

**REGULAR MEETING OF THE CARBON COUNTY PLANNING  
BOARD**

**JUNE 20, 2023**

**TUESDAY 7:00 PM**

**CARBON COUNTY PERSONAL SERVICE BUILDING**

**10 OAKES AVENUE SOUTH**

**RED LODGE, MT**

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. APPROVAL OF MINUTES OF PREVIOUS MEETING**

May 16, 2023

**D. PUBLIC HEARINGS**

None

**E. REGULAR BUSINESS**

Martin Meadows Subdivision – Recommendation to  
Commission

Subdivision Regulations Update

Development Regulations Update

**F. PETITIONS & COMMUNICATION FROM AUDIENCE**

**G. WRITTEN COMMUNICATIONS**

**H. REPORTS FROM PLANNING BOARD MEMBERS AND  
COMMITTEES**

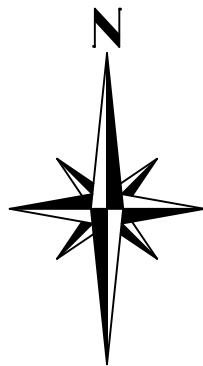
**I. STAFF REPORTS**

**J. ADJOURN**

Carbon County Planning Board  
May Meeting  
5-16-23

- A. Call Meeting to Order, 7:00 pm, Betsy Scanlin – Vice Chairperson
- B. Roll Call
  - Present: Clinton Giesick, Skip Bratton, Dean Webb, Clint Peterson, Betsy Scanlin, Mike Hayes, Forrest Mandeville
  - Audience: see attached sign-in sheet
- C. Approval of 3-21-23 Minutes
  - Dean moved. Mike second.
    - Motion passed unanimously
- D. Public Hearings
  - *See Regular Business*
- E. Regular Business
  - *Fallen Tree Subdivision*
    - Two lot subdivision
    - 22 acres total
    - Near intersection of Highway 78 and Red Lodge Creek Rd.
    - Individual well and drainfield system will serve each lot
    - Skip moved to recommend Commissioner’s approval. Clint second.
      - Motion passed unanimously
- F. Audience Communication
  - *None*
- G. Written Communication
  - *None*
- H. Committee Reports
  - *None*
- I. Staff Reports
  - *None*
- J. Adjourn Meeting
  - 8:20 pm





SCALE 1"=100'  
0 100 200

### PRELIMINARY PLAT

"MARTIN MEADOWS SUBDIVISION"  
LOCATED IN TRACT 1 OF CERTIFICATE OF SURVEY OF NO. 2476 FT LYING IN THE  
W1/2SW1/4 OF SECTION 2, T.7S., R.20E., P.M.M.,  
CARBON COUNTY, MONTANA

SURVEYED BY: RED LODGE SURVEYING LLC  
PO BOX 986 | 606 S GRANT AVE.  
RED LODGE, MT 59068  
DURING: APRIL 2021  
LANDOWNER: PHOBIAS RED LODGE LLC

#### SURVEYOR'S NOTE:

Site specific wetland delineation for foundation, grading and drainage design are recommended prior to actual building construction

#### CERTIFICATE OF DEDICATION AND LEGAL DESCRIPTION:

I, the undersigned landowner does hereby certify that I have caused to be surveyed, subdivided and platted into lots, as shown by the plat hereto annexed, a tract of land located in W1/2SW1/4 Section 2, T.7S., R.20E., Carbon County, Montana, containing 20.27 acres, more or less, and all according to the attached plat. Subject to easements and/or rights-of-way of record, apparent on the ground, and/or reserved per this survey.

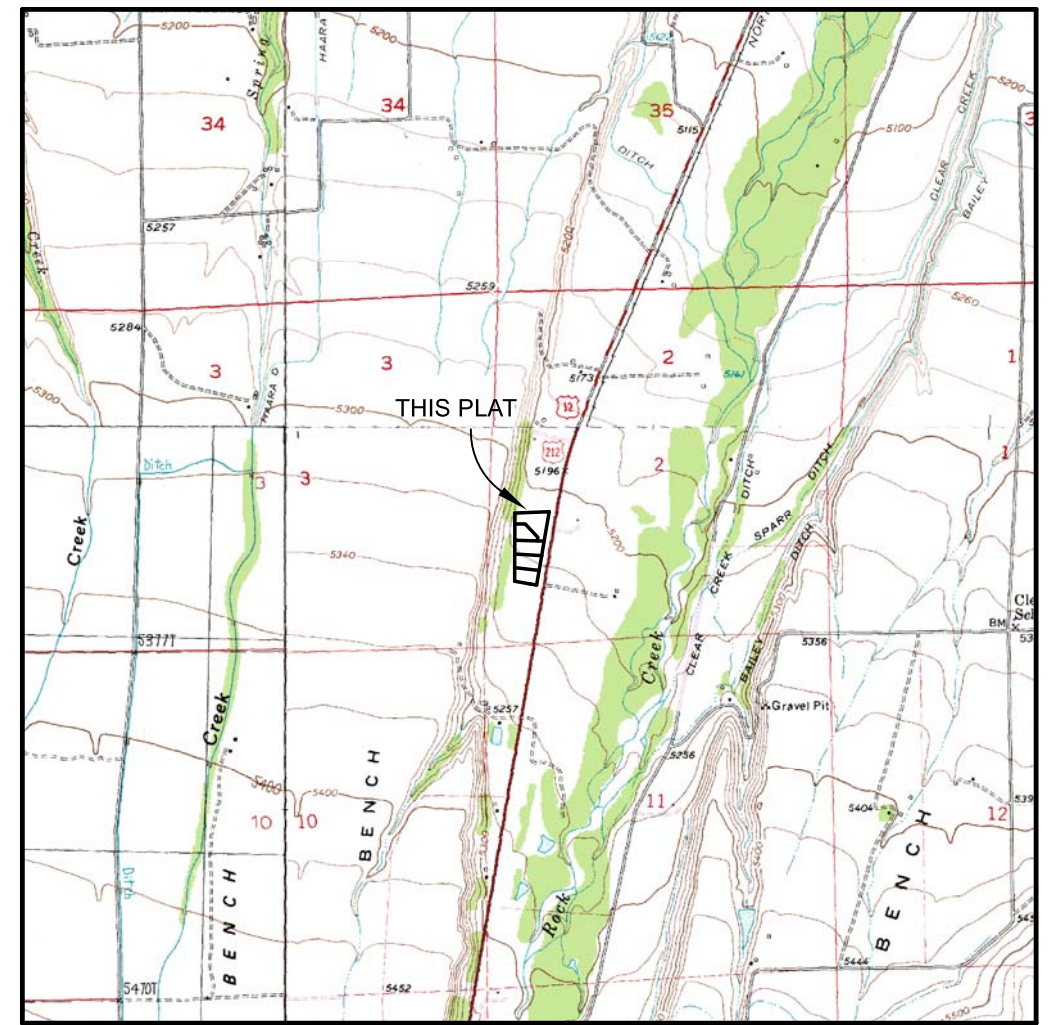
Legal and physical access is provided each lot per MCA 76-3-608(3)(d) and Section II.B.4.p.

The above described tract of land is to be known and designated as "MARTIN MEADOWS SUBDIVISION". The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, television, water or sewer service to the public, the right to joint use of an easement for the construction, maintenance, repair and removal of their lines and other facility, in, over, under and across each area designated on this plat as "utility easement" to have and to hold forever. No land is being dedicated to the public.

#### LEGEND

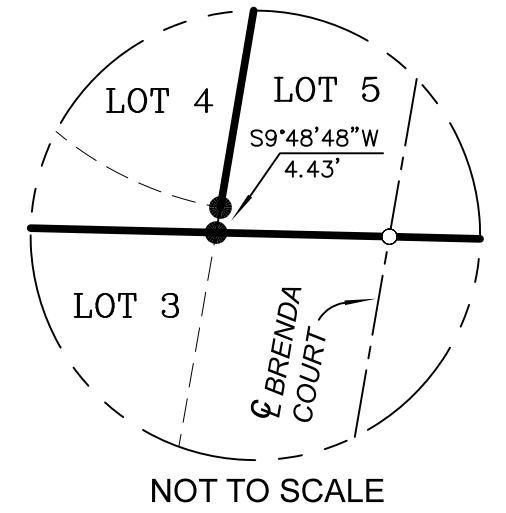
- SET NO. 5 REBAR WITH 1 1/4" YELLOW PLASTIC CAP VIA RED LODGE SURVEYING LLC AND UNDERSIGNED PLS
- FOUND YPC VIA BRATTON 9519 LS
- ⊙ FOUND IRON PIPE
- ⊙ FOUND REBAR
- NO MONUMENT SET OR FOUND
- ⊕ SECTION AND QUARTER CORNER
- EDGE OF PAVEMENT
- T- UNDERGROUND TELEPHONE
- TELEPHONE PEDESTAL
- OVERHEAD POWER
- BURIED POWER
- x-x- FENCE
- - - DITCH
- CONTOUR INTERVAL = 1'
- VERTICAL DATUM ASSUMED

#### VICINITY MAP



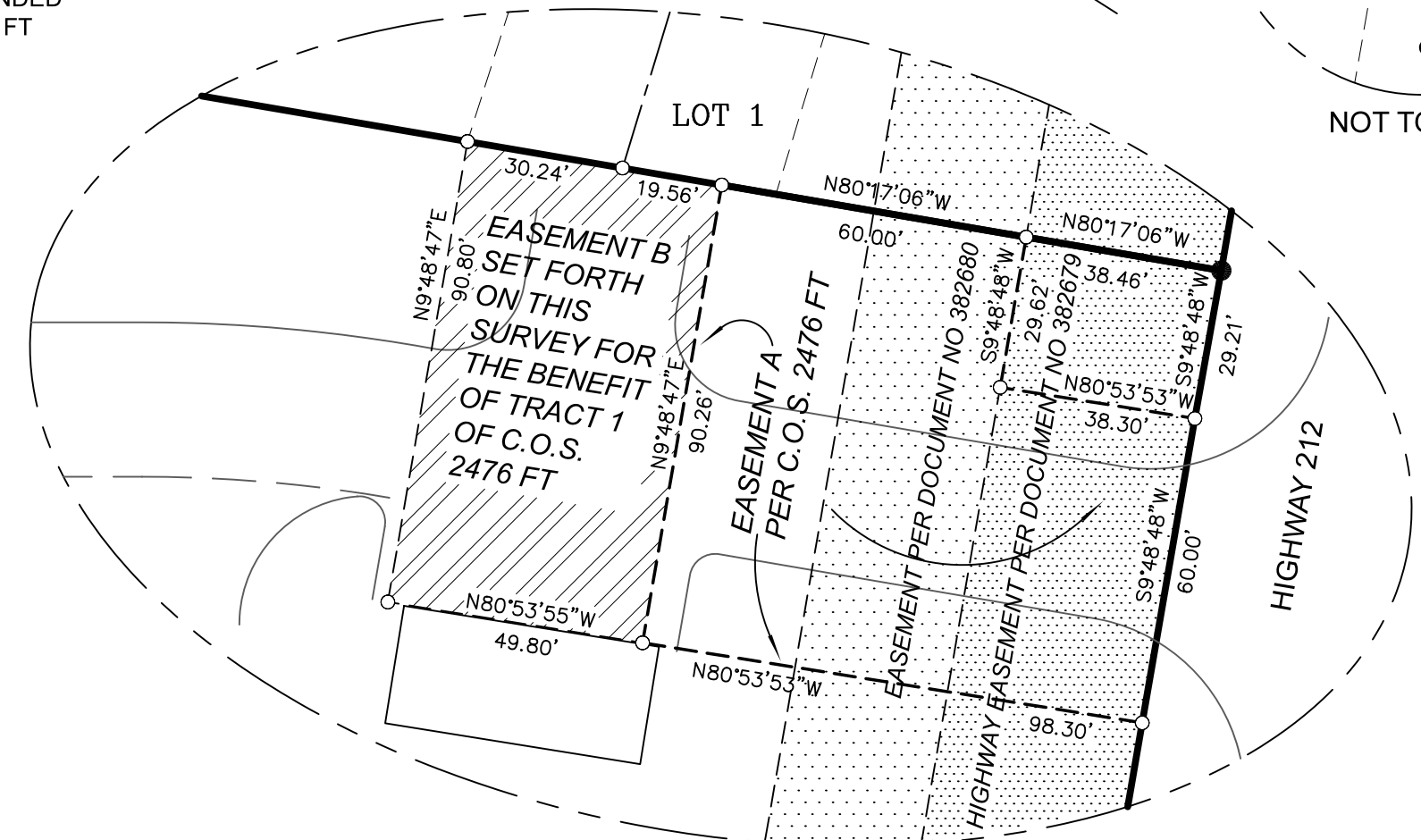
SCALE: 1"=3000'

#### DETAIL #2



NOT TO SCALE

#### DETAIL #1



NOT TO SCALE

HARRISON JENNIFER LOVE  
PO BOX 1101  
RED LODGE, MT 59068  
TRACT 1  
C.O.S. 1062

PHOBIAS RED LODGE LLC  
3167 FEE FEE ROAD  
BRIDGETON, MO 63044  
TRACT 2  
C.O.S. 2476 FT

MARVIN F. AND JANET M. VINCENT  
7376 US HIGHWAY 212  
ROBERTS, MT 59070  
TRACT 1  
C.O.S. 2464 RB

SALIBA PROPERTIES LLC  
PO BOX 1618  
RED LODGE, MT 59068  
TRACT 3  
C.O.S. 2464 FT

TERRY DEAN AND KAREN KING KREITZBERG  
74 BAY BRIDGE DR  
GULF BREEZE, FL 32561  
TRACT 2 AMENDED  
C.O.S. 2464 FT

COX-SULLIVAN DITCH AND IRRIGATION FACILITY EASEMENT

TRACT 2  
C.O.S. 2426 FT

**IRRIGATION FACILITY EASEMENTS:**  
Nothing herein nor any covenant shall diminish the unobstructed use and maintenance of the existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to land adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights.



**CARBON COUNTY**  
**Planning Office**  
**P.O. Box 466, Red Lodge, MT 59068**  
**Main: (406) 446-1694**  
**Fax: (406) 446-2640**

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**PROJECT MEMORANDUM**

TO: Members of the Carbon County Planning Board  
FROM: Forrest J. Mandeville, AICP – Contract Planner  
DATE: June 11, 2023  
RE: Martin Meadows Subdivision Preliminary Plat Application–Staff Report and Findings

REQUIRED PLANNING BOARD ACTION: Review, receive public comment, and recommendation to approve, conditionally approve, or deny the proposed preliminary plat.

RECOMMENDATION: **Approval with Conditions**

RECOMMENDED MOTION: *Having reviewed and considered the application materials, project memorandum, public comments and all of the information presented, I hereby move to recommend approval of the Martin Meadows Subdivision, with the findings and conditions included in the project memorandum.*

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**Project/Application Summary:**

Red Lodge Surveying, on behalf of Phobia Red Lodge, LLC (Beau Reinberg), has submitted a preliminary plat application for a 5-lot subdivision, with lots designed for commercial use. Beartooth Engineering is providing engineering services for the proposed subdivision. The subdivision area is approximately 13.85 acres; proposed new lots will range from 2.30 acres (1.13 net) to 4.21 acres (2.75 net) in size.

The subject property is located on Highway 212, approximately 2 miles north of Red Lodge, on the north side of Best Box Storage, which is owned by the same company. The property is legally described as Tract 1 of COS 2476 FT, lying in the W ½ SW ¼ of Section 2, Township 7 South, Range 20 East, P.M.M., Carbon County, Montana.

**Required Planning Board Action:**

During a public meeting, the Planning Board shall make a recommendation to the County Commission to approve, conditionally approve, or deny the preliminary plat. The Planning Board may recommend conditions for approval intended to ensure compliance with the Subdivision Regulations and to mitigate any anticipated impacts of the subdivision.





**Proposed Subdivision Location (Blue) and Vicinity**



**Subdivision Regulations – Compliance Review/Findings Summary:** (Section references are to the Carbon County Subdivision Regulations unless otherwise noted)

*a. Relevant evidence relating to the public health, safety, and welfare*

Each lot is proposed to utilize individual wells located on each lot. A multi-user drainfield area is proposed to be located on the property to the south, also owned by the developer. An easement will be required for the multi-user drainfield. DEQ review and approval is required.

Access is provided by Highway 212 via an existing approach which will be shared with the Best Box Storage business and is located to the south of the subject property. An easement will be utilized to access the subdivision.



**Looking North Across Subdivision (Left) and Towards Storage Units from Subdivision (Right)**

*b. Summary of Probable Impacts*

Except where exempt by state law, all subdivisions must be reviewed for the specific, documentable, and clearly defined impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety.

- **Effect on agriculture:** The site (approximately 13.85 acres) has been in agricultural production historically, primarily hay production and grazing. This use would cease as a result of this subdivision, though recent development in the area has limited agricultural production over the last several years.

There is agricultural land to the west, but surrounding property has primarily been developed into commercial and residential uses.

**Finding:** The subdivision will remove some property from agricultural production, but because the subdivision is not in close adjacent to similar uses, there should be minimal adverse impacts on agriculture as a result of this subdivision.

- **Effect on agricultural water user facilities:** The Cox-Sullivan (Klessens) Ditch runs along Highway 212 on the east side of the subdivision. An easement for the ditch is proposed and is shown on the preliminary plat. The Subdivision Regulations, Section V-A-18 requires the following statement appear on the final plat: “Nothing herein nor any



covenant shall diminish the unobstructed use and maintenance of the existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to land adjacent or to beyond the subdivision in quantities and in a manner that are consistent with historic and legal rights.”

Irrigation rights associated with the property will be retained by the developer, who owns surrounding property.

A copy of a DNRC Water Right Review letter was included with the preliminary plat application and indicates the subdivision will utilize a total of .45 acre feet of water for the five commercial buildings, and 3.18 acre feet for lawn and garden use. This leaves a remainder of 6.37 acre feet. The acquisition of new water rights are not required for this subdivision.

Finding: As long as an easement for the ditch is provided on the plat, and the required language appears on the plat, there should be minimal adverse impacts on agricultural water user facilities as a result of this subdivision.



**Ditch on East Side of Subdivision**

- Effect on local services: The Carbon County Sherriff’s office will provide law enforcement services to the subdivision. According to documents provided in the subdivision application, Sheriff Josh McQuillan reports the ability to serve the area

Finding: This subdivision will have minimal adverse impacts on law enforcement, since services can be provided.

The Red Lodge Fire District provides fire protection in the area. Email correspondence with Chief Tom Kuntz indicated that the proposal, in order to provide for basic public health and safety, would need to provide an on-site water supply of at least 30,000 gallons and located within 1000 feet of any proposed structure. To address these concerns, the developer is proposing an on-site water supply to be provided by a dry hydrant on proposed Lot 5.

Due to high ground water in the area, the hydrant will need to be properly anchored and designed to be freeze-proof. The hydrant design should be reviewed and approved by the Red Lodge Fire Department and as-built documents should be filed with the final plat. The developer should also coordinate with the Department to conduct a pump test after hydrant installation to ensure the hydrant is operational (Section V-A-21).

The applicant submitted a Fire Prevention and Control Plan (FPCP) indicating recommendations and requirements relating to fire protection, including a dry hydrant, which should be filed with the subdivision (Section V-A-21).

The Fire Prevention and Control Plan should be referenced in the covenants, and the covenants should reference maintenance of the hydrant by the property owners association (V-A-23.c).

Finding: This subdivision would create a potentially significant adverse impact on area fire protection and public safety due to the density and nature of the subdivision. This is proposed to be mitigated through the provision of an on-site water supply (dry hydrant) and the filing of a Fire Control and Prevention Plan. The Fire Department should review and approve of both the FPCP and the dry hydrant. As-built documents should be filed for the hydrant and a pump test should be performed.

The lots are proposed to be access by a new road named Brenda Court. This name will need to be approved by the County GIS Department and approved names shown on the final plat (Section V-A-10.a.xiii).

Brenda Court is proposed to be maintained by a Lot Owners’ Association through private covenants. The road will be open and accessible to the public, but the County will not have any responsibility to maintain the road. The following statement, to be modified as appropriate, should appear on the plat: “(I), (We) the undersigned property owner(s) do hereby certify that (I) (We) have caused to be surveyed, subdivided and planned into lots , parcels, blocks, roads and alleys, and other divisions and dedications , as shown by this plan hereunto included the following described tract of land ( insert description) . The above described tract of land is to be known and designated as \_\_\_\_\_,

Carbon County, Montana, and the lands included in all roads, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever. The roadways dedicated to the public are accepted for public use but the county accepts no responsibility for maintaining the same. The owner(s) agree(s) that the County has no obligation to maintain the roads hereby dedicated to the public use.”

Finding: The road name should be approved by the County GIS Department to ensure names are not duplicative and are easily located by emergency services. The road should be dedicated to the public use but owned and maintained by a Property Owners Association. The standard road dedication language should be shown on the final plat. The approved road name be shown on the final plat.

Beartooth Electric Cooperative provides power in the area and reports the ability to serve the site through new easements as shown on the preliminary plat. Utility easements should be shown on the final plat per section V-A-15.a., and the standard utility language should be placed on the final plat, per section V-A-15.h. of the Subdivision Regulations: “The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric, power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of the lines and other facilities, in, over, under and across each area designated on this plat as “Utility Easement” to have and hold forever.”

Finding: There will be no significant adverse impacts on utility providers if utility easement are shown on the plat and the standard utility easement language is provided.

- Effect on the natural environment: New septic/drainfield systems will be utilized for each lot. Individual wells will serve each lot. Wells will be located on the lot they serve. The developer is proposing a multi-user drainfield to be located on property to the north, which is also owned by the developer and currently utilized as storage units. A draft Declaration of Multi-User Wastewater Collection and Treatment system was submitted with the preliminary plat application. There is a storm water retention pond proposed to be located on Lot 5, which will collect runoff from the subdivision.

Review and approval of new septic, well, solid waste, and stormwater drainage is required by the Montana Department of Environmental Quality (DEQ) and the Carbon County Sanitarian, as appropriate. (See Sections IV-B-8.b, V-A-11 through 14, and MCA 76-3-622).

The acquisition of a new water right for the subdivision is not required unless the combined subdivision lots will use 10 acre-feet of water per year, or if a well will pump more than 35 gallons per minute. The application included a letter from DNRC indicating the subdivision will use 3.63 acre feet.



It should be noted that water use and wastewater need is calculated based on a maximum of four employees per commercial building. Additional employees could put the subdivision into non-compliance with DEQ and/or DNRC approval.

Finding: New water, wastewater, stormwater drainage, and solid waste disposal will not have an adverse impact on the natural environment if DEQ and County Sanitarian review and approval is required to be obtained prior to final plat.

Roads within the subdivision are proposed to be asphalt-surfaced. As noted above under Effect of Local Services, roads will be maintained by a Lot Owners' Association. Road maintenance should be specifically addressed in the covenants per Section V-A-23.c.ix.

Finding: If provisions for road maintenance are included in the Property Owners' Association covenants, adverse impacts on the natural environment from dust on the roads will be adequately mitigated.

The applicant submitted a Weed Inspection Report completed by Carbon County Weed District Coordinator Brian Ostwald dated February 8, 2022. The report indicates there was a small area of spotted knapweed on the property. No weed bond was required by the Weed District, but if more weeds become visible the property could be put into noncompliance.

Finding: There should be minimal impacts on the natural environment due to the proliferation of noxious weeds, since there were few weeds within the project area.

A Wetland Delineation Summary Report prepared by Cindy Hoschouer of Woodard & Curran was submitted with the preliminary plat application and indicated "Within the Phobia Red Lodge property, three wetlands representing 4.96 acres, including a ditch, with perennial flows, were delineated on May 17th, 2021. The wetlands are slope, depression, emergent wetlands and two of these wetland types include perennial flows and/intermittent flows (riverine)."

Further email correspondence regarding the relevancy of the wetlands area and potential mitigation resulted in the following response from Ms. Hoschouer:

Wetland 3, the wetland that will be impacted due to the proposed drainage swale was likely supported by irrigation water or surface water runoff and potentially high groundwater. The data form mentions signs of ponded water and that could be the result of irrigation water. WL-3 is isolated, and likely non-jurisdictional. Unfortunately, the USACE is not taking on any AJD requests until at least June 20. And it could take months to get an approved non-jurisdictional determination for WL-3. It is very possible that with the lack of irrigation WL-3 may not meet the wetland hydrology criteria now.

The identified wetland areas are identified on the plat and a surveyor's note recommends "Site specific delineation for foundation, grading and drainage design" prior to construction.

The Subdivision Regulations, Section V-A-5, allows the County to require minimum construction setbacks to protect “riparian areas, wetland, trout spawning areas, critical wildlife habitat, fragile areas, or important historical or archaeological sites” based on the following factors:

- a. The width of the riparian area;
- b. The location of critical wildlife habitat on the land proposed for subdivision;
- c. Protection of riverbank stability, trees, water quality, and trout spawning areas;
- d. The location of an important historic or prehistoric site on the property; and
- e. To protect the viewshed.

The Subdivision Regulations also state that “Any mitigation measures proposed by the subdivider shall be considered prior to the establishment of a setback.”

Finding: The wetland delineation and recommendation for site-specific delineation should appear on the final plat. If the County does not believe this mitigation is sufficient to prevent significant adverse impacts on wetlands, construction setbacks may be required.



**Low Areas on North Side of Subdivision**

Effect on wildlife: Wildlife does frequent the area. However, since the project is in close proximity to existing similar development, no significant adverse impacts on wildlife is anticipated other than what may have already occurred.

Finding: No significant adverse impacts to wildlife is anticipated due to the proximity of existing similar development.

- Effect on wildlife habitat: The site is identified as sage grouse general habitat by the Montana Sage Grouse Habitat Conservation Program. The preliminary plat application included a letter from the Program that recommended noxious weed management within the area. Weed management is also a requirement of the County and an inspection has been done. See also discussion under Effect on the natural environment, above. There has been no other critical wildlife habitat identified on the site.

Finding: There should be no significant impact on wildlife habitat as long as mitigation of noxious weeds is required.



#### **Sage Grouse General Habitat Area (Green) in Subdivision Area**

- Effect on public health and safety: The Carbon County Sheriff's office provides law enforcement service in the area. See discussion and findings under Effect on Local Services.

The Red Lodge Fire District provides fire protection in the area. To address safety concerns relating to increased fire hazards, the developer is proposing an on-site water supply to be provided by a dry hydrant on proposed Lot 5.



The applicant submitted a Fire Prevention and Control Plan (FPCP) indicating recommendations and requirements relating to fire protection, including a dry hydrant, which should be filed with the subdivision (Section V-A-21).

The Fire Prevention and Control Plan should be referenced in the covenants, and the covenants should reference maintenance of the hydrant by the property owners association (V-A-23.c). See also the discussion and findings under Effect on Local Services.

The lots are proposed to be accessed by a new road named Brenda Court. This name will need to be approved by the County GIS Department and approved names shown on the final plat (Section V-A-10.a.xiii). DEQ and County Sanitarian approval of well and septic provisions is required. See discussion under effects on the natural environment.

The preliminary plat application included comments from Zach Kirkemo of the Montana Department of Transportation (MDT) indicating that design will need to be approved by MDT, primarily with regard to runoff and future reconstruction of Highway 212, both of which appear to be addressed in submitted plans. Regarding the issue of a turn lane being required, Mr. Kirkemo indicated this was unlikely and if required would have been required as part of the storage unit development.

It should be reiterated that each commercial unit is anticipated to have no more than four employees, which, if exceeded, may impact traffic safety in the area. MDT has permitting authority and enforcement ability on Highway 212.

A professional engineer should certify that the subdivision roads have been constructed per the requirements in Table-1 of the Subdivision Regulations (Section V-A-10.c.iv). Roads appear to have largely been constructed already.

Finding: If an engineer certifies that the roads have been constructed per the requirements in the Subdivision Regulation, it will mitigate to the extent possible any safety concerns with traffic and road design.



**Entrance from Highway 212 and From Storage Units to Subdivision**

c. Whether the application and plat conform to the provisions of the following:

- i. The Montana Subdivision and Platting Act: The Plat has been prepared and processed in accordance with the Montana Subdivision and Platting Act (MSPA). The final plat should include a notation that each lot has legal and physical access (76-3-608(3)(d), MCA, and Section IV-B-10.f.v of the Carbon County Subdivision Regulations).

Finding: Upon compliance with the recommended conditions of approval and adherence to the process outlined in statute, the subdivision will have complied with the MSPA.

- ii. Compliance with Survey Requirements: The final plat must be in compliance with the requirements of Title 76, Chapter 3, Part 4, MCA, as well as Uniform Standards for Final Subdivision Plats (24.183.1107, ARM). A requirement that, prior to filing, the plat be submitted to the County's Examining Land Surveyor (ELS), and that any comments of the ELS be addressed will ensure survey requirements are followed (Section IV-C-3.b.vi of the Carbon County Subdivision Regulations).

Finding: Upon review by the ELS and the addressing of any comments thereof, survey requirements will have been adhered to.

- iii. The Carbon County Subdivision Regulations: The subdivision, once conditions have been met, will conform to the requirements of the adopted Subdivision Regulations.

The final plat must be substantially similar to the preliminary plat application, except as modified by conditions. If the final plat differs substantially from the preliminary plat, additional review may be required (Section IV-C-5.b of the Carbon County Subdivision Regulations).

The Carbon County Subdivision Regulations, Section IV-B-11 states that a preliminary plat approval is in force for two years. If a final plat is not filed within that timeframe, an extension must be granted or a new application submitted. The County is under no obligation to grant such an extension.

A condition requiring final plat preparation to be in conformance with the Subdivision Regulations will ensure compliance with County requirements, even if not specifically discussed in this memorandum.

Finding: To ensure compliance with the Subdivision Regulations, conditions should be required to ensure the final plat is substantially similar to the preliminary plat and plans, that the final plat is filed within two years of preliminary plat approval, and that the final plat be submitted in conformance with the Subdivision Regulations.

- iv. Applicable Zoning Regulations: The Carbon County Development Regulations require a Group 2 Development Permit or a Conditional Use Permit depending on the type of commercial/industrial development. A Development Permit is required to be obtained prior to development. The draft Declaration of Restrictions, Covenants, and Conditions provided with the subdivision application reference the current setback requirements of

the Development Regulations, however, it may be more appropriate to reference the necessity of acquiring a Development Permit instead of referencing a current standard, in case the regulations are amended or greater setbacks are necessitated by building specifics. For example, commercial kennels and salvage yards require greater setbacks.

Finding: Compliance with zoning regulations would be ensured to the extent possible by requiring the covenants reference the County Development Regulations and state that there is a requirement to obtain a Development Permit prior to development.

- v. Other regulations in effect in the area of the proposed subdivision: There are private covenants proposed for the subdivision (Declaration of Restrictions, Covenants and Conditions). The County does not typically enforce private covenants but may require that certain standards are met (Section V-A-23). No other known regulations are in effect to which the subdivision would be subject.

Finding: Private covenants should be filed with the final plat and prepared to the standards required in the Subdivision Regulations.

- vi. Whether DEQ has approved the subdivision for proposed subdivisions that will create parcels of less than twenty (20) acres: DEQ approval is required prior to final plat, as all lots are under 20 acres. (Sections IV-B-8.b.i and V-A-11, 12,13, and 14 of the Carbon County Subdivision Regulations).

Finding: DEQ review and approval of the subdivision should be a condition of final plat approval.

- vii. Whether the subdivider has demonstrated that there is an adequate water source and at least one are for a septic system and a replacement drainfield for each lot for a proposed subdivision that will create one or more parcels containing twenty (20) acres or more: No proposed lots are over 20 acres.

Finding: There are no lots over 20 acres in the proposed subdivision.

*d. Compliance with Growth Policy:*

State law, 76-1-605, MCA, requires that after the adoption of a growth policy, the governing body must be “guided by and give consideration to the general policy and pattern of development set out in the growth policy” in the “authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities; authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and adoption of zoning ordinances or resolutions.” However, statute also states that “A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law. A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy [...]” It is, though, beneficial to examine the proposed subdivision in consideration of the adopted growth policy.



Carbon County adopted the 2020 Growth Policy in March of 2020. Chapter 6 contains goals and objectives for the implementation of the Growth Policy. The following goals and objectives may be relevant to the proposed subdivision:

- Objective 1.4: Encourage development in areas that are not in agricultural production
  - 1.4.A. As authorized by the state legislature in 2003, in 76-3-509 MCA, formulate and adopt regulations to encourage cluster development for those developments that meet the definitions.
- Objective 1.7: Direct growth to existing communities, incorporated towns and cities, or platted unincorporated places.
  - 1.7.A. Explore the potential for future land use mapping in areas immediately adjacent to existing communities
  - 1.7.B. Discourage development within the wildland-urban interface.
- Objective 4.3: Continue to provide cost-effective services to residents for road maintenance and construction.
  - 4.3.A. Communicate with MDT, the Forest Service, the Bureau of Land Management, and adjacent counties to discuss road projects, coordinate schedules, and look for efficiencies through working cooperatively.
  - 4.3.B. Continue to work with MDT on the construction/ reconstruction projects on Highways 212, 212/310, 78, 72, and 310. Coordinate with MDT on residential development planning in the north end of the county for commuters to Billings that utilize Highway 212/310

*e. Planning Staff Recommendation:*

The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision is in compliance with the Montana Subdivision and Platting Act and the adopted Subdivision Regulations.

In consideration of the findings included in this Memorandum, Planning Staff recommends approval of the Martin Meadows Subdivision, pursuant to the following conditions (Section references are to the Carbon County Subdivision Regulations unless otherwise noted):

1. An easement shall be provided for the Cox-Sullivan Ditch to allow for the use, maintenance, and inspection of the ditch. (Section V-A-18; Effect on Agricultural Water Users Facilities)
2. The following statement shall appear on the final plat: “Nothing herein nor any covenant shall diminish the unobstructed use and maintenance of the existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to land adjacent or to beyond the subdivision in quantities and in a manner that are consistent with historic and legal rights.” (Section V-A-18; Effect on Agricultural Water User Facilities)
3. Filing of the final plat shall be subject to the review and approval by the Montana Department of Environmental Quality and Carbon County Sanitarian, as appropriate, for

water, wastewater, solid waste, and stormwater drainage provisions. (Sections IV-B-8.b.ii and V-A-11, 12,13, and 14; Effect on the Natural Environment; Effect on Public Health and Safety)

4. The Fire Prevention and Control Plan shall be filed with the subdivision. (Section V-A-21; Effect on Local Services; Effect on Public Health and Safety)
5. A water supply shall be provided that meets the requirements of Section V-A-21. (Section V-A-21; Effect on Local Services; Effect on Public Health and Safety)
6. As-built documents for the dry hydrant shall be prepared and filed with the subdivision. (Section V-A-21; Effect on Local Services; Effect on Public Health and Safety)
7. Evidence shall be provided that the local Fire Department has reviewed the Fire Prevention and Control Plan, tested the hydrant, and approved of each. (Section V-A-21; Effect on Local Services; Effect on Public Health and Safety)
8. Private covenants shall provide for implementation of the Fire Prevention and Control Plan and maintenance of the hydrant (Section V-A-23.c.; Effect on Local Services; Effect on Public Health and Safety)
9. Road names shall be approved by the Carbon County GIS Department. Approved names shall be shown on the final plat. (Section V-A-10.a.xiii; Effect on Local Services)
10. Private covenants shall provide for road maintenance and the following dedication language shall appear on the final plat: “(I), (We) the undersigned property owner(s) do hereby certify that (I) (We) have caused to be surveyed, subdivided and planned into lots , parcels, blocks, roads and alleys, and other divisions and dedications , as shown by this plan hereunto included the following described tract of land ( insert description) . The above described tract of land is to be known and designated as \_\_\_\_\_, Carbon County, Montana, and the lands included in all roads, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever. The roadways dedicated to the public are accepted for public use but the county accepts no responsibility for maintaining the same. The owner(s) agree(s) that the County has no obligation to maintain the roads hereby dedicated to the public use.” (Section V.A-10.a.vi.; Effect on Local Services)
11. The final plat shall show the location of all existing and required utility easements. (Section V-A-15.a; Effect on Local Services)
12. The final plat must include the following statement: “The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric, power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of the lines and other facilities, in, over, under and across each area designated on this plat as “Utility Easement” to have and hold forever.” (Section V-A-15.h; Effect on Local Services)
13. The wetlands identified in the 2021 report prepared by Woodard & Curran shall be delineated on the final plat and a notice shall appear on the final plat recommending site-specific delineation prior to development. (Section V-A-5.; Effect on the Natural Environment)
14. Prior to final plat, the roads shown on the preliminary plat shall be constructed to the standards required in the Subdivision Regulations and the construction shall be certified

- by a registered professional engineer. (Section V-A-10.c. and Table 1; Effect on Public Health and Safety)
15. A notation shall be provided on the final plat that legal and physical access is provided per 76-3-608(3)(d), MCA. (Section III-B-11.g.v; Compliance with the Montana Subdivision and Platting Act)
  16. Prior to filing the final plat, the plat shall be submitted to the County Examining Land Surveyor and any comments sufficiently addressed. (Section IV-C-3.b.vi; Compliance with Survey Requirements)
  17. The Declaration of Restrictions, Covenants, and Conditions for Martin Meadows Subdivision shall include language referencing the Carbon County Development Regulations and that a Development Permit must be obtained prior to development.. (Section IV-C-2; Compliance with Applicable Zoning Regulations)
  18. The Declaration of Restrictions, Covenants, and Conditions for Martin Meadows Subdivision shall be filed with the final plat and meet the standards of Section V-A-23. (Other regulations in effect in the area of the proposed subdivision)
  19. The final plat shall be in substantial compliance with the plans and documents submitted as part of the preliminary plat application. (Section IV-C-5.b; Compliance with the Subdivision Regulations)
  20. The final plat shall be submitted within two years of the date of preliminary plat approval, or an extension(s) to the approval period obtained. (Section IV-B-11; Compliance with the Subdivision Regulations)
  21. The final plat shall be prepared and reviewed in accordance with Section IV-C of the Carbon County Subdivision Regulations. (Compliance with the Subdivision Regulations)

## **IX. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW**

### **IX-A. Purpose**

The State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the Act, Section 76-3-101 et. seq. MCA.

### **IX-B. Divisions of Land Entirely exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act**

Unless the method of disposition is adopted for the purpose of evading these Regulations or the MSPA, the requirements of these Regulations and the MSPA may not apply when:

- a. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30;
  - i. Before a court of record orders a division of land, the court shall notify the Commission of the pending division and allow the Commission to present written comments on the subdivision.
- b. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;
- c. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
- d. A division of land creates cemetery lots;
- e. A division of land is created by the reservation of a life estate;
- f. A division of land is in a location over which the state does not have jurisdiction;
- g. A division of land is created for public rights-of-way or public utility sites;
- h. Condominiums, townhomes, or townhouses, constructed on land divided in compliance with these Regulations and the MSPA provided that:
  - i. The approval of the original division of land expressly contemplated the construction of the condominiums and 76-3-621 MCA, is complied with; or



- ii. The condominium, townhome, or townhouse proposal is in conformance with applicable zoning regulations.
- i. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land;
- j. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities;
- k. A division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1973;
- l. Deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1973.

**IX-C. Specific Exemptions from Review but Subject to Survey Requirements and Zoning Regulations**

Unless the method of disposition is adopted for the purpose of evading these Regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the MSPA, but are subject to the surveying requirements of 76-3-401. MCA and zoning regulations adopted under Title 76 chapter 2. A division of land may not be made under this section unless the County Treasurer has certified that no real property taxes and special assessments assessed and levied on the land to be divided are delinquent. The Clerk shall notify the Planning Office of any land division described in this section or 76-3-207(1) MCA.

- a. Divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;
- b. Divisions made outside of platted subdivisions by gift, sale, or a agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the County and the property owner that the divided land will be used exclusively for agricultural purposes;
- c. Divisions made outside of platted subdivision for the purpose of relocating common boundary lines between adjoining properties;
- d. Divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted

subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply in those areas.

e. For five (5) or fewer lots within a platted subdivision, relocation of common boundaries.

f. Aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel re established. A restriction on the original platted lot or original unplatted parcel continues to apply to those areas.

g. Divisions within platted subdivisions are exempt from additional subdivision reviews if the division:

i. is within a subdivision that has been approved by a local governing body;

ii. creates parcels of a size allowed within the subdivision; and

iii. is gifted or sold to a member of the landowner's immediate family;

h. Divisions of land transferred to an immediate family member pursuant to IX-C.a and g. may be transferred regardless of age and may be owned jointly with that immediate family member's spouse.

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#### **IX-D. Exemption from Survey and filing Requirements but Subject to Review**

Subdivisions created by rent or lease are exempt from the surveying and filing requirements of these Regulations but must be submitted for review and approved by the Commission before portions thereof may be rented or leased, except when:

a. The approval of the original division of land expressly contemplated the construction of the condominiums and applicable park dedication requirements of 76-3-621 MCA, are complied with; or

b. The condominium proposal is in conformance with applicable zoning regulations.

#### **IX-E. Exemption from Survey and Platting Requirements for Lands Acquired for State Highways**

Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 MCA, and are exempted from the surveying and platting requirements of these regulations and the MSPA. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

#### **IX-F. Procedures and General Requirements for Review of Exemptions**

The following procedures, criteria and requirements shall be used to review an exemption claim from subdivision review and to determine whether the division of land is for the purpose of evading the MSPA.

- a. The Commission designates the Planning Office as its agent for purposes of this these Regulations. All certificates of survey claiming an exemption shall be submitted to the Planning Office along with the application form in Appendix E. The procedures and requirements of this subsection are limited to the exemptions specified in these Regulations.
- b. Claimants are encouraged to meet with the Planning Staff to discuss whether a proposed land division or use of an exemption is in compliance with these criteria. The Planning Staff may issue an advisory opinion only, and the opinion creates no commitment on the local officials when the documents creating the proposed land division are submitted to the Planning Office.
- c. Claim for Exemption Submittal. A claimant seeking an exemption under the Act and these Regulations shall submit a claim on the appropriate application forms if needed, including a plat or deed with a signed certificate of exemption, together with sufficient evidence to support the claim and any other information required by these Regulations to the Planning Office.
- d. Determination. The Planning Office, Clerk, and County Attorney shall review the claimed exemption. The Planning Office shall make a report on the findings of the review and issue a determination to allow or disallow the claim.
  - i. In assessing the claimant's purpose the Planning Office will evaluate all relevant circumstances including the nature of the claimant's business and use of the parcel, the prior history of the particular tract in question, the proposed configuration of the tract(s), if the proposed exempt transactions are completed, and patterns of development. Any pattern of development which is the equivalent of a subdivision which has not been reviewed may be presumed to be adopted for the purposes of evading the act. A "pattern of development" occurs whenever three (3) or more parcels of less than one hundred sixty (160) acres with common covenants or facilities, such as roads and utilities, have been divided from the original tract of record.
  - ii. If the Planning Office finds that the proposed use of the exemption complies with the statutes and these criteria, the Planning Office shall advise the Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and any accompanying documents. If the Planning Office finds that the proposed use of the exemption does not comply with the statutes and these Regulations, the Planning Office shall provide notification of its

determination to disallow to the person claiming the exemption and advise the Clerk and Recorder to not file or record the documents.

- iii. When applicable, deeds transferring property proposed to be created or amended utilizing an exemption must be submitted and executed at time of filing the survey. Applicants are encouraged to submit draft deeds for the property at time of application.
- e. Appeal. The claimant may appeal a determination to evade the Act to the Commission.
  - i. If the Commission concludes that the evidence overcomes the determination and that from all the circumstances the exemption is justified, the Commission will allow the exemption. If the Commission concludes that the determination to evade the Act is not overcome and that from all the circumstances the exemption is not justified, the Commission shall make findings and disallow the exemption.
- f. If the claimant proposing to use an exemption does not seek to appeal the determination to disallow, or if the Commission determines that the proposed use of the exemption was for the purpose of evading the Act, the landowner may proceed according to the procedures for a subdivision application for the proposed land division.
- g. If the exemption is allowed, the Commission shall direct the Clerk and Recorder to record the certificate of survey.
- h. A certificate of survey of a division of land which is exempted from review may not be filed by the Clerk and Recorder unless it bears the certificate of the person having recorded interest claiming exemption stating that the division of land is exempted from review as a subdivision and citing the applicable exemption.
- i. To assist in the implementation of this review process and to monitor those parcels divided by exemption the Clerk and Recorder shall cause the following identification codes to be added to the numbering of recorded certificates of survey.

CO ... Court order [76-3-201(1)(a), MCA]  
MTG ... Mortgage Exemption [76-3-201(1)(b), MCA]  
RB ... Relocation of Common Boundary [76-3-207(1)(a), MCA]  
FT ... Family Transfer and conveyance [76-3-207(1)(b), MCA]  
AG ... Agricultural Exemption [76-3-207(1)(c), MCA]  
AL ... Aggregation of Lots [76-3-207(e), MCA]  
RE ... Retracement of an Existing parcel



- j. Each newly created parcel less than one hundred sixty (160) acres shall have a certificate of exemption.
- k. These Regulations shall not be applicable to deeds, contracts, leases or other conveyances executed prior to July 1, 1973.
- l. An exemption may not be requested or made under this section unless the Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid except for Security for Construction financing and Court Orders.

**IX-G. Exemptions as a Gift or Sale to a Member of the Immediate Family**

- a. Purpose. The proper use of this exemption is to allow a landowner to convey one parcel to each member of his or her immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.
- b. The term “immediate family” means the spouse, children (by blood or adoption), or parents of the grantor [76-3-103(8), MCA]. This exemption may be used only by grantors who are natural persons and not by non-corporal legal entities such as corporations, partnerships, and trusts.
- c. Filing of any certificate of survey (or recording of an instrument of conveyance) that would use this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner’s certification of compliance. Also, the certificate of survey or instrument of conveyance must be accompanied by a deed or other conveying document.
- d. One conveyance of a parcel to each member of the landowner’s immediate family is eligible for exemption from subdivision review under these Regulations.

e. An immediate family member or the spouse of an immediate family member who receives a division of land may not transfer or otherwise convey the division of land for a period of up to 2 years after the date of the division.

i. A variance from this process may be sought to address a hardship situation. Requests for a variance must be made in writing to the Planning Director of Designee. The County Commissioners will make a determination to grant or deny the requested variance.

d.ii. For the purposes of this section, a hardship is defined as the death of the recipient or medical emergency. Documentation of the hardship must be presented with the request for a variance.

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f. The use of the family conveyance exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.

e.g. The use of the family conveyance exemption within a platted subdivision that would create a parcel or parcels not in compliance with adopted design and improvement standards under Chapter V. raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.

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**IX-H. Security for Mortgages, Liens, or Trust Indentures for the Purpose of Construction, Improvements to the Land Being Divided, or Refinancing Purposes**

- a. Purpose. The proper use of the exemption is to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes, when a survey of the parcel has been required. Any parcel created for security shall not be conveyed, except to the lending institution during foreclosure.
- b. A rebuttable presumption exists when a division of land that is created to provide security is adopted for the purpose of evading the Act under the following conditions:
  - i. If the division of land is created for the purpose of conveyance;
  - ii. The financing is for construction on land other than on the exempted parcel;
  - iii. The person named in the statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed is anyone other than the borrower of funds for construction;
  - iv. Title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs; or
  - v. It appears that the principle reason the parcel is being created is to create a building site and using the parcel to secure a construction loan is a secondary purpose.
- c. When the security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes exemption is to be used, the landowner shall submit, in addition to such other documents as may be required, a written statement explaining:

- i. How many parcels within the original tract will be created by use of the exemption?
- ii. Who will have title to and possession of the remainder of the original parcel?
- iii. A signed statement from a lending institution that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel, or refinancing purposes.
- d. The exempted parcel may be of any size, providing that the parcel size is in compliance with any officially adopted zoning regulation.
- e. The exempted parcel shall be delineated by a dotted line within the survey.
- f. The written statement of lending institution and the instruments creating the security shall be filed at the same time with the Clerk and Recorder.
- g. A transfer of the exempted parcel, by the owner of the property at the time that the land was divided, to any party other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture, subjects the division of land to the requirements of these Regulations.

**IX-I. Relocation of Common Boundaries within a Platted Subdivision**

- a. Purpose. The proper use of the exemption for relocation of common boundaries is to rearrange five (5) or fewer lots within a platted subdivision and does not increase the total number of lots. The plat shall contain the title “Amended Plat” and must be filed with Clerk and Recorder.
- b. The Amended Plat showing the relocation of common boundary within a platted subdivision must be accompanied by:
  - i. A deed(s) exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel(s) that are acquiring additional land; and
  - ii. Documentation showing the need or reason for the relocation (for example: structure encroachment, surveyor error or enhancement of the configuration of the property).
- c. A rebuttable presumption exists when a proposed relocation of common boundaries within a platted subdivision is adopted for the purpose of evading the Act if it determines that six (6) or more lots are affected by the proposal.
- d. Any division of lots which results in an increase in the number of lots or which redesigns or rearranges six (6) or more lots must be reviewed and approved by the Commission prior to the filing of the final plat.

**IX-J. Relocation of Common Boundary Lines**

- a. General. Divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties, and divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision.
- b. Purpose. The proper use of the exemption for relocating common boundary lines is to:
  - i. Establish a new boundary between adjoining parcels of land, without creating an additional parcel; or
  - ii. Establish a new common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.
- c. Certificates of Survey showing the relocation of common boundary lines must be accompanied by:
  - i. A deed(s) exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel(s) that are acquiring additional land; and
- d. A presumption of evasion exists when a proposed relocation of common boundary lines is adopted for the purpose of evading the Act, if:
  - i. The Commission determines that the documentation submitted according to this section does not support the stated reason for relocation or created an additional parcel, and/or
  - ii. The Certificate of Survey for the relocation of common boundary lines significantly rearranges multiple parcels with little or no resemblance to the original configuration of the parcels.

**IX-K. Agricultural Exemption**

- a. Purpose. An agricultural exemption is a division of land made outside of a platted subdivision by gift, sale or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land, revocable only by mutual consent of the Commission and the transferee/property owner, that the divided land will be used exclusively for agricultural purposes. No building or



structure requiring water or sewer facilities shall be utilized on such a parcel. The parcel involved in the division must be outside of a platted subdivision.

- b. A change in use of the land for anything other than agricultural purposes subjects the division to these Regulations.

**IX-L. Aggregation of Parcels or Lots**

- a. Purpose. This exemption is to allow for aggregating parcels or lots by eliminating the boundaries of the original parcels and establishing the boundary of a single larger aggregate parcel.
- b. Required Information. Certificates of survey or amended plats claiming this exemption must clearly distinguish between the existing boundary locations and the new aggregate boundary. This must be accomplished by representing the boundaries of existing lots or parcels with dashed lines and the new boundary with a solid line. Each parcel and lot included in the aggregation must be identified on the Certificate of survey or amended plat. Restrictions or requirements (such as covenants or zoning) on existing parcels must be identified. Ownership of each parcel/lot must be identified and the certificate of survey or amended plat must include signatures of all owners. Where the aggregation involves multiple landowners, the certificate of survey or amended plat must be accompanied by quit claim(s), warranty deed(s), or other recordable transfer document(s) transferring ownership to a single landowner or undivided interest ownership. Any aggregation that includes six or more lots in a platted subdivision must be reviewed and approved by the governing body before an amended plat may be filed with the clerk and recorder (76-3-207(2)(a), MCA).
- a. Rebuttable presumptions.
  - i. If the boundary of the aggregate tract is different from the perimeter boundary of all combined individual parcels.
  - ii. If the resulting parcel includes areas that previously were subject to with existing zoning, covenants, and/or deed restrictions, and those requirements appear to have been eliminated, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

**IX-L. Court Order and Lands acquired for state highways, 76-3-209. MCA**

The proper use of this exemption is when the division of land is created by order of any court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, when a survey of the parcel has been required.

76-3-209. MCA. Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA and are exempted from the surveying and platting requirements of the chapter.

#### **IX-M. Correction of Errors**

Corrections of errors that in the opinion of the Clerk and Recorder will not materially alter the survey may be made by the submission of a corrected certificate of survey to be filed in the Office of the Clerk and Recorders.

#### **IX-N. Uniform Standards for Certificate of Survey**

A certificate of survey may not be filed by the Clerk and Recorder unless it complies with the requirements of ARM 8.94.3002 Uniform Standards for Certificates of Survey.

#### **IX-0. Remainders**

a. The Subdivision Act defines a "Division of land" as

*the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.*

The portion of the larger tract left after segregation of the transferred and/or identified parcels is denominated a "remainder." Only one remainder can be established in the parcel segregation process.

b. To qualify as a remainder, a parcel must not have been created for the purpose of transfer. Rather, the remainder must be retained by the owner. Remainders claimed created in conjunction with requests for exemption from subdivision review of a tract or tracts under §§ 76-3-201 and 76-3-207, M.C.A., shall be examined to determine if the remainder is created for evasion of the subdivision process. The Planning Director or designee shall determine during the plat examination process whether the remainder was created to evade the subdivision process. If the proposed remainder is found to be created for the purpose of evasion of the Act, the subdivider may submit an appeal of the determination by the Planning Director or designee with the preliminary plat application. If an appeal is submitted, the Commissioners shall make the final determination as to whether or not a proposed remainder is being created for the purpose of transfer.

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# **DEVELOPMENT REGULATIONS**

Carbon County, Montana

ADOPTED

July 18, 2016 (Resolution 2016-14)

REVISED

May 20, 2021 (Resolution 2021-11)

CARBON COUNTY DEVELOPMENT REGULATIONS

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**I-A. Authority**

These Regulations are adopted under authority of Sec. 76-2-201, MCA, et. seq.

**I-B. Jurisdiction**

The area included within the jurisdiction of these Regulations and governed by them shall be all the unincorporated areas of Carbon County, Montana.

**I-C. Conflicting and Prior Regulations Repealed**

All prior ordinances and resolutions related to these regulations, as originally adopted June 8<sup>th</sup>, 1989 are hereby amended.

**I-D. Most Restrictive Standards Apply**

When future County regulations, or state or federal law, impose additional standards on land use or development governed by these Regulations, the most restrictive standard shall apply. These Regulations do not nullify easements, covenants, deed restrictions, or other similar private agreements, but where any such private agreement imposes standards that are less restrictive than those adopted herein, these Regulations shall apply.

**I-E. Burden of Proof**

In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

**I-F. Severability**

If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these Regulations invalid, that judgment will only affect the part held invalid.

**I-G. Liability**

No individual, including members of the Planning Board, Zoning Commission, Board of Adjustment, Board of County Commissioners, the Administrator, or any other County employee, who acts in good faith and without malice in the performance of duties assigned by these Regulations, shall be held liable for errors or omissions in their administration.

## II-A. General Purposes

The goal of these Regulations is to provide for the planning of any proposed land use changes in Carbon County to address public health and safety, water and air quality, impacts to existing infrastructure, and the economic welfare of Carbon County and its residents. Carbon County will encourage economic development, preserve agricultural resources, support tourism, recreation and use of its natural resources for multiple uses.

Furthermore, these Regulations are to:

1. Implement the land use goals, objectives and policies set forth in the Carbon County Growth Policy, purposes further specified in these Regulations, and to give strong consideration for the rights of those who own the property in question. Balancing the interest of the public and private property owners is recognized.
2. Preserve open space and manage development by encouraging and channeling the more intensive developments to within, or close to, existing cities and communities of Carbon County; ensuring the continuance of natural open space, and fish and wildlife habitat; and not diminishing quality or quantity of groundwater in the greater area of the development.
3. Minimize, where possible, impacts of new developments upon existing and new government services and infrastructure such as roads, wildfire protection, health and safety, and emergency services.
4. Limit development to those areas best suited for them physically, economically, socially and environmentally.

## III-A. Definitions

**ABANDONMENT OF USE:** An activity occurring by a Group 2 permit or Conditional Use Permit is deemed abandoned when the activity is inactive for two (2) years.

**ACCESSORY USE:** The use of land, or a subordinate building, or a portion of a main building, such use being secondary to or incidental to the principal use or structure. This definition includes but is not limited to a shed, garage, or non-commercial shop.

**AGRICULTURE:** Any use of land for the production of crops or livestock, or other animals including ranching, farming, dairying, grazing, pasturage, husbandry of poultry, forestry, horticulture and floriculture; "agriculture" includes:

1. Any buildings, structures, machinery, equipment and practices associated with such production.
2. Those accessory facilities and activities necessary to load, transport, store or dispose of agriculture products produced solely by the owner or operator on the premises.
3. Any land classified as agricultural by the Carbon County Department of Revenue at the time of application.

Carbon County Development Regulations

BEHAVIORAL HEALTH FACILITY: A facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety in accordance with the requirements of the Montana Department of Public Health and Human Services.

BOARD OF ADJUSTMENT: The County Planning Board is the Board of Adjustment, required in Montana Code Annotated 76-2-221. The Board of Adjustment shall consist of the members of the County Planning Board operating under the bylaws of the County Planning Board.

BUSINESS CONTAINING OBSCENE PERFORMANCES: a business who knowingly permits any person to engage in a performance covered by the 1988 Exotic Dancing Ordinance recorded under Miscellaneous Document number 6239.

COMMERCIAL AGRICULTURE: Any premise, facility, or use of the land for the processing, storage disposal, loading or transportation of:

1. Agricultural products produced off the premises or by other than the owner of the facility; or
2. Commercial products for use by agricultural operators. Commercial agriculture includes facilities such as grain elevators, railroad loading facilities, crop and meat processing plants, rendering plants, slaughterhouses, fertilizer plants, and commercial feedlots as defined in these Regulations.

COMMERCIAL USE: Any use of land for the sale, offering for sale, purchase or any other transaction involving the handling or disposition of any article, commodity, substance or service; also the occupancy or management of office buildings, and the use of structures or premises by professions and trades or people rendering services.

COMMUNITY OR CULTURAL FACILITY: A facility typically engaged in nonprofit or quasi-public use for a public purpose, such as a community center, cultural center, museums senior center and the like.

CHANGE IN USE: Any development of, alteration or intensification of the use of a parcel of land from any of the defined uses in these regulations (i.e. agricultural use, residential use, recreational use, commercial use, and industrial use) to another of the defined uses.

CHILD CARE FACILITY: An out-of-home place in which day care is provided to 13 or more children on a regular or irregular basis and which is licensed by the Montana Department of Public Health and Human Services.

CONDITIONAL USE PERMIT: A document issued by Carbon County, authorizing a specific change or intensification in land use that are identified in these Regulations. Conditional uses are approved by the governing body, require a public hearing, and may be subject to conditions of approval.

Carbon County Development Regulations

**CONDOMINIUM:** The ownership of single units with common elements located on the property. Condominium developments are also subject to subdivision review, unless the property was previously subject to subdivision review that expressly contemplated such development.

**CURRENT USE:** Current use will be determined by the designated County Planning Director. The Planning Director will rely on current assessed use of each tract of land based on its status in the Carbon County Department of Revenue. The administrator may also confirm current use by a site investigation.

**DEVELOPMENT:** Any construction of a structure, use of, or occupancy of a parcel of land which intensifies or changes a land use.

**DEVELOPMENT PERMIT:** A document issued by Carbon County authorizing a specific change of use or intensification in land use (after the criteria and requirements of these Regulations has been met).

1. Group 1 Development Permit means an application for residential development. These permits are administratively reviewed by the designated County Planning Director and are not subject to conditions of approval.
2. Group 2 Development Permit means an application for commercial use that is not specifically identified as a Conditional Use. These permits are administratively reviewed by the Planning Director and may be subject to conditions of approval.

**DWELLING:** A building or portion thereof arranged or designed to provide living facilities for one or more families. The term dwelling shall not be deemed to include a motel or hotel, but includes a mobile home, modular home, travel trailer or RV if affixed to the ground.

**INDUSTRIAL USE:** Any use of land for the manufacture, fabrication, processing, reduction or destruction of any article, substance, commodity or any other treatment in such a manner as to change the form, character or appearance thereof, including warehouses, wholesale storage, storage elevators, and truck storage yards.

**LIBRARY:** An institution for the custody, circulation and administration of a collection of books, manuscripts, etc., but not for the sale of such

**MARIJUANA BUSINESS:** Any business that requires licensing by the State of Montana Cannabis Control Division including but not limited to cultivator, manufacturer, dispensary, transporter, testing lab, or combined-use

**NONCONFORMING USE:** A use, structure or parcel of land that does not conform to these Regulations but was lawful prior to the original adoption of these Regulations.

**ON-PREMISE SIGN:** A sign which carries advertisements incidental to a lawful use of the premises on which it is located, including signs indicating the business transacted at, services rendered, goods sold or produced on the premises, name of the business and/or name of the person, firm or corporation occupying the premises.



**OFF-PREMISE SIGN:** An off-premise sign is any sign structure advertising an establishment, merchandise, service, or entertainment which is not sold, produced, manufactured, or furnished at the property on which the sign is located.

**POWER PLANT:** An industrial facility for the generation of electric power. May also be referred to as a power station, generating station, or generating plant.

**PROJECT AREA:** The tract or tracts on which a development is taking place. If multiple tracts are involved in a single development, the property lines, affected tract(s), etc., relating to the development shall be interpreted to refer to the external boundaries of the project.

**TOWNHOME or TOWNHOUSE:** Property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities. Townhome and townhouse developments are also subject to subdivision review, unless the property was previously subject to subdivision review that expressly contemplated such development.

**TRACT OF LAND:** area, parcel, site, piece of land, or property which is the subject of a development permit.

**PLANNED UNIT DEVELOPMENT (PUD):** A land development project consisting of residential clusters, industrial parks, shopping centers, office building parks or any combination thereof that comprises a planned mixture of land uses built in a prearranged relationship to each other, and having open space and community facilities in a common ownership or use. PUDs must also meet the requirements of the Carbon County Subdivision Regulations.

**PUBLIC IMPROVEMENT:** Any structure or facility constructed to serve the general public such as streets and roads, utilities and systems for water supply, sewage treatment, and drainage.

**RECREATIONAL USE:** Any use of the land primarily for facilities and equipment used for recreational purposes. Any recreational use that is commercial in nature will be classified as a commercial use.

**RELIGIOUS BUILDING :** building which is used primarily for religious worship and related religious activities, including but not limited to churches, convents, monasteries, shrines, and temples.

**RESIDENTIAL MULTI-FAMILY:** The use of land for four or more separate housing units for residential inhabitants. This includes, but is not limited to, apartments, condominiums, townhomes or townhouses, mobile home parks, and multiple homes on a single tract of land.

**RESIDENTIAL USE:** The use of land for the location of a structure to be used as the private dwelling place or sleeping place of one or more people.

**SOLAR FARM:** A solar farm is an extensive photovoltaic system, built to generate electrical energy for the primary purpose of off-site use or resale.

**STRUCTURE:** Any appurtenance constructed or erected on a fixed location on the ground which

intensifies land use.

**SIMILAR USE:** A use which is not expressly stated in these Regulations. The designated County Planning Director may determine if a similar use will be subject to Group 1, Group 2, or Conditional Use permitting

**VARIANCE:** A special process by which an applicant can request deviation from these Regulations. Variances are approved by the governing body.

**ZONING COMMISSION :** The County Planning Board is the zoning commission of Carbon County, as required in Montana Code Annotated 76-2-220. The zoning commission shall consist of the members of the County Planning Board operating under the bylaws of the County Planning Board.

**IV-A. Permit Required**

1. A Development Permit or Conditional Use Permit must be issued under these Regulations before any person may change current residential or agricultural uses to other uses as defined in subsequent sections of this ordinance.
2. A Development Permit or Conditional Use Permit must be issued under these Regulations when a change in use occurs; this can mean both intensification and de-intensification.
3. No development permit is required for any agricultural use or structure.
4. No development permit is required for an accessory use or structure, as long as the necessary setbacks and other requirements for the primary use are met.
5. A Group 1 Development Permit is required for any new residential use.
6. A Group 2 Development Permit is required for any expansion or new commercial or residential multi-family use that is not specifically identified as a Conditional Use or use with specific criteria as outlined in Section VII-A.
7. A Conditional Use Permit is required for all activities described in the Conditional Uses section of these Regulations.

**IV-B. Nonconforming Use(s)**

1. Any lawful use of the land or structures existing at the date of passage of this ordinance and located on a property in which a permit would be required as a new use under these Regulations, is declared to be a nonconforming use, and not in violation of the ordinance. Nothing in these Regulations are intended to stop an existing nonconforming use from continuing in its current state.
2. No nonconforming use may be extended to occupy any land outside the structure nor any additional structures may be constructed for such nonconforming use at the date of adoption of this ordinance without issuance of a permit under these Regulations. The nonconforming use of land shall not be extended to any additional land not used at the date of adoption of this ordinance without issuance of a permit under these

Regulations.

3. If any nonconforming use becomes abandoned for a period of two (2) years, it shall not continue.

**IV-C. Violation**

1. Failure to comply with the conditions associated with a Development Permit or a Conditional Use Permit can result in suspension, revocation and other enforcement actions as provided by these Regulations.

**IV-D. Penalties for Violation**

1. Violation of the provisions of these Regulations or failure to comply with any of its requirements shall constitute a misdemeanor and shall be punishable by a fine not exceeding \$500 or imprisonment in the County Jail not exceeding 6 months per § 76-2-211, Mont. Code Ann. These Regulations may also be enforced by Carbon County through any additional remedy at law or in equity.

**IV-E. Abandonment of Group 2 or Conditional Use**

1. Any activity occurring by a Group 2 permit or Conditional Use Permit is deemed abandoned when the activity is inactive for two (2) years or unless otherwise stated in these Regulations. Before any abandoned activity may resume, a new permit must be applied for. Permitting processes will be based on whether the activity is a Group 1, Group 2 or Conditional Use.

**V-A. Administration and Procedures for Group 1 and 2 Permitted Uses**

1. Development Permit Application Submittal
  - a. A Development Permit may be applied for by the property owner, contract purchaser, or their authorized agent. The application shall be filed with the designated County Planning Director.
  - b. The application shall include, but not be limited to, the following information:
    - i. A legal and general description of the tract(s) affected.
    - ii. A map and general site plan showing the dimensions, acreage and location of tract(s), and existing and proposed buildings and structures, access, agricultural water facilities, sewerage and water provisions, drainage and other features that may be important for review.
    - iii. A time schedule for development.
    - iv. Any other information the applicant believes will support their request.
    - v. For Group 2 applications, the applicant shall provide the names and mailing address of record for surrounding property owners for noticing purposes.

2. Staff Review

- a. Upon receiving a complete application, the Planning Director shall evaluate the proposed development according to the following:
  - i. Consult with other departments of the County as applicable to fully evaluate the impact of the development upon public facilities including, access, drainage, traffic and other related facilities.
  - ii. Study each application with reference to its appropriateness and effect on existing and proposed land-use, and reference the Growth Policy.
  - iii. Approval Criteria
    - 1. Water Supply: The development shall provide adequate water supply and adequate means of waste water disposal, and adequate disposal of solid and hazardous waste.
    - 2. Floodplain: The development shall conform to the Carbon County Floodplain regulations. There shall be no development in the floodway.
    - 3. Site Design: The development shall be properly graded and appropriate culverts, ditches, settling ponds, and other necessary facilities shall be provided to remove surface run-off in a manner that will not adversely affect adjacent streams, lakes, reservoirs, or public roads.
    - 4. Setbacks: Proposed buildings or structures may not be erected on property lines or within right-of-ways or easements. All buildings and structures shall be set back 10 feet from any side lot line, 20 feet from a rear lot line and 30 feet from the front lot line or street right of way or easement.
    - 5. Access: legal and physical access shall be provided to the tract of land where the development is proposed. Any new proposed access on a County Road will require an approach permit. Approaches on state highways shall be approved by the Montana Department of Transportation
    - 6. Agricultural Interference: Development shall not interfere with agricultural operations through the contamination of livestock or irrigation water supplies or obstruct, impair or impede irrigation canals, headgates, ditches, culverts or other irrigation facilities.
    - 6-7. Community impacts: Development shall not create a significant unmitigated adverse impact on the community in which the development is located.

3. Issuance of Permit for Group 1 Development Permit (Residential Use Only)

- a. The Planning Director shall issue a Development Permit within 30 days of receiving a complete application.

b. The Planning Director shall issue a Development Permit if the approval criteria has been met.

4. Issuance of Permit for Group 2 Development Permit

- a. The ~~Planning Director~~Zoning Commission shall ~~issue approve, deny, or conditionally approve~~ a Group 2 Development Permit within ~~45-60~~ days of receiving a complete application.
- b. The Planning Director shall notice all property owners within 100 feet of the subject property ~~and solicit public comment on the proposed development during a 30 calendar day comment period of the Zoning Commission meeting at which the application will be discussed.~~
- c. The ~~Planning Director~~Zoning Commission shall ~~issue approve~~ a Development Permit if the approval criteria has been met.
- d. The ~~Planning Director~~Zoning Commission may, within reason, impose conditions of approval to mitigate adverse effects on surrounding properties. Conditions may include, but not be limited to the following:
  - i. Ingress and egress to adjoining streets and roads
  - ii. Off-street parking
  - iii. Fencing, screening and landscaping
  - iv. Building bulk and location (setbacks)
  - v. Signs and lighting
  - vi. Weed control
  - vii. Conditions to address other reviewing agency concerns
- ~~vii.e.~~ The Zoning Commission may deny a Development Permit if the approval criteria cannot be met, or it is determined that the development will create a significant adverse impact on the community.

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5. Appeals

- a. A person aggrieved by a decision of the ~~Planning Director~~Zoning Commission may appeal, in writing, within 10 calendar days, that decision to the Board of County Commissioners.
- b. The Board of County Commissioners may consider:
  - i. Whether the decision is consistent with the meaning and intent of the these Regulations and the Carbon County Growth Policy;
  - ii. Whether strict compliance with these Regulations or conditions of approval would create an unnecessary hardship or unreasonable situation on the particular property;
  - iii. Evidence of any adverse effects on other property or the general health, safety and welfare of the County.

V-B. Administration and Procedures for Conditional Uses

1. Conditional Use Application Submittal

- a. A Conditional Use Permit may be applied for by the property owner, contract purchaser, or their authorized agent. The application shall be filed with the designated County Planning Director.
  - b. The application shall include, but not be limited to, the following information:
    - i. A legal and general description of the tract(s) affected.
    - ii. A map showing the dimensions, acreage and location of the tract(s) affected.
    - iii. The name and addresses of the owner(s) of the tract(s) and their agents, if any and the names and addresses of property owners of record who own lands adjoining the affected property.
    - iv. A site plan showing major details of the proposed development including but not limited to, existing and proposed structures, dimensions of structure setbacks, parking and loading, service and refuse areas, means of ingress and egress, landscaping, sewerage and water provisions, drainage, screening and signs.
    - v. A time schedule for development
    - vi. Any other information required by these Regulations or information the applicant believes will support their request or that has been described elsewhere in these Regulations.
2. Staff Review
- a. Upon receiving an application for a Conditional Use Permit, the Planning Director shall complete the following:
    - i. Consult with other departments of the County or State to fully evaluate the impact of the development upon public facilities including, County Road and Bridge, DES, County Sanitarian, and Emergency Services.
    - ii. Study each application with reference to its appropriateness and effect on existing and proposed land-use, and reference the Growth Policy.
    - iii. Notify, by mail, all property owners within 100 feet of the property subject to the development permit of the time, date, and place of the public hearing.
    - iv. Publish public hearing notice for the Zoning Commission meeting in accordance with Montana Code Annotated 7-1-2121.
3. Zoning Commission Review and Recommendation
- a. The Zoning Commission shall hold a public hearing and take into consideration all public testimony.
  - b. The Zoning Commission shall evaluate the staff report prepared by the Planning Director.
  - c. The Zoning Commission shall consider the following approval criteria:
    - 1. Water supply: The development shall provide adequate water



supply and adequate means of waste water disposal, and adequate disposal of solid and hazardous waste. Where reliance on individual water supplies is proposed, evidence shall be provided that adequate quantities and quality of water is available for the proposed development.

2. Floodplain: The development shall conform to the Carbon County Floodplain regulations. There shall be no development in the floodway. All development within the floodplain or Special Flood Hazard Area requires a floodplain permit.
3. Site Design: The development shall be properly graded and appropriate culverts, ditches, settling ponds, and other necessary facilities shall be provided to remove surface run-off in a manner that will not adversely affect adjacent streams, lakes, reservoirs, or public roads.
4. Setbacks: Proposed structures may not be erected on property lines or within right-of-ways or easements. All structures for conditional uses shall be set back 10 feet from any side lot line, 20 feet from a rear lot line and 40 feet from the front lot line or street right-of-way. Setback requirements for wind energy, telecommunication towers, and oil and gas are required to exceed this standard to eliminate potential impacts to surrounding properties or roadways.
5. Easements: Easements or other legal rights-of-way shall be provided for utilities, this includes, but is not limited to, electric, telephone and natural gas.
6. Utilities: Development shall demonstrate it will be adequately served by public and/or private utilities. Written certification that capacity is available and that adequate rights-of-way or easements have been provided may be required.
7. Access: legal and physical access shall be provided to the tract where the development is proposed. Any new proposed access on a County road will require an approach permit. Approaches on state highways shall be approved by the Montana Department of Transportation.
8. Parking: Off street parking and loading areas shall be provided for commercial and industrial uses. One space per full-time employee is required, plus one space per 400 square feet of floor space.
9. Impact to Residential Areas: Conditionally approved uses shall not be located within existing residential tracts. Where a proposed conditional use would abut a residential use, a sight obscuring screen or fence at least eight feet in height is required to screen the residential use. The installation of landscape buffers between

potential incompatible land uses shall be considered as an alternative.

10. Agricultural Interference: Development shall not interfere with agricultural operations through the contaminations of livestock or irrigation water supply supplies or obstruct, impair or impede irrigation canals, headgates, ditches, culverts or other irrigation facilities.

11. Additional Requirements: All proposed conditional uses shall, in addition to the identified approval criteria, meet the regulations identified within the conditional uses section of these Regulations and any other conditions as supported by findings in order to mitigate impacts.

- d. The Zoning Commission shall consider and may recommend to the governing body modifications or conditions concerning, but not limited to the following:
    - i. Street and road capacity
    - ii. Ingress and egress to adjoining streets and roads
    - iii. Off-street parking
    - iv. Fencing, screening and landscaping
    - v. Building bulk and location
    - vi. Usable open space
    - vii. Signs and lighting
    - viii. Noise, vibration, air pollution and similar environmental influences
    - ix. Weed control
  - e. The Zoning Commission shall recommend approval, approval with conditions or denial of the conditional use permit application. The Zoning Commission shall give findings for the recommendation.
4. Governing Body Approval/Issuance of Permit
- a. The Carbon County Commissioners shall approve, approve with conditions or deny the application for Conditional Use Permit within 60 days of receiving a complete application.
  - b. The Carbon County Commissioners shall consider the Zoning Commission recommendation, written or spoken testimony provided at the public hearing, the application and the staff report provided by the Planning Director.
5. Appeals
- a. Any aggrieved party wishing to appeal the decision of the Board of County Commissioners shall appeal to District Court.

**V-C. Administration and Procedures for Variances**

There is a special process that allows an applicant to request a deviation from the literal requirements of these Regulations. The Board of County Commissioners is authorized to grant

variances that are not contrary to the public interest, where, owing to special conditions, literal enforcement based on these Regulations results in an unnecessary hardship, excluding financial hardships.

1. Variance Application Submittal

- a. A variance may be applied for by the property owner, contract purchaser, or their authorized agent. The application shall be filed with the designated County Planning Director. The variance application shall accompany the associated Development Permit or Conditional Use application.
- b. The application shall include, but not be limited to the following information:
  - i. A written description of the variance request and justification for how the request pertains to:
    - 1. Special conditions: There are special circumstances or conditions that are peculiar to the land or building for which the variance is sought that do not apply generally to land or buildings in County; and
    - 2. Not a result of the applicant: The special circumstances or conditions have not resulted from an act of the applicant or been established to circumvent these Regulations; and
    - 3. Strict application unreasonable: Due to the special circumstances or conditions, the strict application of these Regulations would deprive the applicant of reasonable use of the land or building or create an undue hardship on the landowner; and
    - 4. Necessary to provide reasonable use: Granting the variance is necessary to provide a reasonable use of the land or the building;
    - 5. Minimum variance: the variance is the minimum variance necessary to allow a reasonable use of the land or building; and
    - 6. Not injurious; Granting the variance will not be injurious to the neighborhood or detrimental to the public welfare; and
    - 7. Consistent with regulations: Granting the variance is consistent with the purposes and intent of these Regulations.
  - ii. A list of property owners within 100 feet of the subject property and their mailing addresses.

2. Staff Review

- a. Upon receiving an application for a variance, the Planning Director shall complete the following:
  - i. Consult with other departments of the County or State to fully evaluate the impact of the development upon public facilities including, Road and Bridge, Sanitation, DEQ and Emergency Services.
  - ii. Study each application with reference to its appropriateness and effect on existing and proposed land-use, and reference the Growth Policy.
  - iii. Notify, by mail, all property owners within 100 feet of the property

subject to the variance and associated permit request of the time, date, and place of the public hearing.

iv. Publish public hearing notice for the Board of Adjustment meeting.

3. Board of Adjustment Review and Recommendation

- a. The Board of Adjustment shall hold a public hearing.
- b. The Board of Adjustment shall evaluate the staff report prepared by the Planning Director.
- c. The Board of Adjustment shall not recommend that a variance be granted unless:
  - 1. Special conditions: There are special circumstances or conditions that are peculiar to the land or building for which the variance is sought that do not apply generally to land or buildings in County; and
  - 2. Not a result of the applicant: The special circumstances or conditions have not resulted from an act of the applicant or been established to circumvent these Regulations; and
  - 3. Strict application unreasonable: Due to the special circumstances or conditions, the strict application of these Regulations would deprive the applicant of reasonable use of the land or building or create an undue hardship on the landowner; and
  - 4. Necessary to provide reasonable use: Granting the variance is necessary to provide a reasonable use of the land or the building; and
  - 5. Minimum variance: the variance is the minimum variance necessary to allow a reasonable use of the land or building; and
  - 6. Not injurious; Granting the variance will not be injurious to the neighborhood or detrimental to the public welfare; and
  - 7. Consistent with regulations: Granting the variance is consistent with the purposes and intent of these Regulations.
- d. The Board of Adjustment shall consider and may recommend conditions related to the variance request.
- e. The Board of Adjustment shall recommend approval, approval with conditions or denial of the variance. The Board of Adjustment shall give findings for the recommendation.

4. Governing Body Approval

- a. The Carbon County Commissioners shall approve, approve with conditions or deny the application for Variance within 60 days of receiving a complete application.
- b. The Carbon County Commissioners shall consider the Board of Adjustment recommendation, written or spoken testimony provided at the public hearing, the application and the staff report provided by the Planning Director.

5. Appeals

- a. Any aggrieved party wishing to appeal the decision of the Board of County

Commissioners shall do so through District Court.

#### VI-A. Permitted Uses

Permitted Uses still require a Development Permit, however, the permit is approved by the designated County Planning Director, or designee. There ~~are~~ is two one groups of permitted uses.

1. Group 1, Administratively reviewed with no conditions
  - a. Residential uses
    - i. Single family residential structures

~~2. Group 2, Administratively reviewed with conditions~~

- ~~a. Commercial uses that are not specifically identified as a Conditional Use. This includes recreational uses that are commercial in nature.~~

#### VII-A. Group 2 Uses

Group 2 Development Permits are subject to specific requirements. The ~~designated County Planning Director~~ Zoning Commission may impose conditions to ensure the requirements of these Regulations are met. In addition to the uses expressly stated in this Section, commercial or residential multi-family uses that are not identified as Conditional Uses are subject to the review procedures and requirements as other Group 2 uses.

##### 1. Telecommunication Towers

- a. The purpose of this section is to establish regulations for the siting of antenna support structures and antennae on public and private property. The goals of this section are to:
  - i. Encourage the location of antenna support structures in non-residential areas and minimize the total number of antenna support structures throughout the County;
  - ii. Strongly encourage the joint use of new and existing antenna support structures;
  - iii. Require wireless communication facilities to be located, to the greatest extent possible, in areas where the adverse impact on the County is minimal; and
  - iv. Require wireless communication facilities to be configured in a way that minimizes the adverse visual impact of the towers and antennae.
- b. Definitions
  - i. Antenna support structure: any structure specifically designed, constructed and/or erected for the purpose of attaching, mounting or otherwise affixing antennae. Antenna support structures may include, but are not limited to, self-supporting lattice towers, guyed towers, or monopole towers, microwave towers, common-carrier towers, cellular telephone towers, alternative antenna support structures and the like.

The term includes the structure and any support thereto.

- ii. **Wireless Communication Facility:** An unstaffed facility for the transmission and/or reception of radio frequency, microwave or other signals for commercial communication purposes, typically consisting of an equipment enclosure, an antenna support structure and one or more antennae. Amateur radio, land mobile radio, and commercial radio and television facilities are excluded from this definition.

c. **Requirements**

- i. **Setbacks:** Wireless communication facilities or structures shall be located at least 150' from any property line.
- ii. **Height:** Shall not exceed two hundred fifty feet.
- iii. **Fencing:** A fence at least 6 feet in height is required at the base of a wireless support structure for the purpose of safety and security.
- iv. **Lighting:** Antenna support structures shall not be artificially lit unless required by the FAA or other local, state, or federal agency. If the FAA requires safety lighting, the use of red beacons shall be used.
- v. **Signage:** The structure shall not provide advertising of any kind. One sign, limited to four square feet shall be posted at the base of the tower. The sign shall include a notice of no trespassing, a warning of high voltage, and the telephone number of the property owner/operator to call in case of emergency. Other acceptable signage is limited to non-illuminated warning and equipment identification signs.
- vi. Wireless communication facilities shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA or other applicable local, state, or federal agency, be painted a neutral color or painted and/or textured to match the existing structure or surroundings so as to reduce visual obtrusiveness.
- vii. Wireless communication facilities attached to new or existing structures shall be designed to blend with the structure's architecture and should be placed directly above, below or incorporated with vertical design elements of a structure.
- viii. Wireless communication facilities shall be located as to minimize their visibility and not be placed along scenic corridors

**2. Signage (212 Corridor)**

- a. The purpose of this section is to promote the safety, convenience, and enjoyment of travel on and protection of the public investment in highways within Carbon County along the US 212 Corridor. These Regulations shall apply to all viewable lands from US 212 where a sign would be legible from the right of way. Furthermore, the intent of these Regulations is to:
  - i. Preserve and enhance the natural scenic beauty and aesthetic features of the highway and adjacent areas, this Regulation is intended to control the



location, size and proximity to other of off-premise signs thereby promoting and protecting the public safety and welfare by reducing roadside distractions, sign clutter, and obstructions that may contribute to traffic accidents and driving hazards.

- ii. Protect property values, create an attractive economic and business climate, enhance and protect the physical appearance of Carbon County.
- iii. Curb the deterioration of the traditional natural environment, and preserve view sheds, open space, and the scenic and natural beauty of Carbon County.
- iv. Not interfere with constitutional rights related to free speech.

b. Definitions:

- i. Off-premise sign: An off-premise sign is any sign structure advertising an establishment, merchandise, service, or entertainment which is not sold, produced, manufactured, or furnished at the property on which the sign is located.

c. Requirements:

- i. Height: The maximum total height of an off-premise sign shall not exceed fifteen (15) feet above the mean centerline elevation of the roadway.
- ii. Size: No off-premise sign shall exceed the maximum of eighty (80) square feet in sign area.
- iii. Setbacks: Any off premise sign shall be separated by at least 1,500 feet from any other existing off-premise sign.
- iv. Lighting: Lighting shall only be allowed so as to illuminate the message on the face of the sign. No lighting will face upwards nor be reflected onto the adjacent roadway or adjoining properties. No off-premise sign shall have flashing or blinking lights, moving parts, or simulate motion with reflective parts. The maximum allowable reflected light shall be one (1) footcandle or ten (10) lumens per sign face.
- v. Animation: No off-premise sign shall contain flashing or colored lights or electronically-changeable face on the sign.

**3. Commercial Kennels:**

- d. The purpose of these Regulations is to establish regulations for the siting of commercial kennels on private property. The goals of this section are to:
  - i. Encourage the location of these facilities in non-residential areas.
  - ii. Require these facilities to be located, to the extent possible, in areas where the adverse impact on the County is minimal.

e. Definitions:

- i. Commercial Kennels: Any Day use Kennel, Limited Kennel, or Overnight Boarding Kennel operated as a business. A kennel type structure does not by itself constitute a Kennel. A commercial kennel can be one of the following kennel types

1. Day use Kennel: any premises at which one or more dogs cats or both are kept during daytime hours for a commercial purpose including but not limited to grooming, training and or boarding.
  2. Limited Kennel: any premises at which one or more dogs cats or both are kept overnight for a commercial purpose including but not limited to breeding or selling a single incidental litter in a 12 month period is not a commercial purpose.
  3. Overnight Boarding Kennel: any premises at which three or more dogs cats or both are kept overnight for the commercial purpose of boarding.
- f. Requirements:
- i. The structure(s) housing the animals shall be adequately soundproofed to reduce noise levels during a period of normal operation;
  - ii. The structure(s) and outside runs or areas housing the animals shall be not less than 200 feet from any dwelling (other than the dwelling of the owner), and shall be no less than 50 feet to any property line of the subject site;
  - iii. Any permitted outside runs or areas shall be completely screened from view by sight-obscuring fencing or landscaping, or both, to serve as a visual and noise abatement buffer; and
  - iv. All animals are to be housed within a structure and no outside boarding of animals is permitted between the hours of 10:00 p.m. and 6:00 a.m.

#### 4. Marijuana Businesses

- a. The purpose of this section is to establish regulations for the operation of marijuana related businesses in Carbon County. The Goals of this section are to protect the public health, safety, and welfare by:
- i. Limiting the location of marijuana in proximity to residences, schools, child care facilities, churches, synagogue, other religious buildings, playgrounds, and behavioral health facilities;
  - ii. Limiting marijuana business density; and
  - iii. Placing limitations on marijuana business on-premise and off-premise signage that is visible from public roads.

b. Definitions:

SETBACKS: the distance between any marijuana business to any enumerated building or public property set forth below. In the case of buildings, the setback shall be determined between the closest point of any marijuana business building to the closest point of any enumerated building. In the case of public parks, the setback shall be determined as between the closest point of any marijuana business building to the closest property line for such public park property. In all cases, distance shall be measured from the closest points

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Carbon County Development Regulations

of the buildings regardless of building frontage or address.

c. Requirements

i. Setbacks: Marijuana business buildings shall be setback not less than 1,000 feet from a school, child care facility, church, synagogue, or other religious building, public parks that contain children’s playgrounds or playfields, behavioral health facilities, libraries, community or cultural facility, businesses containing obscene performances, and from any other marijuana business.

ii. Residential Setbacks: Any proposed marijuana business shall be setback from all residential dwellings a minimum of 1,000’. The 1,000’ setback requirements shall be waived if the dwelling owner submits a notarized statement declaring their acceptance of a lesser setback. The notarized statement shall be submitted with the marijuana business’s application materials.

iii. Signage:

1. On-premise marijuana business signs: the maximum number of on-premise signs is two (2).

2. Off-premise marijuana business signs: are prohibited

3. Height: The maximum total height of any sign regulated pursuant to this part shall not exceed fifteen (15) feet above the mean centerline elevation of the roadway;

4. Size: No sign regulated pursuant to this part shall exceed the maximum of eighty (80) square feet in sign area;

5. Setbacks: Any sign regulated pursuant to this part shall be separated by at least 1,500 feet from any other existing sign;

6. Lighting: Lighting shall only be allowed so as to illuminate the message on the face of any sign regulated pursuant to this part. No lighting will face upwards nor be reflected onto the adjacent roadway or adjoining properties. No sign regulated pursuant to this part shall have flashing or blinking lights, moving parts, or simulate motion with reflective parts. The maximum allowable reflected light shall be one (1) foot-candle or ten (10) lumens per sign face.

7. Animation: No sign regulated hereunder shall contain flashing or colored lights or electronically-changeable face on the sign.

8. Content: the content of the sign regulated hereunder shall be limited to the business name, business logo (that complies with ARM 42.39.123(5)), operating days and hours, and a phone number.

9. Flags: No sign shall be adorned with banners, streamers, flags, or other movable or reflective items.

iv. Foundation: Marijuana businesses that are open to the public shall be physically anchored to a permanent concrete foundation. The tongue, axles, transporting lights and towing apparatus of any building placed on a

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permanent concrete foundation shall be removed after placement and before occupancy.

iv. v. Sanitary Facilities: Marijuana businesses that are open to the public shall have a permanent on-site wastewater system permitted by the Carbon County Sanitarian or be tied into an existing sewer system.

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## VIII-A. Conditional Uses

Conditional uses will be evaluated by the Zoning Commission with a recommendation to be approved, conditionally approved or denied by the Carbon County Commissioners. Each conditional use provides minimum requirements. The Zoning Commission and Carbon County Commissioners may recommend and require conditions of approval beyond the requirements listed in the sections below.

Applicability: All structures located within Carbon County whether upon private or public land shall be subject to this section. The section shall apply to facilities located on federal lands to the extent of the County's jurisdiction by way of law, pursuant to any memoranda of understanding or otherwise.

### 1. Industrial Uses

- a. The purpose of this section is to establish regulations for the siting of industrial facilities. The goals of this section are to:
  - i. Encourage the location of industrial facilities and activities in non-residential areas;
  - ii. Require industrial facilities and structures to be located, to the extent possible, in areas where adverse impacts on the County is minimal;
- b. Definitions
  - i. Industrial Use: Any use of land for the manufacture, fabrication, processing, reduction or destruction of any article, substance, commodity or any other treatment in such a manner as to change the form, character or appearance thereof, including warehouses, wholesale storage, storage elevators, and truck storage yards.
- c. General Requirements
  - i. Setbacks: Proposed structures may not be erected on property lines or within right-of-ways or easements. All structures for conditional uses shall be set back 10 feet from any side lot line, 20 feet from a rear lot line and 40 feet from the front lot line or right-of-way.
  - ii. Fencing: Where an industrial use abuts a residential use a fence with visual screens or a landscaping buffer shall be provided.
  - iii. Signage: The tract or structure may not promote or contain off-premise sign advertising. Only services or products sold, manufactured, or stored on-site may be advertised by means of signage.

**2. Wind Energy**

- a. The purpose of this section is to promote the effective, efficient and safe use of the County's wind energy resources through Wind Energy Conversion Systems (WECS), and to regulate the construction, placement, operation of such systems so that public health, safety and welfare will not be jeopardized. The goals of this section are to:
  - i. Encourage the location of WECS to support structures in non-residential areas throughout the County;
  - ii. Require WECS facilities to be located, to the extent possible, in areas where the adverse impact on the County is minimal; and
  - iii. Require WECS facilities to be configured in a way that minimizes the adverse visual impact of the facilities and structures.
- b. Definitions
  - i. Wind Energy Conversion System (Commercial): Any device or assemblage which directly converts wind energy into usable thermal mechanical, or electrical energy for the primary purpose of resale or off-site use. WECS includes such devices as windmills and wind turbines, towers and supporting structures and such directly connected facilities as generators, alternators, inverters, batteries and associated control equipment.
  - ii. Wind Energy Conversion System (Non-Commercial): A wind driven machine that converts wind energy into electrical power for the primary purpose of on-site use and not for resale.
  - iii. Wind Turbine: An alternate energy device which converts wind energy by means of a rotor to mechanical or electrical energy. A wind generator may also be deemed a windmill.
- c. Requirements
  - i. Regulations: Must meet all state, federal and local regulations regarding the uses.
  - ii. Setbacks: 1,000 feet from the project area boundary or road right of way.
  - iii. Height: In no case shall the height of the tower combined with the longest point of the blade exceed the setback.
  - iv. Noise: Measured from property lines
    - 1. Residential Use: 50 db(A)
    - 2. Commercial Use: 60 db(A)
    - 3. Industrial Use: 75 db(A)
    - 4. Hours of operation may be limited due to excess noise.
  - v. Fencing: Must be fenced or protected to prohibit unauthorized access.
  - vi. Climbing Apparatus: All climbing apparatuses shall be located at least 12 feet above the ground and the system tower must be designed to prevent climbing within the first 12 feet above the ground.
  - vii. Lighting: No lights shall be installed on the system, unless required to meet Federal Aviation Administration regulations.

- viii. Signage: The system tower or blades shall not be used for signs and advertising of any kind. One sign, limited to four square feet shall be posted at the base of the tower. The sign shall include a notice of no trespassing, a warning of high voltage, and the telephone number of the property owner/operator to call in case of emergency.
- ix. Visual Impacts/Aesthetics: Tower colors should be a matted or non-reflective finish and be of neutral subdued tones such as earth tones of green or brown. Flat white and gray, including naturally darkening galvanized gray, are also acceptable. Towers shall not be finished in bright or vivid colors intended to draw attention to the structure or property.

### 3. Animal Feed Lots

- a. The purpose of this section is to establish regulations for the siting of animal feedlots. Furthermore, these Regulations intend to be consistent with the Right to Farm Act as contained in MCA 76-2-901 through 76-2-903. The goals of this section are to:
  - i. Not prohibit or terminate any existing agricultural activities, including commercial agriculture;
  - ii. Not to prohibit or terminate any other approved existing uses.
  - iii. Not to prevent the use, development, or recovery of any agricultural resource.
  - iv. Not to prohibit or condition seasonal ranch operations lasting less than 90 calendar days per year. These regulations are intended exclusively for feeding operations only and do not apply to calving, birthing, or other containment scenarios.
- b. Definitions
  - i. Commercial Feed Operations: Any lot or building or premises on which animals are held, maintained, or confined for the purpose of feeding for market, breeding, or raising. An operation shall be considered a commercial feed operation where there are 300 head or more cattle, 300 head or more hogs, 1,000 head or more sheep, 1,000 or more poultry or rabbits and 300 or more of any other animal. Livestock which have access to natural forage on a regular seasonal basis shall not be considered as a Commercial Feed Operation. Furthermore, Commercial Feed Operation does not include the normal seasonal feeding or wintering of livestock produced by the owner as part of an agricultural operation.
- c. Requirements:
  - i. Setbacks: Feed lot enclosures or structures related to animal feed lots or commercial feed operations shall be located not less than 50' from any property line.

**4. Commercial Salvage or Wrecking Yard**

- a. The purpose of this section is to establish regulations for the siting of commercial salvage or wrecking yards on private property. The goals of this section are to:
  - i. Encourage the location of these facilities in non-residential areas.
  - ii. Require these facilities to be located, to the extent possible, in areas where the adverse impact on the County is minimal; and
  - iii. Require salvage and wrecking yard facilities to be configured in a way that minimizes the adverse visual impact of the facilities.
  - iv. Require these facilities to be in compliance with MCA 75-10-5, Motor Vehicle Recycling and Disposal.
- b. Definitions
  - i. Salvage and Wrecking Yards: Means any use involving the storage or processing of four or more inoperable, dismantled or wrecked vehicles, equipment or machinery.
- c. Requirements
  - i. Setbacks: shall be set back 40’ from all property lines or street right-of-way and shall not encroach upon a swale, gully, ravine or other similar land mass and not be located within 300’ of any natural or manmade water course.
  - ii. Signage: The tract or structure may not contain off-premise sign advertising. Only services or products sold or stored on-site may be advertised by means of signage.
  - iii. Fencing and Landscaping: Shall be screened from view of any public street or highway, and any adjacent property by a fence at least eight feet in height.
  - iv. Environmental: Shall retain surface run off on-site.

**5. Rifle and Other Shooting Facilities**

- a. The intent and purpose of this section is to establish regulations for the siting of shooting ranges and outdoor target practice facilities on private property. The goals of this section are to:
  - i. Encourage the location of these facilities in non-residential areas.
  - ii. Require these facilities to be located, to the extent possible, in areas where the adverse impact on the County is minimal.
- b. Definitions:
  - i. Shooting Range: A facility, including its component shooting ranges, safety fans or shotfall zones, designed for the purpose of providing a place for the discharge of various types of firearms or the practice of archery. This definition is exclusive of occasional target practice by individuals on property owned or leased by the individuals or for sighting of weapons for hunting purposes.



- ii. Safety Fan: Applies only to rifle and pistol firing ranges. The safety fan of a firing range consists of three parts: the direct fire zone, the safety zone, and the ricochet zone. The direct fire zone is that area into which all shots are fired during the normal course of shooting. The length of the direct fire zone extends to the maximum range of the ammunition and firearm used on the firing range, but can be shortened by physical barriers or other devices which reduce the maximum distance of a bullet's trajectory. The safety zone extends 10 degrees to the left and right of the direct fire zone and protects against errant bullets caused by cross fire or accidental discharge of a firearm. The ricochet zone is that area 45 degrees to the left and right of the firing line, and extended a certain distance dependent on the type of firearm and ammunition allowed on the range.
- c. Requirements:
  - i. Lot Size: These facilities shall not be located on a lot less than 5 acres in size.
  - ii. Primary Use: Shooting facilities must be the primary use of the property. They shall not be accessory to a dwelling.
  - iii. Setbacks: No portion of the range or associated Safety Fan shall be closer than 1,500 feet to any property line or 2,500 feet to any existing residential dwelling, or other structure.
  - iv. Ingress and Egress: the site shall be secured and controlled to prevent unregulated entrance to the facility or target area.
  - v. Site Design/Development Plan: Elevations for the range area, from shooter to target, shall be constructed to prevent rounds from being fired over the berm, and shall be shown on a site plan accompanying the conditional use application. Furthermore, the complete layout of each range, including, shooting stations or firing lines, target areas, shot-fall zones, backstops, and berms, shall be shown on the site development plan. The development plan shall also identify the Safety Fan for each firing range. The Safety Fan shall include the area necessary to contain all projectiles; including direct fire and ricochet. The safety Fan configuration shall be based on evidence and address the design effectiveness of berms, overhead baffles or other safety barriers to contain projectiles to the Safety Fan area.
  - vi. Containment: Shots fired on site, whether on range or in air, shall be contained entirely on the site. Clay pieces associated with in-air target practice shall also be contained entirely on site.

## 6. Planned Unit Developments (PUDs)

- a. The purpose of this section is to provide a consistent procedure for PUD review across the County's regulatory documents. The goals of this section

are to:

- i. Allow for concurrent review with the County's subdivision review process and procedures.
  - ii. Reduce redundant review for projects that have been reviewed and approved as PUDs, with prearranged relationship of uses.
- b. Definitions:
- i. Planned Unit Development (PUD): A land development project consisting of residential clusters, industrial parks, shopping centers, office building parks or any combination thereof that comprises a planned mixture of land uses built in a prearranged relationship to each other, and having open space and community facilities in a common ownership or use.
  - ii. Subdivision Regulations: The Subdivision Regulations for Carbon County.
- c. Requirements:
- i. PUDs are subject to review as delineated in the Subdivision Regulations.
  - ii. PUDs must be submitted concurrently with a subdivision application.
  - iii. The approved/conditionally approved conditional use permit is for the whole PUD development. No additional development permits are required for the PUD.

## 7. Solar Farms

- a. The purpose of this section is to promote the effective, efficient and safe use of energy generation through solar farms and to regulate the construction, placement, operation of such systems so that public health, safety and welfare will not be jeopardized. The goals of this section are to:
  - i. Encourage the location of solar farms in non-residential areas throughout the County;
  - ii. Require solar farms facilities to be located, to the extent possible, in areas where the adverse impact on the County is minimal; and
  - iii. Require solar farms to be configured in a way that minimizes the adverse visual impact of the facilities and structures.
- b. Definitions
  - i. A solar farm is an extensive photovoltaic system, built to generate electrical energy for the primary purpose of off-site use or resale. This does not include residential systems designed to off-set normal residential utility costs.
  - ii. A solar panel is a term used colloquially for a photo-voltaic module.
  - iii. A photo-voltaic module is an assembly of photo-voltaic cells mounted in a framework for installation. Photo-voltaic cells use sunlight as a source of energy and generate direct current electricity.

- c. Requirements
  - i. Regulations: Must meet all state, federal and local regulations regarding the uses.
  - ii. Setbacks: 30 feet from the project area boundary or road right of way.
  - iii. Noise: Measured from property lines
    - 1. Residential Use: 50 db(A)
    - 2. Commercial Use: 60 db(A)
    - 3. Industrial Use: 75 db(A)
    - 4. Hours of operation may be limited due to excess noise.
  - v. Fencing/screening: Must be fenced or protected to prohibit unauthorized access. Additional screening may be required to help screen the solar farm and accessory structures from major roads and neighboring residences.
  - vi. Lighting: No lights shall be installed on the system, unless required to meet other local, state, or Federal regulations.
  - vii. Signage: Appropriate warning signage shall be placed at the entrance and perimeter of the solar farm. The sign shall include a notice of no trespassing, a warning of high voltage, and the telephone number of the property owner/operator to call in case of emergency.

**8. Power Plants**

- a. The purpose of this section is to promote the effective, efficient and location of power generation facilities other than those previously listed in these Regulations. The goals of this section are to:
  - i. Require the placement and siting of power plants to be at a distance which will not harm residential structures in the vicinity;
  - ii. Require power plants to be located, to the extent possible, in areas where the adverse impact on the County is minimal
- b. Definitions:
  - i. A Power Plant is an industrial facility for the generation of electric power for the primary purpose of off-site use or resale. May also be referred to as a power station, generating station, or generating plant. This may include but is not limited to hydro power generation, nuclear power plants, biofuel generators, etc. This definition does not include power generation that is regulated elsewhere in these Regulations, i.e. wind energy and solar farms.
- c. Requirements:
  - i. Regulations: Must meet all state, federal, and local regulations regarding the uses.
  - ii. Setbacks: 300 feet from the project area boundary or road right of way.
  - iii. Noise: Measured from property lines
    - 1. Residential Use: 50 db(A)
    - 2. Commercial Use: 60 db(A)
    - 3. Industrial Use: 75 db(A)
    - 4. Hours of operation may be limited due to excess noise.
  - iv. Signage: Appropriate warning signage shall be placed at the entrance and

perimeter of the solar farm. The sign shall include a notice of no trespassing, a warning of high voltage, and the telephone number of the property owner/operator to call in case of emergency. Must not have any advertising signage attached to the facility.

- v. Fencing/screening: Must be fenced or protected to prohibit unauthorized access. Additional screening may be required to help screen the facility and accessory structures from major roads and neighboring residences.

## 9. Oil and Gas Development

- a. The purpose of this section is to promote the effective, efficient and safe use of the County's oil and gas resources through well development to ensure public health, safety and welfare will not be jeopardized. The goals of this section are to:

- i. Require the placement and siting of such wells to be at a distance which will not harm residential structures in the vicinity;
- ii. Require oil and gas facilities to be located, to the extent possible, in areas where the adverse impact on the County is minimal;

- b. Definitions

- i. Abandoned Oil and Gas Activity: Any oil and gas activity is abandoned if it has been abandoned for a period of at least two (2) years.
- ii. Derrick: Any portable framework, tower mast and/or structure which is required or used in connection with drilling or re-working a well for the production of oil or gas.
- iii. Drilling Pad: The area of surface operations surrounding the surface location of a well or wells. Such area shall not include an access road to the drilling pad.
- iv. Deviated Well: A well that is directionally or horizontally drilled resulting in a total deviation from the wellbore, measured from a perpendicular line descending from the surface opening of the wellbore of more than one hundred (100) feet.
- v. Environmental Impact Study: The detailed study of the potential effects of designated development on the local environment.
- vi. Fracking: The process of injecting customized fluids, sand, steam, or gas into a gas well under pressure to improve gas recovery.
- vii. Hydraulic Fracking: The introduction through a wellbore of fluid under pressure into a formation containing oil or gas for the purpose of creating cracks in the formation to serve as channels for fluids to move to or from the wellbore.
- viii. Oil and Gas: Crude oil, natural gas, methane gas, coal bed methane gas, propane, butane and/or any other constituents or similar substances that are produced by drilling an oil or gas well.

- ix. Oil and Gas Development or Development: well site preparation, construction, drilling, re-drilling, hydraulic fracturing, and/or site restoration associated with an oil or gas well of any depth; water and other fluid storage, impoundment and transportation used for such activities; and the installation and use of all associated equipment, including tanks, meters, and other equipment and structures whether permanent or temporary; and the site preparation, construction, installation, maintenance and repair of oil and gas pipelines and associated equipment and other equipment and activities associated with the exploration for, production and transportation of oil and gas.
  - x. Oil or Gas Well: A pierced or bored hole drilled or being drilled in the ground for the purpose of, or to be used for, producing, extracting or injecting gas, oil, petroleum or another liquid related to oil or gas production or storage, including brine disposal.
  - xi. Oil or Gas Well Site: The location where facilities, structures, materials and equipment whether temporary or permanent, necessary for or incidental to the preparation, construction, drilling, production or operation of an oil or gas well. This definition also includes exploratory wells.
  - xii. Natural Gas Compressor Station: A facility designed and constructed to compress natural gas that originates from an gas well or collection of such wells operating as a midstream facility for delivery of gas to a transmission pipeline, distribution pipeline, natural gas processing plant or underground storage field, including one or more natural gas compressors, associated buildings, pipes, valves, tanks and other equipment.
  - xiii. Natural Gas Processing Plant: A facility designed and constructed to remove materials such as ethane, propane, butane, and other constituents or similar substances from natural gas to allow such natural gas to be of such quality as is required or appropriate for transmission or distribution to commercial markets but not including facilities or equipment that is designed and constructed primarily to remove water, water vapor, oil or naturally occurring liquids from the natural gas.
  - xiv. Storage Well: A well, used for and in connection with the underground storage of natural gas, including injection into or withdrawal from an underground storage reservoir for monitoring or observation of reservoir pressure.
- c. Requirements
- i. Site Design/Development Plan: The applicant shall prepare and submit upon application of a conditional use permit a site design and development plan. At minimum the plan shall include all existing and proposed structures, well pad location(s), rights-of-way, pipelines,

pertinent surface features, surface water and well locations within ¼ mile of the proposed drilling site, and retaining ponds. Applicant shall submit color photos of well location, and of area from well to north, south, east and west.

- ii. Residential Setbacks: Any proposed drilling activity shall be setback from all residential dwellings a minimum of 750'. The 750' setback requirements shall be waived if the dwelling owner submits a notarized statement declaring their acceptance of a lesser setback. The notarized statement shall be submitted with the Conditional Use Permit application materials.
- iii. Baseline Water: The applicant, at their expense, shall provide baseline water testing analysis as a part of the Conditional Use Permit application. The testing must be completed by a qualified professional licensed or certified in the state of Montana. A minimum of 4 samples will be required within ¼ mile of the proposed drilling activity. The samples shall consist of both ground and surface water when available. If there are no ground or surface water sources within a ¼ mile, the testing area shall be extended to ½ mile. In the event 4 testing sites are not located within ½ mile, the requirements shall be waived to include only the sources available. If a property owner will not allow the applicant to access the water sources for testing, this requirement shall be waived. Initial testing must occur within 12 months prior to setting a conductor pipe in a well or the first well on a multi-well site, or commencement of drilling an injection well. The baseline water testing shall account for the following:
  - Arsenic
  - Barium
  - Benzene
  - Calcium Carbonate
  - Diesel Range Organics
  - Ethane
  - Ethene
  - Ethyl benzene
  - Fluoride
  - Gasoline range organics
  - Iron
  - Magnesium
  - Manganese
  - Methane
  - Nitrogen
  - Selenium
  - Sodium
  - Specific Conductance
  - Strontium
  - Sulfate
  - Toluene
  - Total Dissolved Solids
  - Total Petroleum hydrocarbons
  - Xylene
- iv. Dust Mitigation Plan: The applicant shall provide a dust mitigation plan which identifies haul roads. These roads must be located so they are not directed through recreational, residential or rural residential areas to the

extent possible. Dust free (site) access roads may be required near concentrated residential areas. The governing body shall approve the dust mitigation plan on a case-by-case basis.