this agreement as hereinafter set forth will reduce or eliminate the possibility of a violation of the Montana Streambed and Land Preservation Act, Mont. Code Ann. 75-7-101 *et seq.* by either the Landowner or recreationists; and

WHEREAS, it is mutually understood and agreed, the parties have together reached what they consider to be an equitable agreement between them.

WHEREAS, the parties have entered into the negotiations and preparation of this Agreement with full knowledge and understanding of its consequences; and there have been no arrangements, understandings or connivances of any kind or character between the parties for the purpose of obtaining the consent of the other to this Agreement, and all parties are fully confident that this Agreement has been made free of fraud or imposition, coercion or duress, and without unfair persuasion or domination of either of the said parties by the other or by any other person; and

WHEREAS, the parties hereto intend by this instrument to finalize their agreements as to the future use of the North Stillwater Road and the fishing access sites located along the said road and to further clarify the responsibilities of all parties to address access issues and erosion issues associated with the said location.

II.

NOW, THEREFORE, IT IS HEREBY AGREED:

COMES NOW, Stillwater County, the Montana Fish Wildlife and Parks (FWP), The Stillwater Conservation District (SCD), and the Landowner, Richard Bridges, by and through their, agents and/or counsels of record, enter into this Cooperative Agreement. This Agreement shall be filed with the Stillwater Clerk and Recorder's Office for future reference and review as a

duly executed document of record.

THE UNDERSIGNED PARTIES HEREBY AGREE AND STIPULATE AS FOLLOWS:

THIS AGREEMENT made and entered into this 21st day of March, 2007, is, and shall, except as release may be forever remain, binding between Stillwater County, the Montana Fish Wildlife and Parks (FWP), The Stillwater Conservation District (SCD), and Landowner, Richard Bridges and upon their representatives, successors, and assigns.

III.

PURPOSE OF THE AGREEMENT: It appears to the parties that reconciliation of all of their differences heretofore presented would be in their best interests. As a result of the foregoing, the parties have been negotiating with respect to settlement of their dispute and any and all issues raised, and this Agreement is entered into by the parties for the purpose of defining their respective rights and obligations.

IV.

MUTUAL RELEASE: In consideration of the execution of this Agreement and the terms and conditions hereof, each party hereto releases and forever discharges the other party, his or her personal representatives and assigns from any and all rights, claims, citations, demands and obligations related to all matters raised concerning this dispute except as herein specifically provided; and each party is forever barred from having or asserting such right, claim, demand or obligation at any time hereafter for any purpose; and it is hereby agreed that the personal obligations of the parties shall remain their respective obligations; and each party shall pay and hold the other free and harmless from any obligations or bills for merchandise or services separately incurred by the parties hereto arising out of this dispute and subsequent to the date of this Agreement, except to the extent herein expressly provided.

V.

VOLUNTARY AGREEMENT: This Agreement is voluntary, each of the parties hereto having read and approved the same, being fully advised of their rights and obligations, and approved the same in exercise of his or her independent judgment.

VI.

FULL DISCLOSURE: Each of the parties hereto represents and warrants to the other, as an integral part of this Agreement, that there has been full disclosure of all information pertaining to this dispute between the parties and counsel.

VII.

JOINT DRAFTING: All parties jointly drafted the said Agreement as is demonstrated by the undersigned signatures.

VIII.

TERMS OF AGREEMENT:

I. Obligations of Fish Wildlife and Parks:

In consideration of the mutual promises and covenants expressed between the parties, Montana Fish Wildlife and Parks (FWP), through the undersigned representatives agree to perform the following:

- 1) FWP shall improve the Absaroka Fishing Access Site by:
 - (a) Providing sufficient gravel to improve the existing launch site and the parking lot.
 - (b) Providing signage as follows:
 1. A large sign will be posted on the North Stillwater Road and Highway 78 informing recreationists of the location of the

Absarokee Fishing Access site. Said sign will expressly state
“Parking in non-designated areas is strictly prohibited and in
violation of any pertinent county ordinance”

2. Signs will also be posted indicating where there are designated
parking areas along the North Stillwater Road. Said parking
will be designated between the signs erected and their location
will be agreed upon by the FWP, Stillwater County Road
Supervisor and the Landowner.

(c) Removing the rock wing of Benbow Ditch extending out into the
Stillwater River pending approval of all people who have water
rights to said ditch.

(d) Placing of bank stabilization materials (rip rap) to stop erosion at
specified locations.

(e) Securing any and all necessary permits to perform the bank
stabilization measures.

(d) FWP will also be working with the Stillwater County Road
Department to provide dust control on the North Stillwater Road and
around the Absaroka Fishing Access Site. This will include sharing in
the costs of road preparation and paying agreed upon dust control
agents.

II. Obligations of Stillwater Conservation District:

In consideration of the mutual promises and covenants expressed between the
parties, Stillwater Conservation District, through the undersigned representatives,

agree to perform the following:

- (a) Facilitate the process to obtain permission for FWP to remove the Benbow Ditch diversion structure.
- (b) Facilitate a public hearing on the removal of the Benbow Ditch diversion structure and implementation of this agreement by publishing proper notice in the Stillwater County News informing the public of when and where a public hearing will be held. The SCD will be responsible for moderating the public hearing.
- (c) Coordinate the purchase or acquisition of the boulders, or such other construction or barrier material, as may be required, at no cost to the Landowner, FWP, or Stillwater County. This material will be used to serve as a barrier preventing parking on Landowner's land.
- (d) Coordinate the purchase or acquisition of the bank stabilization material to be hauled by Stillwater County and placed by the FWP in specified locations.

III. Obligations of Stillwater County:

In consideration of the mutual promises and covenants expressed herein between the parties, Stillwater County, through the undersigned representatives, agrees to perform the following:

- (a) Authorize the Stillwater County Road and Bridge Department to obtain, transport and place the barrier material in specified locations. Authorize the Stillwater County Road and Bridge Department to transport bank stabilization material obtained by

FWP to areas specified by FWP.

- (b) Adopt a “no-parking” ordinance on the North Stillwater Road to specify where parking is permitted and where it is not.
- (c) Request the assistance of the Stillwater County Sheriff to assist FWP in enforcing the said ordinance, pending approval, and request the Sheriff to seek cooperation from enforcement officers of the FWP to monitor parking in the said area to avoid congestion in non-designated parking areas.

IV. Obligations of Landowner:

In consideration of the mutual promises and covenants expressed between the parties, the Landowner, through his representatives, agrees to perform the following:

- (a) Authorize the placement of all of the above-described materials in the designated areas.
- (b) Authorize foot traffic in designated areas so the public can continue to access the river for recreation and not be cited for trespassing. The Landowner will be responsible for placement of “No Trespassing” signs in the areas that are not designated for foot travel.
- (c) Authorize placement of materials in designated areas to be used for the bank stabilization project.
- (d) Authorize placement of rocks in designated areas to create a no-parking barrier in areas not designated for parking

(e) Indemnify and hold Stillwater County, FWP, and the SCD harmless for the full amount of any loss, damage, liability, and claims whatsoever arising directly or indirectly out of the parties' performance of this agreement, excepting only such liability or damage resulting from the sole negligence or willful misconduct of any of the parties.

IX. NO FUTURE MODIFICATION: All parties agree that the terms of this Agreement shall not be modified EXCEPT in writing executed by all the parties hereto or their successors or assigns. A public hearing shall be scheduled to address any and all future modifications.

X.

ATTORNEY'S FEES: The parties acknowledge that they have been represented by their respective attorneys of record(s). Each party shall pay their respective attorney fees incurred in connection with this Agreement. In the event of future litigation between parties to enforce, modify, or interpret any provision of this agreement, the prevailing party shall be entitled to all court costs, including reasonable attorney's fees.

XI.

ENFORCEMENT: Agreement shall be made an integral part of any decree and shall be enforceable by any method provided by law or equity. Agreement shall be binding upon the parties, representatives, successors, and assigns for as long as the said road and access sites remain in existence.

XIII.

CONSTRUCTION AND VENUE: Agreement will be construed under and governed by the laws of the State of Montana. Venue with respect to the substance of this Agreement shall be

proper in the Twenty Second Judicial District Court.

XIV.

JOINT DRAFTING: It is hereby expressly understood and agreed that this Agreement was jointly drafted by the undersigned parties. Accordingly, the parties hereby agree that any rule of construction, to the effect that an ambiguity is construed against the drafting party, shall be inapplicable to and dispute concerning the terms, meaning, or interpretation of this Agreement.

XV.

SEVERABILITY: If any provision of this Agreement is deemed invalid or unenforceable in the respective jurisdiction, such provision shall be fully severable from this Agreement; and the other provisions thereof shall remain in full force and effect in such jurisdiction; and the remaining provisions hereof shall be liberally construed to carry out the provisions and intent thereof.

XVI.

WAIVER: Any failure on the part of any Party hereto to comply with any of its obligations, agreements, or conditions thereunder may be waived by any other party to whom such compliance is owed. To be effective, the waiver shall be in writing and signed by all of the undersigned parties, their representatives, agents, or assigns. No waiver of any provision of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver.

XVII.

ENTIRE AGREEMENT: This Agreement is the entire, final and complete Agreement between the parties regarding the subject matter hereof and supercedes and replaces all prior written and oral agreements between the parties or their representatives with respect to such matters. Any

and all future agreements or changes to this agreement shall be in writing

DULY EXECUTED this 21st day of March, 2007.

Stillwater County:

By: DO NOT COPY DO NOT COPY

Dennis R. Hoyem, Chairman

By: DO NOT COPY DO NOT COPY

Jerry L. Friend, Member

By: DO NOT COPY DO NOT COPY

Maureen Davey, Member

By: DO NOT COPY DO NOT COPY

John I. Petak, III, Stillwater County Attorney

By: DO NOT COPY DO NOT COPY

Patrick G. Begley, Deputy Attorney for Stillwater County

Stillwater Conservation District

By: DO NOT COPY

By: DO NOT COPY

Montana Fish Wildlife and Parks

By: DO NOT COPY

Landowner and his Representative

By: *Richard Bridges* DO NOT COPY
Richard Bridges, Landowner

By: _____
Stanley Pelton, Agent