

AN ORDINANCE FOR THE PROTECTION OF SOIL AND WATER
FROM ALL BISON/BUFFALO GRAZING
IN PHILLIPS CONSERVATION DISTRICT

Section 1. FINDING, POLICY AND INTENT.

- 1) It is the finding of the Phillips Conservation District that due to the migratory behavior of bison/buffalo to search out desirable grazing forage, their social behaviors, and other bison/buffalo behaviors, bison/buffalo grazing can create lasting impacts to soil and water resources.
- 2) Pursuant to 76-15-102 it is the declared policy of the State of Montana to provide for the conservation of soil and soil resources of the State of Montana, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of the State of Montana.
- 3) It is the policy of the Phillips Conservation District to provide for the conservation of the soil and water resources of the district and the prevention of soil erosion, accelerated soil erosion and the prevention of sediment damage to the land, water and other resources within the boundaries of the conservation district.
- 4) It is Phillips Conservation District's intent, in furtherance of the policy of the State of Montana and of Phillips Conservation District, to protect the soil and water resources within the boundaries of the conservation district from unreasonable depletion and degradation of natural resources from the grazing of wild, free roaming and domesticated bison/buffalo.
- 5) It is Phillips Conservation District's intent that all bison/buffalo be healthy subject to a disease testing plan and certification that the bison/buffalo are disease free and brucellosis free and identifiable as such.
- 6) It is Phillips Conservation District's intent, in order to carry out the above policies and intents, that this ordinance applies to existing as well as future grazing by all bison/buffalo.

Section 2. PURPOSE. The purpose of this ordinance is to:

- 1) Enact a soil conservation and erosion prevention program for the conservation and protection of land, water, and other resources of the Phillips Conservation District from the grazing of bison/buffalo;

- 2) Encourage the use of land in accordance with its capabilities and treat it according to its needs;
- 3) Prevent the degradation of rangelands, cultivated lands, waterways, drainages, reservoirs and lakes;
- 4) Protect the tax base;
- 5) Protect and promote the health, safety and general welfare of the people; and
- 6) Ensure that soil resources are preserved for the production of food and fiber for the present and future generations of this district.

Section 3. AUTHORITY.

- 1) Pursuant to 76-15-701, Phillips Conservation District has the authority to formulate regulations governing the use of lands within its boundaries in the interest of conserving soil and water resources and preventing and controlling erosion.
- 2) In pertinent part, Phillips Conservation District is authorized to adopt regulations that include any means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control erosion in this district.

Section 4. DEFINITIONS. Unless the context requires otherwise in this ordinance, the following definitions apply:

- 1) "Bison/buffalo" means bison/buffalo that are wild, free-roaming or domestic, or classified as indigenous.
- 2) "District" or "conservation district" means the Phillips Conservation District, a governmental subdivision of the State of Montana and a public body, corporate and politic, exercising public powers.
- 3) "Erosion" means the process by which the surface layer of the land is worn away by the action of water, wind, gravity, or a combination thereof.
- 4) "Land occupier" means any person, firm, corporation, municipality, or other legal entity who holds title to, or is in possession of, any lands lying within the district, whether as owner, lessee, renter, tenant, or otherwise the occupier of land. Where the term land occupier is used in this ordinance, the term shall include both the owner and the occupier of the land when they are not the same person.
- 5) "Management and conservation plan" means the plan developed by the landowner and which describes the suitability of the land for its intended uses and the measures required to prevent the spread of disease and, to the extent possible, erosion from occurring on the land for which the plan is developed.
- 6) "Person" means any natural person, individual, corporation, firm, partnership, association, municipality, governmental agency, non-governmental agency, political subdivision, or other legal entity.
- 7) "Qualified elector" means an individual qualified to vote under state law residing within the Phillips Conservation District.

- 8) "Sediment" means the solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice, and has come to rest on the earth's surface.
- 9) "Sediment damage" means the economic or physical damage caused to any person's property or natural resource resulting from erosion.
- 10) "Sedimentation" means the process or action of depositing sediment into a waterway.
- 11) "Supervisors" or "district supervisors" means the Phillips Conservation District board of supervisors.
- 12) "Water" means any and all surface water and groundwater which are contained within, flow through, or border upon the Phillips Conservation District.

Section 5. APPLICABILITY. This ordinance applies only to bison/buffalo grazing on lands within the Phillips Conservation District. The provisions of this ordinance have the same force and effect of law over publicly owned lands within the District and shall be in all respects observed by the agencies administering such lands. Unless otherwise provided, this ordinance applies retroactively to all bison/buffalo grazing within the conservation district.

Section 6. COMPLIANCE WITH ORDINANCE.

- 1) No land occupier or person may cause, conduct, continue to cause or conduct, contract for, or authorize any bison/buffalo grazing activity that does not meet the provisions of this ordinance.
- 2) Bison/buffalo grazing of all land within the district shall be carried out under a management and conservation plan developed under Section 7.
- 3) No lands may be grazed by bison/buffalo if:
 - a. the lands do not have sustainable or suitable habitat/forage for bison/buffalo;
 - b. the lands do not have an adequate and sustainable water supply, or an approved plan to provide an adequate and sustainable water supply for the maximum number of bison/buffalo to be grazed on the land;
 - c. the animals are not disease and brucellosis free; or
 - d. grazing will result in sediment damage to lands, drainages, waterways, reservoirs, and other water storage facilities.

Section 7. MANAGEMENT AND CONSERVATION PLANS.

- 1) Prior to the placement of bison/buffalo on lands within Phillips Conservation District:
 - a. A management and conservation plan must be developed that:
 - i. includes site location information where the bison/buffalo will be maintained, including a legal description of the location, carrying capacity, and wildlife habitats in the area;
 - ii. includes a map showing the location of fences, watering facilities, soil types and habitats;

- iii. addresses population objectives and defines a means to control herd size and distribution, wildlife habitat management, fencing, disease monitoring, and conflict strategies including a bison/buffalo escape plan;
 - iv. meets or exceeds the USDA Natural Resource and Conservation Service technical guides for Phillips County in existence at the time of placement of bison/buffalo on lands within Phillips Conservation District;
 - v. addresses wind erosion, water erosion, the protection of grass waterways, the proper grazing rates, and any other management practices which protect the land and water resources from degradation;
 - vi. includes the management, techniques, and methods for control of accelerated erosion and sediment damage resulting from the activities of grazing bison/buffalo; and
 - vii. includes, if no applicable USDA technical guidelines are available, a management and conservation plan appropriate and consistent with the policy and purpose of this ordinance.
- b. All bison/buffalo must be tested and certified, by a state veterinarian to be disease free;
 - c. A perimeter fence must be built to keep bison/buffalo from leaving the land on which they are placed;
 - d. Adequate water must be available; and
 - e. Bison/buffalo must be branded, tattooed, tagged or otherwise identified to track its health status.

Section 8. COMPLAINTS.

- 1) A complaint signed by a land occupier may be filed against any other land occupier or person alleging that bison/buffalo are grazing on lands within the district in violation of this ordinance.
- 2) The complaint must:
 - a. include the name and address of the complainant;
 - b. be in writing, signed, and delivered to the district office by mail, email or in person;
 - c. include the location of the alleged violation;
 - d. include the date of the alleged violation, if known;
 - e. describe the source, nature and extent of any erosion or sediment damage that is alleged to have occurred or that is occurring; and
 - f. describe whether degradation of the lands has occurred or is occurring.
- 3) The complaint is a public record that is maintained in the district office.

Section 9. ACTION ON A COMPLAINT.

- 1) Within 15 working days of the receipt of a correct and complete complaint the supervisors shall notify the alleged violator of the complaint.
- 2) The supervisors shall conduct an onsite inspection within 30 working days of receipt of the correct and complete complaint to determine whether an actual violation exists.

The alleged violator, or a designated representative, may participate in the onsite inspection.

- 3) At the onsite inspection, the supervisors shall acquire all of the following information:
 - a. the location of and estimated amount of acreage involved in the alleged violation;
 - b. the description of the source, nature and extent of any type of erosion or sediment damage;
 - c. identification of the type of land involved, including, but not limited, to rangelands, croplands, water ways/drainages, riparian areas, reservoirs, creeks and dams;
 - d. the type of fencing, if any, being used to control the bison/buffalo;
 - e. whether a conservation plan is in place and is being implemented;
 - f. the number of animal units and bull/cow ratio grazing on the land;
 - g. whether adequate water supply is available;
 - h. whether a health and disease testing plan is in place and being implemented; and
 - i. whether bison/buffalo are certified to be disease and brucellosis free and can be identified as such.
 - j. Whether a management and conservation plan has been developed and implemented in compliance with Section 7.
- 4) Based upon subsection (3) and compliance with Section 7, the supervisor shall determine whether there is a violation of this ordinance. The alleged violator and the complainant must be notified of the supervisors' determination within 15 working days of their determination. If there is a violation the violator must be given a violation notice by certified mail. The supervisors shall include with the violation notice the corrective actions necessary to resolve the violation.
 - a. If the supervisors determine that the degradation of the land or waters is occurring, the violation notice must include an order requiring the cessation of degradation of the land.
 - b. If degradation of the land continues after an order to cease has been issued the supervisors may petition the district court under 76-15-709 for the enforcement of the ordinance and for such other temporary relief as may be necessary.
 - c. If the violator ceases the degradation of the land pursuant to the supervisors' order or if the violation does not involve the degradation of land, the supervisors, or their designated representative, shall meet with the violator within 15 working days of the notice of violation to:
 - i. discuss solutions to resolve the corrective actions identified in the violation order; and
 - ii. specify a reasonable length of time to complete any corrective measures identified in the agreed to solution.
 - iii. a meeting under this subsection may be continued from time to time in order to reach an agreed to solution.
- 5) If the violator and the supervisors do not agree to a solution, within 10 working days of the conclusion of the meeting, the supervisors shall notify the violator of the corrective actions necessary to resolve the violation. The violator is not entitled to any further meeting under Section 10.
- 6) The supervisors may extend the time periods in this section as they deem necessary.

Section 10. REVIEW OF SUPERVISORS' DETERMINATION.

- 1) A person determined to be in violation of this ordinance who disagrees with the supervisors' determination or who is issued an order to cease further activity under Section 9 (4) may request in writing a meeting with the supervisors. The request must be made within 15 working days of receipt of the violation notice. The supervisors shall hold a meeting with the violator to review the information set forth in Section 9 (3).
- 2) Within 15 working days of a meeting held under this section, the supervisors shall notify the person determined to be in violation of the ordinance by certified mail of the result of the supervisors' review under subsection (1) or (2) and the remedy to be implemented by the violator.
- 3) A person who does not comply with a remedy determined by the supervisors under Section 9 or this Section shall be subject to enforcement pursuant to Section 11.
- 4) The supervisors may extend the time periods in this section as they deem necessary.

Section 11. ENFORCEMENT IN DISTRICT COURT.

- 1) The supervisors may bring enforcement actions in district court as provided in 76-15-709 against any person failing to comply with the ordinance and any corrective action or order issued by the supervisors.
- 2) The supervisors may seek an enforcement order requiring the removal of bison/buffalo, against any person whose bison/buffalo grazing practices are degrading lands which results in accelerated erosion, sediment damage, or damage to waterways, drainages, reservoirs or lakes.

Section 12. BOARD OF ADJUSTMENT.

- 1) A board of adjustment shall exist to hear and determine matters filed pursuant to 76-15-223 through 76-15-725.
- 2) The board of adjustments shall be structured as set forth in 76-15-721 through 76-15-722.
- 3) All meetings of the board of adjustment shall be open to the public and its records and proceedings shall be public.

Section 13. BOARD OF ADJUSTMENT--PETITION FOR VARIANCE.

- 1) A petition may be filed for a variance as provided in 76-15-723, alleging that there are great practical difficulties or unnecessary hardships in complying with the land use regulations prescribed by the ordinance.
- 2) The petition must be served upon the chair of the Phillips Conservation District and the Department of Natural Resources and Conservation. The Department of Natural Resources and Conservation will appoint a board of adjustment pursuant to 76-15-721 to hear the variance.
- 3) On the basis of findings and determination, the board of adjustment may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that:

- a. will relieve the great practical difficulty or unnecessary hardship;
 - b. will not be contrary to the public interest;
 - c. will be such that the spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done.
- 4) An order of the board of adjustment may be appealed to district court pursuant to 76-15-726.

Section 14. COMPLIANCE WITH THE STATE CONSTITUTION AND OTHER LAWS.

- 1) Nothing in this Ordinance shall be construed as exempting a person from the requirements of other local, state or federal laws. To the extent that the requirements of the ordinance conflict with any applicable local, state or federal requirements, the local, state, or federal requirements shall apply.
- 2) This Ordinance is intended to be supplemental to Title 81, chapter 4, part 2, MCA.
- 3) This Ordinance is enacted by the Phillips Conservation District, mindful of its constitutional obligations:
 - a. under Article II, section 3 of the Montana constitution, specifically the inalienable right for all persons to acquire, possess, and protect property; and
 - b. under Article IX, section 1 of the Montana constitution, specifically as a remedy for the protection of the environmental life support system from degradation and to prevent unreasonable depletion and degradation of natural resources.

Section 15. LIABILITY.

- 1) The Phillips Conservation District, conservation district supervisors, and conservation district employees are immune from suit for any liability that might otherwise be incurred or imposed for an act or omission committed while engaged in conservation district activities under the ordinance as more fully set forth in 76-15-320.
- 2) No person or land occupier acting in compliance with the ordinance is relieved of liability for damage to any person or property as the result of the person's or land occupier's negligent acts or omissions.

Section 16. ALTERATION OR REPEAL OF ORDINANCE. The ordinance may only be amended, supplemented or repealed by the filing of a petition as provided in 76-15-705. Referenda on the adoption, amendment, supplementation, or repeal of any part of the ordinance shall not be held more often than once in six (6) months.

Section 17. SEVERABILITY CLAUSE.

If a part of this ordinance is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this ordinance is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

