

# POWELL COUNTY

## ZONING & DEVELOPMENT REGULATIONS



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**TABLE OF CONTENTS**

**CHAPTER I – GENERAL PROVISIONS..... 1**

I-A. Title ..... 1

I-B. Authority..... 1

I-C. Purposes..... 1

I-D. Preservation of Rights ..... 2

I-E. Jurisdiction..... 2

I-F. Severability ..... 2

**CHAPTER II – ADMINISTRATION AND PROCEDURES ..... 3**

II-A. Planning Department ..... 3

II-B. Planning Board..... 3

II-C. Board of Adjustment ..... 3

**CHAPTER III – DEVELOPMENT CERTIFICATE REQUIRED..... 4**

III-A. Development Certificate ..... 4

III-B. Applications for a Development Certificate for the purpose of constructing ..... 4

III-C. Applications for a Development Certificate must be accompanied ..... 4

III-D. Procedure for Application, Review and Granting a Development Certificate ..... 4

III-E. General Requirements for Development Certificate Approval..... 5

**CHAPTER IV – CONDITIONAL USE PERMIT REQUIRED ..... 7**

IV-A. For uses other than those which can be authorized by a Development Certificate ..... 7

IV-B. Applications ..... 7

IV-C. Conditions required ..... 7

IV-D. Procedure for Application, Review and Granting a CUP ..... 7

IV-E. Requirement for Application Review and Approval of a CUP for Communication  
Facilities..... 10

IV-F. Requirement for Application Review and Approval of a CUP for Wind Generation  
Towers ..... 12

IV-G. Requirement for Application Review and Approval of Transmission Line Corridors ..	12
IV-H. General Requirements For Conditional Use Permit Approval.....	13
<b>CHAPTER V – SPECIFIC DISTRICT REQUIREMENTS FOR DEVELOPMENT CERTIFICATE OR CONDITIONAL USE PERMIT APPROVAL.....</b>	<b>16</b>
1. The Board of County Commissioners may grant a variance .....	16
2. In addition to the specific standards.....	16
V-A. Rural Community District (1-acre minimum residential lot size).....	17
V-B. District No. 1 (I-90 Strip, 5-acre minimum residential lot size).....	19
V-C. District No. 2 (20-acre minimum residential lot size) .....	22
V-D. District No. 3 (160-acre minimum residential lot size) .....	24
V-E. District No. 4 (40-acre minimum residential lot size).....	27
V-F. District No. 5 (Deer Lodge “donut” with minimum lot sizes determined by water and sewer/septic permit requirements) .....	30
<b>CHAPTER VI – SPECIFIC OVERLAY DISTRICT REQUIREMENTS.....</b>	<b>32</b>
VI-A. Airport Safety Overlay Districts.....	32
VI-B. Floodplain and Stream Setback Overlay District .....	32
VI-C. Important Fish and Wildlife Area Overlay District.....	33
VI-D. Planned Unit Development Overlay District.....	33
VI-E. Ground Water Recharge Overlay District .....	35
VI-F. Superfund Overlay District .....	35
<b>CHAPTER VII – BUFFERING AND SCREENING REQUIREMENTS .....</b>	<b>37</b>
VII-A. Purpose.....	37
VII-B. Minimum buffer requirements .....	37
VII-C. Buffer width reduction: berms .....	38
VII-D. Buffer width reduction: additional plantings .....	38
VII-E. Minimum buffer width .....	38
VII-F. Buffer crossing and inclusions.....	38

VII-G. Plant Materials Specifications.....	39
VII-H. Maintenance .....	39
<b>CHAPTER VIII – NONCONFORMING USES AND STRUCTURES .....</b>	<b>40</b>
<b>CHAPTER IX – BOARD OF ADJUSTMENT .....</b>	<b>41</b>
IX-A. Board of Adjustment .....	41
IX-B. Powers of the Board of Adjustment .....	41
IX-C. Proceedings of the Board of Adjustment.....	41
IX-D. Procedures for Variance Requests.....	41
IX-E. Requirements for Granting a Variance .....	42
IX-F. Procedures for Hearing and Acting on Appeals from Actions of Planning Board .....	43
IX-G. Stay of Proceedings .....	43
IX-H. Appeals from Decisions of the Board of Adjustment .....	43
<b>CHAPTER X – FEES AND ENFORCEMENT .....</b>	<b>44</b>
X-A. Fees .....	44
X-B. Enforcement.....	44
<b>CHAPTER XI – AMENDMENTS TO THESE REGULATIONS.....</b>	<b>46</b>
XI-A. Proposals .....	46
XI-B. Planning Board Recommendations .....	46
XI-C. Procedures by County Commissioners.....	46
<b>CHAPTER XII – DEFINITION OF TERMS USED IN THESE REGULATIONS .....</b>	<b>47</b>

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**Copies of supporting resolutions can be obtained at the Planning Department.**



## **CHAPTER I – GENERAL PROVISIONS**

**I-A. Title** – These regulations shall be known as “The Zoning & Development Regulations for Powell County, Montana.”

**I-B. Authority** – These Zoning & Development Regulations are adopted pursuant to 76-2-201 through 76-2-228, MCA, and 76-1-101 through 76-1-606, MCA.

**I-C. Purposes** – These regulations have both general and specific purposes.

**I-C-1. General purposes** – In addition to those stated in State Law, the general purposes of these regulations are to assure that changes in current land use:

- a. Are consistent with the Powell County Growth Policy.
- b. Minimally impact agricultural operations.
- c. Minimally impact adjacent ownerships and uses.
- d. Minimally impact the scenic and open space values, and rural lifestyles of Powell County.
- e. Minimally impact existing residential uses.
- f. Do not unduly restrict requests for new single-family residences.
- g. Is not adverse to public safety and the general welfare.

**I-C-2. Specific purposes** – The specific purposes of these regulations are to:

- a. Implement the land use goals, objectives and policies set forth in the Powell County Growth Policy as well as those purposes further specified in these regulations.
- b. Preserve open space and manage development by encouraging and channeling the more intensive developments to within or close to existing cities and communities of Powell 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 developments.
- c. Minimize, where possible, impacts of new developments upon existing and new government services and infrastructure such as roads, wildfire protection, or health and safety (emergency services).

**I-D. Preservation of Rights** – It is the intent of these regulations to be consistent with the Right to Farm Act as contained in 76-2-901 through 76-2-903, MCA, and therefore not to prohibit or terminate any existing agricultural activities, including commercial agriculture; and also not to prohibit or terminate any other approved existing uses. Nothing in these regulations shall be construed to prevent the use, development or recovery of any agricultural, mineral or forest resource. However, this provision does not apply to new facilities for the processing of agricultural, mineral or timber products. Additionally, sand and gravel operations may not be prohibited. 76-2-209, MCA

**I-E. Jurisdiction** – The area included within the jurisdiction of state law and these regulations shall be all of the unincorporated area of Powell County, Montana.

**I-F. Severability** – If any section or provision of these regulations is declared unconstitutional or invalid by a court of competent jurisdiction, that decision shall not affect the validity of these regulations as a whole, or any part thereof other than the part declared to be unconstitutional or invalid.

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## **CHAPTER II – ADMINISTRATION AND PROCEDURES**

**II-A. Planning Department** – The Powell County Planning Department, which is under the supervision of the County Commissioners, shall administer and enforce these regulations, and shall have the following duties:

1. Receive and approve Development Certificate applications that are consistent with these regulations.
2. Receive applications for Conditional Use Permits (CUPs); review applications and supporting plans; conduct field inspections for applications as well as approved or amended permits; and recommend issuance or denial of applications.
3. Review and perform field investigations for applications for Variances. Prepare staff report and advise Board of Adjustment.
4. Serve as adviser to the Planning Board, the Board of Adjustment and the County Commissioners on matters relating to these regulations; prepare staff reports as required; and prepare and maintain records of all proceedings required or authorized under these regulations.
5. Serve as staff to the Planning Board. Assign staff member to act as secretary for the Planning Board and Board of Adjustment. This member shall be a non-voting member of the boards during meetings.

**II-B. Planning Board** – The Powell County Planning Board shall review and approve, conditionally approve or disapprove applications for CUPs under the requirements and procedures set forth in these regulations.

**II-C. Board of Adjustment** – The Powell County Board of Adjustment shall hear and act on appeals of actions of the Planning Department or other administrative personnel.



## **CHAPTER III – DEVELOPMENT CERTIFICATE REQUIRED**

These regulations set forth the requirements for Development Certificates.

**III-A. Development Certificate** – A Development Certificate must be obtained from the Planning Department before any person changes existing land use to a residential use through the construction or placement of a single family residence.

A Development Certificate will be issued only when the proposed change to residential use will meet the conditions specified in this chapter and the other requirements specified in these regulations.

**III-B. Applications for a Development Certificate for the purpose of constructing** second or multiple residences must be accompanied by a CUP application. The Development Certificate application fee will be waived when accompanied by a CUP application.

**III-C. Applications for a Development Certificate must be accompanied** by either, (1) a showing that there is minimum danger from wildfire, or (2) a written fire prevention plan to prevent any wildfires from endangering the structure(s). A fire prevention plan should address fire retardant construction materials, cutting or cropping of grass, thinning or removing timber in an adequate area around the structures, or other methods for protecting the structures from wildfire. Upon advice from the local fire department or Fire Warden, the Planning Department may require additional or more restrictive provisions be included.

### **III-D. Procedure for Application, Review and Granting a Development Certificate**

**III-D-1. Before commencing** a change in land use involving construction or placement of a single-family residence, a person must submit a completed Development Certificate application form to the Planning Department. The application must include a sketch plan, showing the dimensions and shape of the parcel, the sizes and location of the proposed single-family residence and any other existing or proposed structures on the parcel. The application shall include a description of the current and proposed uses of buildings and land; the location of the dwelling unit proposed; and such other matters as may be necessary to determine conformance with these regulations.

Where the parcel of land contains a large acreage of agricultural, timbered or otherwise undeveloped land, the sketch plan need show only the area currently or proposed to be developed and in which the change of land use will occur. The application should then indicate the approximate amount and location of undeveloped land in the parcel.

Applicant must include a showing that the construction will not be in an area subject to wildfires or must include a written fire protection plan to prevent damage from wildfires as required by these regulations.

**III-D-2. The Planning Department** shall review the application to ensure the required information is complete. When the application and submitted information are complete, the Planning Department shall analyze within 30 working days whether the proposed building, structure, alteration or use is permitted at the proposed location, and whether the proposal will comply with the provisions of these regulations.

**III-D 3. Should the Planning Department** find that the proposed land use change is consistent with these regulations, it will approve the Development Certificate and distribute copies as indicated on the application. The applicant shall be notified in writing of the Planning Department's decision.

**III-D-4. Should the Planning Department** find that the proposed use change is not appropriate under a Development Certificate, the applicant will be notified of such decision by certified mail and will be advised of the right to appeal to the Planning Board.

**III-D-5. Construction,** installation, alteration, placement or use of structures must be consistent with the approved certificate.

**III-D-6. Development Certificates** permitting the land use change shall be in effect for one year from the date of approval. Extensions for the start of any construction activity may be given on an individual case basis, upon request of the applicant to the Planning Department.

**III-E. General Requirements for Development Certificate Approval** - A Development Certificate will be issued only when the applicant demonstrates that the proposed development will comply with the following standards:

**1. Developments May Not Interfere With Agricultural Operations**

- a. Developments shall not impede or diminish the quantity of, add sediments or other contaminants to, or otherwise adversely affect ground or surface water sources used for human consumption, livestock watering or irrigation.
- b. Developments should not obstruct or impair canals, ditches or other irrigation waterways; or interfere with the operation or function of head gates, culverts or other irrigation facilities.
- c. Developments and subsequent uses may not impede or cause conflict with the normal conduct of agricultural operations or uses.

**2. Developments Must Be On Suitable Lands** – Unless special measures approved by the Planning Board and appropriate under these regulations are taken to overcome the associated problems, developments are prohibited on slopes greater than 25 percent. Further:

- a. All new roads constructed between a public road and the property boundary for land use change purposes must have legal access.
- b. County Road Standards for residential driveways off the county right of way are advisory.
- c. Grading and drainage facilities shall be designed to remove storm run-off waters and prevent accumulation of standing water.
- d. An approach permit for all new approaches on the county roads must be obtained. All applications for approaches onto county roads will be reviewed and approved in writing within 30 working days by a County Commissioner or designee prior to construction.
- e. In addition, some land use changes may need to comply with state or federal rules. Where such is the case, compliance is the responsibility of the applicant, and proof of such compliance may be required by the Planning Board.

**3. New Developments Must Be Compatible With the County's Agricultural and Rural Character**

- a. Developments shall be designed and constructed to avoid blocking or altering natural drainages.
- b. Developments shall be designed and constructed to minimize the disturbance of stream banks and lakeshores, and riparian areas abutting such water bodies.
- c. Telephone and power transmission lines shall be located with respect to natural terrain and vegetation to minimize visual impact, and to minimize disturbance of soil and vegetation.
- d. All soil disturbances associated with land use changes will be treated for noxious weeds and revegetated within the earliest growing season. This responsibility rests with the certificate or permit holder.
- e. New developments may be restricted or may not be allowed in designated fish and wildlife habitat areas (see Chapter VI-C).

**4. New Developments Must Be Compatible With the County's Existing Residential Developments and Other Developments in the Area**

Developments must not substantially diminish the light, air and open space, or cause unsightly conditions, for existing residential developments. Housing generally similar to existing housing shall not of itself be considered to have negative impacts to open space.

## **CHAPTER IV – CONDITIONAL USE PERMIT REQUIRED**

These regulations set forth the requirements for Conditional Use Permits (CUPs).

**IV-A. For uses other than those which can be authorized by a Development Certificate,** a CUP must be obtained from the Planning Board before any person may begin to construct, place, move or significantly expand approved uses identified in each Zoning District.

A CUP may be issued only when the proposed building, structure, parcel or use are consistent with the general and specific purposes stated in these regulations, will meet the conditions specified in this chapter and will meet the other requirements specified in these regulations.

**IV-B. Applications** for CUPs must be accompanied by either, (1) a showing that there is minimum danger from wildfire, or (2) a written fire prevention plan to prevent any wildfires from endangering the structure(s). A fire prevention plan should address fire retardant construction materials, cutting or cropping of grass, thinning or removing timber in an adequate area around the structures, or other methods for protecting the structures from wildfire. Upon advice from the local fire department or Fire Warden, the Planning Department may require additional or more restrictive provisions are included.

**IV-C. Conditions required** - A CUP for any use that may change traffic flow or volume, noise, visual pollution, air quality, or may otherwise or unacceptably affect the natural or human environment be harmful to health and safety, shall be subject to such conditions as the Planning Board deems necessary.

**IV-D. Procedure for Application, Review and Granting a CUP** – The purpose of the conditional use permitting process is to provide a more detailed and comprehensive review of certain proposed developments that could significantly impact neighboring properties or the community; to ensure protection of the public health, safety and welfare; to ensure that the location or manner of development is appropriate in relation to existing neighboring uses and to ensure that the use will be consistent with the general and specific purposes stated in these regulations. Applications must address the items in this chapter.

**IV-D-1. The use of any structure** or land may not be changed unless a CUP has been granted except for situations requiring a Development Certificate.

**IV-D-2. Conditional uses must comply** with the requirements of these regulations and any additional conditions prescribed by the Planning Board relating to the following:

- a. Adequate legal and physical access to the property and proposed structures with particular concern for automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency.

- b. Adequacy of existing roads, streets, driveways, bridges, cattle guards and other infrastructure and possible impacts of additional traffic and other uses on existing access for neighboring and area properties.
- c. Adequate off-street parking and loading areas, where required, with particular attention to access, traffic flow, vehicular and pedestrian safety, and avoidance of adverse effects on neighboring properties and uses.
- d. Significant odor or air, water or noise pollution.
- e. Location of garbage containers and garbage pickup to avoid adverse effects on neighboring properties and uses.
- f. Availability, capacity and quality of utilities and community services.
- g. Adequate landscaping and adequate screening and buffering, where required (see Chapter VIII).
- h. A fire protection plan to protect structures (see III-C).
- i. General compatibility with the Powell County Growth Policy.

#### **IV-D-3. Signs**

- a. Permanent Signs for a new or expanded land use must be specifically approved through the CUP process and must be consistent with these regulations and with the Powell County Growth Policy.
- b. New or enlarged signs for existing land uses do not require a CUP but must meet the criteria of c, below.
- c. For the purpose of this regulation:
  - i. "Sign" shall include all signs larger than 24 square feet in size, whether attached to a structure or free-standing; so-called traditional signs with static lettering on a signboard or neon signs; logos; thematic indicators; and any other man-made or altered structure, item, or feature which appear to be intended to advertise the land use or to entice potential customers, clients or other members of the public. Arches, spires, cupolas, and imitation natural objects, whether or not used in other jurisdictions and/or a recognized corporate or business symbol, shall be considered to be signs.
  - ii. Electronic LCD-type signs that flash, change or scroll lettering or images are presumed to be inconsistent with these regulations and with the Powell County Growth Policy.

iii. Any sign must be in compliance with the following:

1. Signs must be on the property of the new or expanded or existing land use that they relate to, and must be in reasonable proximity to the primary site of the land use.
  2. Signs, including supporting posts, shall not be of a height higher than 10 feet above the main structure, exclusive of cupolas, antennas, or other projections, of the land use that they relate to. Each individual sign shall not exceed 128 square feet in size, exclusive of supporting posts.
  3. Not more than two exterior signs may be emplaced for any individual land use. A group of signs shall not be considered to be one sign, but shall be counted as the individual items that make up the group.
  4. Signs existing on the date these regulations are approved shall be allowed as a non-conforming use. However, replacements for such non-conforming signs must comply with these regulations.
- d. Excluded from these requirements shall be temporary signs and up to two signs located on the premises of an agricultural operation advertising the name of the operation.

**IV-D-4. An accurate and complete written application for a CUP** must be submitted to the Planning Board through the Planning Department. All applications for CUPs must be accompanied by plans drawn to scale, showing the dimensions and shape of the parcel to be built upon; the sizes and locations of any existing buildings on the parcel; the location and dimensions of the proposed buildings or alterations; and information that clearly states how the conditions for the use will be met, including the relation to structures on adjacent parcels.

Where the parcel of land contains a large acreage of agricultural, timbered or otherwise undeveloped land, the sketch plan need show only the area currently or proposed to be developed and in which the change of land use will occur. The application should then indicate the approximate amount and location of undeveloped land in the parcel.

**IV-D-5. Notice shall be published** in the official Powell County newspaper within 30 working days of a completed application and at least 14 days in advance of a public hearing before the Planning Board, and the owner of the property and adjacent landowners for which a CUP is sought, or their agents, shall be notified of the hearing by certified mail, all at the applicant's expense.

**IV-D-6. At the public hearing** any party may appear in person, or through an agent or attorney, and give written or oral comment.

**IV-D-7. The Planning Board shall make its decision** at or within 35 working days after the public hearing. It shall make a written statement supporting its decision on the application. The decision will be to (1) approve, (2) approve with conditions, (3) deny or (4) table the proposal to a definite time. The written statement of the decision will include findings that set forth the factual basis or reason(s) for the decision; cite the statute, rule, ordinance, resolution or other legal authority for the decision; explain how the legal authority is interpreted by the Planning Board so as to authorize the decision; and provide information about any appeal or other process by which a person aggrieved by the decision may seek relief from the decision.

**IV-D-8. Following issuance of a CUP**, the Planning Department shall periodically inspect the site to ensure that the implementing actions are consistent with the approved permit.

- a. The Planning Department shall notify the Permittee of any inconsistencies or violations found. If notification is in writing, the notice shall require compliance within 30 days.
- b. Permittee may request and provide reason for additional time to comply, or may appeal the notice to the Board of Adjustment.

**IV-D-9. Upon application** or on its own motion, the Planning Board may amend a CUP.

- a. An amendment that corrects errors made by the Planning Department or the Planning Board, or that is considered to be minor changes that will not adversely affect neighboring properties and that are fully consistent with the requirements of these regulations including the purposes stated in these regulations, may be made without prior public notice.
- b. An amendment that substantially changes the permit, including any conditions imposed thereon, or that may be considered to be adverse to any neighboring or affected properties may be made only after public notice and hearing as provided above for the issuance of a CUP.

**IV-D-10. The Planning Board** may revoke, cancel or hold to be void a CUP. Such action must be only for cause, such as violation by the Permittee of the CUP terms and conditions, refusal or neglect by the Permittee to comply with the CUP terms, or if the CUP was granted in violation of law or these regulations.

**IV-D-11. A Conditional Use Permit**, permitting the land use change, shall be in effect for one year from the date of approval. A one-year extension for the start of any construction activity may be given by the Planning Board on an individual case basis, upon written request of the applicant. Because in time community conditions may change, subsequent requests for an extension shall be subject to the filing fee and public hearing.

**IV-E. Requirement for Application Review and Approval of a CUP for Communication Facilities** and other towers, except wind generation towers – In addition to the requirements

in these regulations, the following requirements apply to all communication facilities and other towers in Powell County.

**IV-E-1. In order to be considered for review**, the applicant must file an application and demonstrate in writing that the proposed structure, tower or antenna is necessary, that opportunities for co-location on an existing tower are not feasible, and that there are no acceptable alternate sites in the immediate vicinity. Also:

- a. The applicant shall present a plan that indicates how the communications facility will be screened or concealed from any adjacent residential areas.
- b. The applicant shall demonstrate that any tower must be located where it is proposed in order to service the applicant's service area. There shall be a written explanation of why a tower and this proposed site is technically necessary.
- c. The applicant may be required to demonstrate in writing why other locations were not investigated or are not adequate for applicant's purposes.

**IV-E-2. Communication facilities** shall be located on existing structures, including, but not limited to, buildings, water towers, existing telecommunications facilities, utility poles and towers, and related facilities, to the extent feasible. In particular, applicants shall consider use of existing telephone and electric utility structures as sites for one or more personal wireless service facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.

**IV-E-3. New communication facilities or other towers** shall provide for co-location capabilities unless the applicant demonstrates in writing that such a provision is not feasible.

**IV-E-4. Some form of a security barrier is required.** When fencing is used as a security barrier, it shall be 8 feet in height and shall surround any tower, its accessory equipment shelter and guy cables. Buffer landscaping may be required.

**IV-E-5. Any lattice towers shall be painted a non-contrasting gray** or Planning Board-approved color that minimizes its visibility, unless otherwise required by the FCC or FAA.

**IV-E-6. No advertising is permitted** anywhere on the facility or tower, with the exception of identification signage. Such identification signage shall include the telephone number of who to contact in the event of an emergency.

**IV-E-7. Towers shall not be artificially lighted except as required** by the FAA or other governmental agency, or as approved by the Planning Board for safety. All lighting shall be shielded to the extent technically feasible to avoid unnecessary visibility of light from ground areas. If required lighting would unacceptably adversely affect existing uses in



the area, the application may be denied. If shielding will not acceptably reduce or eliminate adverse impact on existing residential areas, the application may be denied.

**IV-E-8. Residential areas** – An application for a new tower in or near an existing residential area may be denied unless it is shown that the tower will not have adverse impacts on residents of that area.

**IV-E-9. If at any time, the use of the facility is discontinued** for 180 days, the Planning Board may declare the facility abandoned. Upon abandonment or discontinuation of use, the Permittee shall physically remove the communication facility within 90 days from the date of abandonment. “Physically remove” shall mean: removal of antennas, mounts, equipment shelters and security barriers from the subject property; proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations; and restoring the location of the facility to its previous condition or other Board-approved condition. A financial guarantee may be required to assure physical removal.

**IV-F. Requirement for Application Review and Approval of a CUP for Wind Generation Towers** – In addition to the requirements of these regulations, the following requirements apply to all wind generation towers in Powell County.

**IV-F-1. A wind generation tower** may be located only where it will not unreasonably and adversely affect neighboring residences.

**IV-F-2. If at any time, the use of the facility is discontinued** for one year, the Planning Board may declare the facility abandoned. Upon abandonment or discontinuation of use, the Permittee shall physically remove the wind generation towers within 90 days from the date of abandonment. “Physically remove” shall mean: removal of complete material from the subject property; proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations; and restoring the location of the facility to its previous condition or other Board-approved condition. A financial guarantee may be required to assure physical removal.

**IV-G. Requirement for Application Review and Approval of Transmission Line Corridors** – New high voltage utility transmission lines must be in reasonable proximity to existing such lines, and must avoid ridgeline and populated areas.

**IV-H. General Requirements For Conditional Use Permit Approval** – A CUP will be issued only when the applicant demonstrates that the proposed development will comply with the following standards:

**1. Developments May Not Interfere With Agricultural Operations**

- a. Developments should not impede or diminish the quantity of, add sediments or other contaminants to, or otherwise adversely affect ground or surface water sources used for human consumption, livestock watering or irrigation.
- b. Developments may not obstruct or impair canals, ditches or other irrigation waterways; or interfere with the operation or function of head gates, culverts or other irrigation facilities.
- c. Developments and subsequent uses may not impede or cause conflict with the normal conduct of agricultural operations or uses.

**2. Developments Must Be On Suitable Lands** – Unless special measures approved by the Planning Board and appropriate under these regulations are taken to overcome the associated problems, developments are prohibited on slopes greater than 25 percent. Further:

- a. All new roads constructed between a public road and the property boundary for land use change purposes must have legal access.
- b. County Road Standards for residential driveways off the county right of way are advisory.
- c. Grading and drainage facilities shall be designed to remove storm run-off waters and prevent accumulation of standing water.
- d. An approach permit for all new approaches on the county roads must be obtained. All applications for approaches onto county roads will be reviewed and approved in writing within 30 working days by a County Commissioner or designee prior to construction.
- e. In addition, some land use changes may need to comply with state or federal rules. Where such is the case, compliance is the responsibility of the applicant, and proof of such compliance may be required by the Planning Board.

**3. New Developments Must Be Compatible With the County's Agricultural and Rural Character**

- a. Developments shall be designed and constructed to avoid blocking or altering natural drainages.

- b. Developments shall be designed and constructed to minimize the disturbance of stream banks and lakeshores, and riparian areas abutting such water bodies.
- c. Telephone and power transmission lines shall be located with respect to natural terrain and vegetation to minimize visual impact, and to minimize disturbance of soil and vegetation.
- d. All soil disturbances associated with land use changes will be treated for noxious weeds and revegetated within the earliest growing season. This responsibility rests with the certificate or permit holder.
- e. New developments may be restricted or may not be allowed in designated fish and wildlife habitat areas (see Chapter VI-C).

**4. New Developments Must Be Compatible With the County's Existing Residential Developments and Other Developments in the Area**

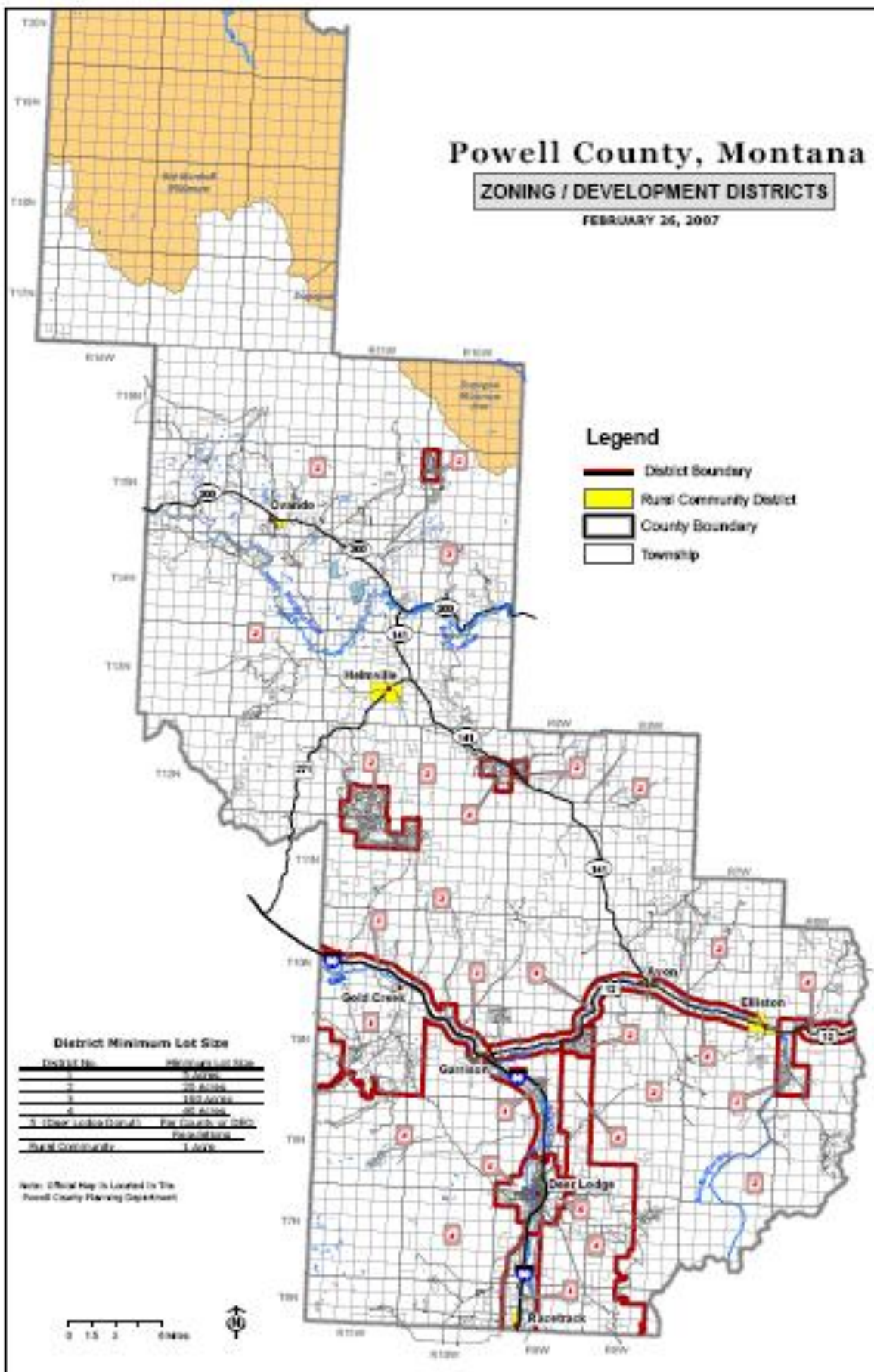
- a. Developments must not substantially diminish the light, air and open space, or cause unsightly conditions, for existing residential developments. Housing generally similar to existing housing shall not of itself be considered to have negative impacts to open space.
- b. Non-residential developments proposed in or near residential areas must not adversely affect the light, air and open space of the area by creating unacceptable noise, odors, visibility, traffic or other conditions.

**IV-I. Appeals of Planning Board Decisions** – Any person or persons, jointly or severally, aggrieved by any decision of the Planning Board may present to the District Court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. The Court shall receive the petition within 30 days after the filing of the decision by the Planning Board.

# Powell County, Montana

## ZONING / DEVELOPMENT DISTRICTS

FEBRUARY 26, 2007



## **CHAPTER V – SPECIFIC DISTRICT REQUIREMENTS FOR DEVELOPMENT CERTIFICATE OR CONDITIONAL USE PERMIT APPROVAL**

- 1. The Board of County Commissioners may grant a variance** to the minimum lot size in any zoning district only if the commissioners determine, and justify in writing, that all of the following criteria are met.
  - a. The variance requested is for a situation where
    - i. A zoning district boundary in effect divides a parcel of record into more than one piece of land,
    - ii. One resulting piece of land is large enough to be subdivided under the minimum lot size restrictions of the district containing it, but the other piece is smaller than the minimum lot size restrictions of the district containing it and would therefore be an unusable piece of land left over after authorized subdivision of the other piece,
    - iii. The variance request is only for the one piece that would otherwise be an unusable left-over, and
    - iv. There is no other unresolved impediment to subdivision of the parcel of record.
  - b. The variance is requested in conjunction with a subdivision preliminary plat application.
  - c. Granting the variance would not result in any special privileges not available to any other in a similar situation.
  - d. Granting the variance will not be unreasonably inconsistent with the wording and intent of the Growth Policy and the Zoning Regulations.
- 2. In addition to the specific standards** set for in each zoning district herein, the general requirements of these regulations apply:

## **V-A. Rural Community District (1-acre minimum residential lot size)**

**V-A-1. General location** – Existing Rural Community Districts are Elliston, Avon, Ovando, Helmville, Garrison and Racetrack. Rural Community District boundaries are depicted on maps in the Planning Department.

**V-A-2. Characteristics** – A series of land use districts offering a small community living environment with a clustering of homes and supportive uses and a limited range of urban services. Uses within this district are a restricted range of urban activities including moderately high density residential, commercial and light industrial uses commensurate with the ability to provide necessary services. Institutional, recreational, public and light industrial uses are permitted, subject to review and CUP approval for impacts on adjacent properties. Site-specific locations for different land uses are not designated.

### **V-A-3. Specific standards**

- a. Permitted Land Uses (No Development Certificate required)
  - i. Agricultural uses.
  - ii. Residential accessory structures and agricultural accessory structures.
  - iii. Home occupation.
- b. Permitted Land Uses (Development Certificate required)
  - i. Single family residential structures.
    - ii. Expansion of existing non-residential uses by less than 1/2 larger than the original permitted use.
- c. Conditional Land Uses (CUP required)
  - i. Expansion of existing non-residential structures or uses by more than 1/2 except for agricultural accessory structures.
  - ii. New non-residential uses.
  - iii. Multi-family dwelling units.
  - iv. More than one residential structure on one parcel. A permit may be denied if it appears to be an attempt to evade the Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations.
  - v. Manufactured or mobile home parks.

vi. RV parks.

vii. Gravel, concrete or asphalt operations are rebuttably presumed as being inappropriate within residential communities.

d. Prohibited Land Uses

i. New commercial feed lots.

ii. Pig farms.

iii. Chicken farms.

e. Minimum Specifications

i. New lots for residential use must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.

ii. New lots for non-residential uses shall be large enough to accommodate structural and traffic circulation needs, and to accommodate a water and sewage system.

iii. Family transfers as listed in the Montana Subdivision and Platting Act are allowed provided they are not an attempt to evade the Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations. New lots created under the family transfer exemption from subdivision review must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.

iv. Boundary relocations as listed in the Montana Subdivision and Platting Act are allowed, provided they are not an attempt to evade Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations. Resulting lots must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.

## **V-B. District No. 1 (I-90 Strip, 5-acre minimum residential lot size)**

**V-B-1. General location** – Along I-90, from Jens to Racetrack, 1/2 mile north and east of the north and east right-of-way boundary or its frontage roads, whichever is further, to a line 1/2 mile south and west of the south and west right-of-way boundary or its frontage roads, whichever is further; the Gold Creek area, generally described as on the county line 1/2 mile south of the I-90 right of way, the southwest corner of Section 19, T10N, R11W, then south to the southwest corner of Section 7, T09N, R11W, thence, easterly and southerly following the northerly boundary of the forest service, to the southeast corner of section 31, T09N, R10W, thence north to a point 1/2 mile southwest of the I-90 right of way or its frontage road, thence westerly following a line 1/2 mile south of the I-90 right of way to the point of beginning; approximately 1 mile up Brock Creek Road, 1/2 mile on each side of Brock Creek; the Little Blackfoot area, east and south of Elliston, Sections 5, 6, 7, 18, 19, 20, 29 and 30, T09N, R06W; that triangular area near Beck Hill Road, east of I-90, south of District 4 along U.S. 12; generally, the area near East Side Road and Yellowstone Trail/Lake Hill Road; all as more specifically depicted on the official map in the Planning Department (No Rural Community Districts are included in District No. 1.).

**V-B-2. Characteristics** – A land use district offering a semi-rural living environment with limited urban services. Residential developments permitted at a moderate rural density. Non-residential uses may be permitted subject to review of site location, impacts on surrounding property and availability of services. Agriculture is recognized as an existing use.

### **V-B-3. Specific standards**

- a. Permitted Land Uses (No Development Certificate required)
  - i. Agricultural uses.
  - ii. Residential accessory structures and agricultural accessory structures.
  - iii. Home occupation.
- b. Permitted Land Uses (Development Certificate required)
  - i. Single family residential structures.
  - ii. Expansion of existing non-residential uses by less than 1/2 larger than the original permitted use.
- c. Conditional Land Uses (CUP required)
  - i. New non residential structures or uses.



ii. Expansion of existing non-residential structures or uses by more than 1/2 except for agricultural accessory structures.

iii. Multi-family dwelling units.

iv. More than one residential structure on one parcel. A permit may be denied if it appears to be an attempt to evade the Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations.

v. Manufactured or mobile home parks.

vi. RV parks.

vii. Commercial feed lots, pig farms and chicken farms. It is a rebuttable presumption that uses such as commercial feedlots, pig farms or chicken farms, and junkyards or recycling yards are unacceptable.

d. Minimum Specifications

i. New lots for single-family residential use shall be 5 acres or larger.

ii. New lots for non-residential uses that are smaller than 5 acres and are not part of a PUD shall contain plat and deed restrictions prohibiting residential use without being further reviewed in accordance with the Powell County Subdivision Regulations.

iii. Lots for non-residential uses shall be large enough to accommodate structural and traffic circulation needs, and to accommodate a water and sewer/septic system.

iv. Any subdivision containing lots smaller than 5 acres must be part of a PUD, have an average density of not more than one residence per 5 acres except as otherwise authorized by these regulations, and be authorized by a CUP. Such developments must address impacts on natural and cultural resources as well as social values and existing uses. PUDs or other developments that would result in strip development along highways will not be allowed.

v. Family transfers as listed in the Montana Subdivision and Platting Act are allowed provided they are not an attempt to evade the Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations. New lots created under the family transfer exemption from subdivision review must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.

vi. Boundary relocations as listed in the Montana Subdivision and Platting Act are allowed, provided they are not an attempt to evade Powell County

Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations. Resulting lots must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.

## **V-C. District No. 2 (20-acre minimum residential lot size)**

**V-C-1. General location – Cooper’s Lake** area, Sections 6 and 7 of T15N, R10W; also, the district east of the **Nevada Creek Reservoir** area, north of State Hwy. 141, Sections 18 and 19 of T12N, R09W; also, the **Hoover Creek** area, Sections 27, 28, 29, 32, 33 and 34 of T12N, R11W, and Sections 1, 3, 4, 5, 9, 10, 11 and 12 of T11N, R11W; also, the **Dana Ranch** area, south of District No. 4 along U.S. 12, Sections 12, 13 and 14, T09N, R09W, all as more specifically depicted on the official map in the Planning Department.

**V-C-2. Characteristics** – A land use district offering a rural living environment with no urban services. Permits residential developments in a rural setting at a moderately low density. Encourages agricultural related uses and outdoor or seasonal recreational and related commercial uses. Industrial or institutional or public uses having a special need to locate in this rural area may be permitted subject to review.

### **V-C-3. Specific standards**

- a. Permitted Land Uses (No Development Certificate required)
  - i. Agricultural uses.
  - ii. Residential accessory structures and agricultural accessory structures.
  - iii. Home occupation.
- b. Permitted Land Uses (Development Certificate required)
  - i. Single family residential structures.
  - ii. Expansion of existing non-residential uses by less than 1/2 larger than the original permitted use.
- c. Conditional Land Uses (CUP required)
  - i. New non residential structures or uses.
  - ii. Expansion of existing non-residential structures or uses by more than 1/2 except for agricultural accessory structures.
  - iii. Multi-family dwelling units.
  - iv. More than one residential structure on one parcel. A permit may be denied if it appears to be an attempt to evade the Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations.

v. Manufactured or mobile home parks.

vi. RV parks.

vii. Commercial feed lots, pig farms and chicken farms. It is a rebuttable presumption that uses such as commercial feedlots, pig farms or chicken farms, and junkyards or recycling yards are unacceptable.

d. Minimum Specifications

i. New lots created for single family residential use shall be 20 acres or larger, or be able to be described as a 1/32 aliquot part of a U.S. Government section.

ii. Lots for non-residential uses shall be large enough to accommodate structural and traffic circulation needs, and to accommodate a water and sewer/septic system.

iii. Any subdivision containing lots smaller than 20 acres must be part of a PUD, have an average density of not more than one residence per 20 acres except as otherwise authorized by these regulations, and be authorized by a CUP. Such developments must address impacts on natural and cultural resources as well as social values and existing uses. PUDs or other developments that would result in strip development along highways will not be allowed.

iv. Family transfers as listed in the Montana Subdivision and Platting Act are allowed provided they are not an attempt to evade the Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations. New lots created under the family transfer exemption from subdivision review must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.

v. Boundary relocations as listed in the Montana Subdivision and Platting Act are allowed, provided they are not an attempt to evade Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations. Resulting lots must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.

**V-D. District No. 3 (160-acre minimum residential lot size)**

**V-D-1. General location** – The part of the county north of U.S. 12, excluding any lands in Districts No. 2 and No. 4, and any Rural Community Districts; also that area east and south of District No. 4 (east and south of I-90 and U.S. 12), excluding any lands in other districts, all as more specifically depicted on the official map in the Planning Department.

**V-D-2. Characteristics** – A land use district of predominately agricultural and timber operations, outdoor recreational activities and low density residential use. This district emphasizes protection of open space, watersheds, grazing lands, fish and wildlife resources, soil and water resources, and the agricultural lifestyle and economy of the district. Permitted uses are outdoor recreational activities including accessory non-residential uses and on-site resource-oriented industrial uses including agricultural- and timber-related operations.

**V-D-3. Specific standards** – Residential developments that are not consistent with agricultural or timber operations are discouraged. Rural residential developments at a very low density that do not have negative consequences to agricultural and timber operations and other related activities are allowed. In order to provide flexibility and allow creativity in subdivision design, clustering of residences and seasonal homes, or non-residential uses through the use of PUDs and other innovative concepts may be permitted when they are located in areas suitable for such developments.

- a. Permitted Land Uses (No Development Certificate required)
  - i. Agricultural uses.
  - ii. Residential accessory structures and agricultural accessory structures.
  - iii. Home occupation.
- b. Permitted Land Uses (Development Certificate required)
  - i. Single family residential structures.
  - ii. Expansion of existing non-residential uses by less than 1/2 larger than the original permitted use.
- c. Conditional Land Uses (CUP required)
  - i. New non-residential uses or expansion of such uses, including outfitting and guiding operations and facilities.
  - ii. Expansion of existing non-residential structures or uses by more than 1/2 except for agricultural accessory structures.

iii. Multi-family dwelling units.

iv. More than one new residential structure on one parcel. A permit may be denied if the Planning Board determines that the proposal for additional residences is an attempt to evade subdivision review pursuant to the Powell County Subdivision Regulations. In determining whether there is an attempt to evade, the Planning Board will consider the issues in (a) through (f), below, as well as such other information that it deems appropriate. Issuance of a permit for multiple residences may not in the future be used to support an application for subdivision that would result in lots smaller than intended by the Powell County Zoning & Development Regulations.

1. All surrounding circumstances. Will the result of the multiple residential unit be tantamount to a subdivision without survey and governmental review?
2. The nature of the applicant's business. For example, if the applicant is a land developer or a home builder, it may indicate that there is an attempt to evade subdivision review.
3. Proximity of the structures to each other and to other properties. Residences located in a manner that gives the appearance as that of a subdivision may indicate that there is an attempt to evade subdivision review.
4. Who will occupy each of the residences? Occupation by non-family members, or by non-family members who are not employees of the owner or operator of the ranch the residence is on, or if the residences will likely be for rent or lease, may indicate that there is an attempt to evade subdivision review.
5. More than four residences on a parcel that are to be occupied even by family or employees may indicate an attempt to evade subdivision review.
6. The absence of a binding ownership agreement that restricts ownership and occupancy to comply with (1) through (4), above, may indicate an attempt to evade subdivision review.

v. Manufactured or mobile home parks.

vi. RV parks.

vi. Commercial feed lots, pig farms and chicken farms.

d. Minimum Specifications

- i. New lots created for residential uses shall be 160 acres or larger or be able to be described as a one-quarter aliquot part of a United States government section.
- ii. Lots for non-residential uses shall be large enough to accommodate structural and traffic circulation needs, and to accommodate a water and sewer/septic system.
- iii. Any subdivision containing lots smaller than 160 acres must be part of a PUD and have an average density of not more than one residence per 160 acres except as otherwise authorized by these regulations, and be authorized by a CUP. Such developments must address impacts on natural and cultural resources and social values and their effect on existing uses. PUDs or other developments that would result in strip development along highways will not be allowed.
- iv. Family transfers as listed in the Montana Subdivision and Platting Act are allowed provided they are not an attempt to evade the Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations. New lots created under the family transfer exemption from subdivision review must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.
- v. Boundary relocations as listed in the Montana Subdivision and Platting Act are allowed, provided they are not an attempt to evade Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations. Resulting lots must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.

**V-E. District No. 4 (40-acre minimum residential lot size)**

**V-E-1. General location** – Nevada Creek Reservoir area, within sections 13, 14, and 24 of T12N, R10W; that area along US 12, from Garrison to MacDonald Pass, from a line 1/2 mile north of the north right-of-way boundary to 1/2 mile south of the south right-of-way boundary, excluding District No. 2 (Dana Ranch area), and any Rural Community Districts; also that area west of I-90, excluding the I-90 Strip district, and south of District No. 2 (the Dana Ranch area), from the southeast boundary 7 miles, then east 3 miles, south 1 mile and then continuing south along the National Forest boundary to the county's border, going west to the District No. 1 boundary, then north along District No. 1 to the southwest boundary of District No. 2, all as more specifically depicted on the official map in the Planning Department.

**V-E-2. Characteristics** – A land use district in which the dominant uses are of agricultural and timber operations and other related activities. This district emphasizes protection of open spaces, watersheds, grazing lands, fish and wildlife resources, soil and water resources, and its agricultural lifestyle and economy. Permitted outdoor recreational activities include accessory non-residential uses and on-site resource-oriented industrial uses including agricultural, mineral- and timber-related operations.

**V-E-3. Specific standards** – Residential developments that are not consistent with agricultural or timber operations are discouraged. Rural residential developments at a very low density that do not have negative consequences to agricultural and timber operations and other related activities are allowed. In order to provide flexibility and allow creativity in subdivision design, clustering of residences and seasonal homes through the use of PUDs as authorized by these regulations and approved by a CUP, and other innovative concepts are encouraged when they are located in areas suitable for such developments.

- a. Permitted Land Uses (No Development Certificate required)
  - i. Agricultural uses.
  - ii. Residential accessory structures and agricultural accessory structures.
  - iii. Home occupation.
- b. Permitted Land Uses (Development Certificate required)
  - i. Single family residential structures.
  - ii. Expansion of existing non-residential uses by less than 1/2 larger than the original permitted use.
- c. Conditional Land Uses (CUP required)



- i. New non residential structures or uses.
- ii. Expansion of existing non-residential structures or uses by more than 1/2 except for agricultural accessory structures.
- iii. Multi-family dwelling units.
- iv. More than one residential structure on one parcel. A permit may be denied if it appears to be an attempt to evade the Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations.
- v. Manufactured or mobile home parks.
- vi. RV parks.
- vii. Commercial feed lots, pig farms or chicken farms.

d. Minimum Specifications

- i. New lots created for single family residential use must be at least 40 acres in size or be able to be described as a 1/16 aliquot part of a U.S. Government section. A survey may be required.
- ii. Lots for non-residential uses shall be large enough to accommodate structural and traffic circulation needs, and to accommodate a water and sewer/septic system.
- iii. Any subdivision containing lots smaller than 40 acres must be part of a PUD, have an average density of not more than one residence per 40 acres except as otherwise authorized by these regulations, and be authorized by a CUP. Such developments must address impacts on natural and cultural resources as well as social values and existing uses. PUDs or other developments that would result in strip development along highways will not be allowed.
- iv. Family transfers as listed in the Montana Subdivision and Platting Act are allowed provided they are not an attempt to evade the Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations. New lots created under the family transfer exemption from subdivision review must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.
- v. Boundary relocations as listed in the Montana Subdivision and Platting Act are allowed, provided they are not an attempt to evade Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County

Subdivision Regulations. Resulting lots must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.

**V-F. District No. 5 (Deer Lodge “donut” with minimum lot sizes determined by water and sewer/septic permit requirements)**

**V-F-1. General location** - An area approximately 1 to 2 miles wide encircling the City of Deer Lodge as depicted on maps in the Planning Department.

**V-F-2. Characteristics** - A land use district with mixed urban and suburban residential, rural residential, ranching operations and some non-residential uses. It is currently primarily agricultural. It is adjacent to the City of Deer Lodge with its full range of services. Availability of city water and sewer/septic is seen as an incentive for new subdivisions with smaller lots that may provide for more affordable housing. With support of city services, other businesses and nearness of a city population, this area may be attractive for new commercial and light industrial economic development. Portions may be considered for annexation by the City of Deer Lodge.

**V-F-3 – Specific standards**

a. Permitted Land Uses (No Development Certificate required)

- i. Agricultural uses.
- ii. Residential accessory structures and agricultural accessory structures.
- iii. Home occupation.

b. Permitted Land Uses (Development Certificate required)

Single family residential structures.

c. Conditional Land Uses (Conditional Use Permit required)

- i. Expansion of existing non-residential structures or uses by more than 1/2 except for agricultural accessory structures.
- ii. New non-residential uses.
- iii. Multi-family dwelling units.

d. Prohibited Land Uses

- i. New commercial feed lots.
- ii. Pig farms.
- iii. Chicken farms.

e. Minimum Specifications

i. New lots for residential use must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.

ii. Family transfers as listed in the Montana Subdivision and Platting Act are allowed provided they are not an attempt to evade the Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations. New lots created under the family transfer exemption from subdivision review must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.

iii. Boundary relocations as listed in the Montana Subdivision and Platting Act are allowed, provided they are not an attempt to evade Powell County Subdivision Regulations. Evasion criteria may be found in the Powell County Subdivision Regulations. Resulting lots must not be smaller than the minimum sizes required for Tri-county Sanitarian or DEQ water and sewer/septic approval.

## CHAPTER VI – SPECIFIC OVERLAY DISTRICT REQUIREMENTS

In addition to the requirements of Chapter V and VI, the following standards apply for uses and facilities in the Overlay Districts.

**VI-A. Airport Safety Overlay Districts** – See Official County Land Use map, on file in the Planning Department for location of the Deer Lodge and Seeley Lake airports.

**VI-A-1. Performance Standards** – The performance standards for this district are detailed in Federal Aviation Regulations Part 77 Objects Affecting Navigable Air Space, which are incorporated by reference (refer to the resolution designating the Deer Lodge City-County Airport Influence Area).

**VI-A-2. Use Restrictions** – No use within any district established by this chapter shall create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other lights, result in glare in the eyes of pilots using the airport or otherwise impair visibility in the vicinity of the airport, create bird strike hazards, or in any way endanger or interfere with the operation of aircraft.

No new structures shall be constructed within any aviation easement area.

**VI-B. Floodplain and Stream Setback Overlay District** – Floodplains are depicted on some streams by the maps on file in the Planning Department. This Overlay is intended specifically to protect health and safety, and scenic, recreational, aquatic and riparian resources of the county.

However, although not depicted on maps, Stream Setback requirements apply to all streams in Powell County, and the floodplain requirements must be met for all streams in accordance with state law.

**VI-B-1. Performance Standards** - See Powell County Floodplain and Floodway Management Ordinance, and Title 76, Chapter 5, MCA.

**VI-B-2. Use Restrictions**

a. Blackfoot River (including the North Fork of the Blackfoot River) – No new structures are allowed within 100 feet of the river bank or the river’s floodplain, whichever is further. This restriction is to preserve scenic and recreational quality of the nationally renowned Blackfoot River. For exceptions, see the Powell County Floodplain and Floodway Management Ordinance.

b. Clark Fork River – Above the mouth of the Little Blackfoot River and in the Jens and Gold Creek areas shown on maps to be contaminated by mining and smelting wastes. No new structures are allowed within 100 feet of the river’s floodplain. Below the mouth of the Little Blackfoot River, structures are not allowed

within 100 feet of the riverbank. For exceptions, see the Powell County Floodplain and Floodway Management Ordinance.

c. Little Blackfoot River – Except for the rural communities of Avon and Elliston where the existing county-wide floodplain ordinance applies, no new structures are allowed within the river’s floodplain or within 25 feet of the river bank, whichever is further. For exceptions, see the Powell County Floodplain and Floodway Management Ordinance.

d. All other Perennial Streams – No new structures shall be placed within 25 feet of the stream bank. For exceptions, see the Powell County Floodplain and Floodway Management Ordinance.

e. Existing structures may be replaced, provided that the replacement is otherwise consistent with these regulations and there is no change in use or substantial increase in structure size. A Floodplain Development Permit is required.

**VI-C. Important Fish and Wildlife Area Overlay District** – The district will be designated from time to time by the Planning Board upon petition by any county resident or government agency and after a public hearing held pursuant to notice published at least once in the county newspaper. Designation may be based generally on fish and wildlife maps available in the Planning Department, on advice of the Montana Department of Fish, Wildlife & Parks, or on other relevant information.

**VI-C-1. Performance Standards** – Allowed developments in the district should not adversely impact fish and wildlife populations that are considered to be critically sensitive and that further stress would demonstrably threaten the existence of that population, or that the impact would noticeably deplete the population of that species in the state by 10 percent or more. Mitigating and exacerbating factors and consequences may be considered. A designation will not be effective on lands on which there is a pending subdivision or CUP application. A designation will not be made in a zoning district for which the minimum size for new lots is 160 acres or more.

**VI-C-2. Use Restrictions** - Residential densities when expanding into this district shall average no more than one residence per 80 acres unless the Planning Board finds that evidence presented indicates that lesser or greater densities are warranted. Residential use that fills in existing residential areas is not affected by the restriction.

#### **VI-D. Planned Unit Development Overlay District**

##### **VI-D-1. Location and procedure**

- a. A Planned Unit Development (PUD) may be authorized by the Planning Board in accordance with these regulations and the requirements and procedures contained in the Powell County Subdivision Regulations. An approved PUD may include a residential unit density of not more than an average of one residence per 5 acres in

District No. 1, 20 acres in District No. 2, 40 acres in District No. 4 or 160 acres in District No. 3.

- b. PUDs must be authorized by a CUP issued in accordance with these regulations in addition to all other required approvals, and must be reviewed and approved or conditionally approved pursuant to the Powell County Subdivision Regulations. The CUP shall include the area and location to be subdivided for development and the area and location to be preserved as open space.
- c. The applicant may not submit an application for a PUD prior to the pre-application meeting required in the Powell County Subdivision Regulations. The applicant may submit applications for the PUD CUP and the application for the subdivision preliminary plat simultaneously, and both shall then be considered at the same hearing. However, if the PUD CUP is not approved or conditionally approved, the subdivision preliminary plat shall not be approved or conditionally approved.
- d. The PUD may be allowed for the purpose of:
  - i. Improving the economics of subdivision, infrastructure and access.
  - ii. Meeting the open space, fish and wildlife, agricultural and related purposes of these regulations and the Powell County Growth Policy.
  - iii. Limiting burdens of providing public services to the development. .
- e. Notwithstanding any other provisions of these regulations, PUDs may not be approved for development on irrigated agricultural land or land with special significance for scenic, open space, or fish and wildlife habitat values unless the majority of the lands with those values are included in open space.

#### **VI-D-2. Supporting evidence**

- a. It shall be the responsibility of the landowner or subdivider to present adequate evidence that approval of a PUD will meet the purposes of these regulations, the Powell County Growth Policy and the Powell County Subdivision Regulations.
- b. The applicant must submit a detailed report of probable impacts and of community impacts.

#### **VI-D-3. Open space preservation**

- a. The portion of the land to be maintained in open, undeveloped space must be placed under the perpetual protection of one of the following mechanisms, and must at a minimum prohibit further subdivision and prohibit residential and non-residential structures or any use that is not consistent with open space, agriculture, and fish and wildlife habitat, and must prohibit further subdivision of the open space land:

- i. owned by a property owners' association, or
  - ii. Dedicated to public use, if acceptable to the County Commissioners, or
  - iii. A Conservation Easement (CE) to be entered into in accordance with 76-6-101 through 76-6-211, MCA. For the purposes of a PUD, the CE must be approved by the Planning Board, or
  - iv. A combination of i, ii and iii, above, if approved by the County Commissioners.
- b. If a CE is to be entered into, within 30 working days of receipt of a draft CE with a letter of support from the qualified organization that will hold the CE, the Planning Board shall approve or disapprove the CE. The reasons for approval or disapproval must be stated in writing and made available to the applicant. If the draft CE and supporting letter are not submitted with the application for the PUD, the CUP and, if appropriate, the subdivision Preliminary Plat may be approved with the condition that the final CE be submitted and approved, and executed and filed with the Powell County Clerk & Recorder prior to the filing of the subdivision Final Plat.

**VI-E. Ground Water Recharge Overlay District** – This district is responsive to the Clark Fork Basin Water Management Plan and is depicted by maps on file in the Planning Department.

**VI-E-1. Performance standards**

(Reserved)

**VI-E-2. Use restrictions** - Residential densities in this Overlay District shall be no more than one residence per 20 acres.

**VI-F. Superfund Overlay District** - This District covers the area contaminated by mining and smelting wastes from operations further upstream in the Butte and Anaconda areas. The contaminated areas lie along the Clark Fork River and the Valiton Ditch, which lies east of the Clark Fork River. Maps of the Superfund Overlay District are available at the Powell County Planning Department.

**VI-F-1. Purpose** - The purpose of establishing this Overlay District is to implement the Growth Policy by protecting public health and safety while allowing appropriate development activities in the Powell County portion of the Clarks Fork Superfund Site. This purpose will be accomplished by:

- a. Assuring that future land use in the Superfund Overlay District is compatible with the presence of potential contaminants and the various remedial actions required to isolate those potential contaminants from the environment.
- b. Requiring that any development in this Overlay District be preceded by soil testing and, if approved, employ construction practices that are consistent with the permanent protection of the environment and public health.



The requirements of this overlay district also serve as institutional controls in the context of the federal Superfund law. The federal government recognizes the use of institutional controls as appropriate and necessary in Superfund areas. The preamble to the Revised National Contingency Plan (53 CFR 51394 et seq.) states:

“EPA expects to use institutional controls such as water use and deed restrictions to supplement engineering controls as appropriate for short and long-term management to prevent or limit exposure to hazardous substances, pollutants, or contaminants. Institutional controls may be used during the conduct of the RI/FS (Remedial Action/Feasibility Study) and Implementation of the Remedial Action and, where necessary as a component of the completed remedy. (at 300.430(a)(1)(iii)(D))”

#### **VI-F-2. Development on Sites Containing Soil Caps or Other Barriers or Structures Required by Superfund Laws**

- a. (Reserved)

#### **VI-F-3. Development On Sites Where No Remedial Structures Have Been Installed**

- a. Where no remedial structures exist, the total arsenic content of any soil to be excavated or graded shall be determined, and that information shall be submitted with the application for a Conditional Use Permit (CUP). All testing shall follow the protocols of the U.S. Environmental Protection Agency.
- b. If soil testing shows levels of arsenic exceeding the permissible levels for the proposed use that are established in section VI-F-4., the developer shall present a plan for the reduction of those levels. The remedies proposed may include, but are not limited to, tilling the soil, mineral or chemical treatment of the soil, a clean fill cap, an impermeable barrier, or others. Before approving a proposed remedy, Powell County shall consider its practicability and costs as well as its long term effectiveness in isolating contaminated or potentially contaminated soil or materials from the environment.
- c. Dust suppression measures may be required whenever a new arsenic reduction remedy is constructed. The administrator may require air quality monitoring, at the developer's expense, to ensure the effectiveness of the dust suppression measures.
- d. Arsenic reduction remedies shall be sited and designed to minimize erosion caused by surface runoff. Erosion control techniques may include any effective combination of paving the surface, diverting runoff, and planting.
- e. Only clean fill shall be imported into the Superfund Overlay Zone or any site within the Superfund Overlay Zone. The import of more than one cubic yard of fill requires explicit approval as part of a Conditional Use Permit, and such a permit shall be approved only where the specific sources of the fill is identified and approved as

providing “clean fill”. Imported fill is subject to random testing to check compliance with this performance standard.

**VI-F-4. Conditional Use Permit Required --** All use changes and development in the Superfund Overlay Zone are subject to the securing of a Conditional Use Permit. All applications for a CUP or variance in the Superfund Overlay Zone shall include the following additional information beyond that which is required for any CUP or variance.

- a. A detailed grading plan showing the depth of all proposed excavations and the volume of soil to be moved.
- b. Where no remedial structures exist on a site, the application materials shall include arsenic tests, as required by Powell County, and detailed plans (if necessary) for achieving compliance with the maximum arsenic level allowed for the proposed use. The permissible arsenic levels are as follows:

<i>Use</i>	<i>Permissible Arsenic Level</i>
residential areas	250 ppm
commercial/industrial areas	500 ppm
agricultural/recreational areas	1,000 ppm

- c. Powell County may contract for the professional assistance needed to ensure the adequacy of applications materials and compliance with the performance standards adopted in this chapter. The actual cost of such assistance shall be the responsibility of the developer and no certificate of compliance shall be issued where these costs have not been reimbursed to the county.

**VI-F-5. Wells -** A development certificate shall be required to drill or dig a well in the Superfund Overlay Zone. Prior to the issuance of a completion certificate of any well in this overlay district, it shall be tested for coliform bacteria, arsenic, barium, cadmium, chromium, copper, lead, mercury and nitrate and the results of the tests submitted to Powell County. No certificate of compliance shall be issued for any well in which the water exceeds state water quality standards for the proposed use.

**VI-F-6. Notice to Purchasers -** Before any parcel or any interest in any parcel, in the Superfund Overlay Zone is conveyed, the following statement shall be placed on the deed, contract for sale, or other instrument of conveyance: “This parcel is within a Superfund site. A permit must be obtained before any development or construction covered by these regulations is initiated.”

## **CHAPTER VII – BUFFERING AND SCREENING REQUIREMENTS**

**VII-A. Purpose –** Landscaping requirements are an essential element in mitigating potential land use conflicts. The purpose of this chapter is to assure that the landscaped buffers required by these regulations effectively accomplish that goal. Screening requirements are added to the buffer requirements in some development districts.

**VII-B. Minimum buffer requirements –** The width of required buffers shall vary with the nature of the uses being separated, the height of the buildings being separated and the

construction of the buffer. Table B.1. shows the basic buffer width required where the buffer consists of a level or gently sloping area of sod or ground cover and at least four major trees per hundred lineal feet of buffer. That table also shows where a solid fence, wall or berm is required as part of a buffer in order to block headlight glare.

**VII-C. Buffer width reduction: berms** – The basic width requirements may be reduced where a vegetated berm is included in the buffer. The width reduction shall be twice the height of the berm, but the maximum permitted reduction shall be 10 feet. No berm shall have a slope of more than 3:1, except where a retaining wall is incorporated into the berm on the side opposite the use or public way being buffered.

**VII-D. Buffer width reduction: additional plantings** – The basic buffer width requirements may be reduced where a greater density and diversity of plantings is included or retained in the buffer. The buffer width reductions permitted in this section are cumulative and may result in a total reduction of up to 30 percent. The buffer width reductions permitted here are also cumulative with those permitted here.

**VII-D-1. Major Trees** – The required buffer width shall be reduced by 10 percent where five or more major trees per hundred lineal feet are planted or retained.

**VII-D-2. Understory Trees** – The required buffer width shall be reduced by 10 percent where five or more understory trees per hundred lineal feet are planted or retained. The understory trees must be of a different species than the major trees.

**VII-D-3. Shrubs** – The required buffer width shall be reduced by 10 percent where 20 or more shrubs per hundred lineal feet are planted or retained.

**VII-E. Minimum buffer width** – No required buffer shall be less than half the basic buffer width or less than 10 feet in width, regardless of any reductions permitted above.

**VII-F. Buffer crossing and inclusions** – Buffers may be crossed by access driveways, utility lines and pedestrian trails. A pedestrian trail may run along the length of a buffer, with its width, up to a maximum 5 feet, being included in the required buffer width.

**TABLE VII.1. – Buffering and screening requirements**

USE	USE IMPACTED	BASIC BUFFER WIDTH (FT.)	HEADLIGHT SCREENING
All Industrial	Any residential use or district	50	For Parking
Commercial	Any residential use or district	30	For Parking
Higher Density Residential	Any lower density residential use or district	30	None

**VII-G. Plant Materials Specifications** – Plant materials installed in required buffers shall be warranted for one year. Plant materials shall meet the American Standard for Nursery Stock and the following minimum specifications:

**VII-G-1. All trees**, major and understory, shall be containerized or bagged and burlapped stock in good condition, with a caliper of at least 1.5 inch (measured 1 foot above grade) for deciduous trees and a height of at least 6 feet for coniferous trees.

**VII-G-2. All shrubs** shall be minimum 1-gallon containerized stock in good condition.

**VII-H. Maintenance** – Perpetual maintenance of required buffers is required. Such requirement will be written in the covenants of a subdivision and be a requirement of any CUP.

## **CHAPTER VIII – NONCONFORMING USES AND STRUCTURES**

(Reserved)

## **CHAPTER IX – BOARD OF ADJUSTMENT**

**IX-A. Board of Adjustment** – A Board of Adjustment has been established in accordance with 76-2-221 through 76-2-228, MCA. The County Commissioners shall appoint five members to the Board, each for a term of two years except that in the initial appointment, two members were appointed for a term of one year, and three members for terms of two years each. Members of the Board may be removed from office by the County Commissioners for cause upon written charges and after public hearing. Vacancies on the Board shall be filled by resolution of the County Commissioners for the unexpired term of the member affected.

**IX-B. Powers of the Board of Adjustment** – The Board shall have the following powers:

**IX-B-1. To hear and decide appeals** where it is alleged that there is an error in any order, requirement, decision or determination made by the Planning Department or other administrative personnel in the enforcement of these regulations.

**IX-B-2. The Board may approve**, approve in part, conditionally approve or deny any request for a Variance from the requirements of these regulations.

**IX-B-3. To grant Variances** from the requirements of these regulations because of hardship when the granting will not be contrary to the general intent of these regulations.

**IX-C. Proceedings of the Board of Adjustment**

**IX-C-1. The Board shall select** one of its members as chairman, and one as vice chairman, and shall adopt rules necessary to conduct its affairs in keeping with the provisions of these regulations. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his or her absence, the acting or vice chairman, may administer oaths and compel the attendance of witnesses. Meetings shall be open to the public.

**IX-C-2. The Board shall keep minutes** of its proceedings, showing the vote of each member upon each question, or if a member is absent or fails to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the Planning Department.

**IX-C-3. Decisions of the board** must be with a concurring vote of three members.

**IX-D. Procedures for Variance Requests**

**IX-D-1. Requests for a Variance** from the Board of Adjustment are initiated by filing an Application for Variance with the Planning Department. The Application for Variance must specifically set forth the reasons for requesting the Variance.

**IX-D-2. The Board** shall fix a reasonable time for the hearing of the Variance request, shall publish notice in the official Powell County newspaper at least seven days in advance of a public hearing and shall notify adjacent landowners and the applicant by certified mail, all at the applicant's expense.

**IX-D-3. At the hearing** any party may appear in person or be represented by an agent or attorney, and give comment, written or oral.

### **IX-E. Requirements for Granting a Variance**

**IX-E-1. To grant a Variance** the Board must find that the granting of the Variance will be in harmony with the general purpose and intent of these regulations, will not be injurious to the neighborhood, is the minimum Variance that will make possible the reasonable use of the land, building or structure, and will otherwise not be detrimental to the public welfare, or will regularize a use that existed prior to February 20, 1996. A pre-existing contract used to justify a Variance must have been in writing and be dated prior to February 20, 1996. The decision and findings of the Board must be put in writing, signed by the chairman or the secretary of the Board, and a copy sent to the applicant by certified mail.

**IX-E-2. The Board shall consider** the totality of the circumstances in determining whether or not to grant or deny a request for a Variance. If a survey or construction authorized by a Variance is not completed within one year of authorization, the Variance shall become void. A one-year extension for the start of any construction activity may be given by the Planning Board on an individual case basis, upon request of the applicant. Because community conditions may change in time, each subsequent request for an extension shall be subject to the filing fee and public hearing.

The Board shall consider the following criteria in making its decision:

- a. Whether special conditions and circumstances exist that are peculiar to the land, structure or building involved and that are not applicable to other lands, structures or buildings in the same district.
- b. Whether a literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these regulations.
- c. Whether the special conditions and circumstances result from the action(s) of the applicant.
- d. Whether granting the requested Variance will not confer on the applicant any special privilege that is denied by these regulations to other lands, structures or buildings in the jurisdiction.

e. Whether the result of granting the Variance will conflict with the Growth Policy.

#### **IX-F. Procedures for Hearing and Acting on Appeals of Actions of the Planning Department or Other Administrative Personnel**

**IX-F-1. Any person or any officer** of the county government may file a notice of appeal of a decision made by the Planning Department or other administrative personnel within 60 days of the date the subject decision was made. The notice of appeal, submitted to the Planning Department, must comply with the rules adopted by the Board of Adjustment.

**IX-F-2. The Planning Department** shall within 14 working days transmit to the Board of Adjustment the notice of appeal and all papers constituting the record of the subject decision.

**IX-F-3. No later than 30 working days** after the filing of the appeal, the Board of Adjustment shall hold a hearing on the appeal, give public notice of the hearing at least seven days prior to holding a public hearing and shall notify adjacent owners and the applicant by certified mail, all at the applicant's expense.

**IX-F-4. At the hearing any party** may appear in person or be represented by agent or attorney, and give comment, written or oral.

**IX-F-5. The Board of Adjustment** may reverse, affirm wholly or in part, or modify the order, decision or action appealed and may make such order, decision or action as deemed necessary.

**IX-G. Stay of Proceedings** - An appeal stays any further proceedings of the action appealed until the Board of Adjustment has heard and decided on the appeal under 76-2-226 (3), MCA, unless it is determined a stay would cause imminent peril to life or property. In such case, proceeding shall not be stayed other than by a restraining order.

#### **IX-H. Appeals from Decisions of the Board of Adjustment**

**IX-H-1. Any person or persons**, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department or board of the county may present to the district court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within 30 days after the filing of the decision by the Board.

**IX-H-2. Upon submittal** of a petition appealing a decision by the Board of Adjustment, the court of record and Board of Adjustment shall proceed in accordance with the provisions of 76-2-227 and 76-2-228, MCA.



## CHAPTER X – FEES AND ENFORCEMENT

**X-A. Fees** – The County Commissioners shall establish, by resolution, a schedule of fees and charges and a collection procedure for Development Certificates, CUPs, Variances and Appeals. Established fees are intended to cover any expenses of the county incurred as necessary public expenses related to processing the application. No action may be taken on any application until the application fee has been paid.

### **X-B. Enforcement**

**X-B-1. Whenever noncompliance** of these regulations occurs, or is alleged to have occurred, any person or agency may file a written complaint. The complaint, stating fully the causes and basis of the noncompliance shall be filed with the Planning Department. The Planning Department shall properly record the complaint, and immediately investigate and file a written report with the Planning Board.

**X-B-2. Upon determination** that there is noncompliance, the Planning Department, directly or through the Planning Board, shall notify in writing the owner of the property alleged to be in noncompliance, by certified mail or by posting notice on the site. The notice shall describe the noncompliance, cite the sections of these regulations and order the owner to attain compliance within 30 days.

**X-B-3. Any person who has been notified** of a noncompliance of these regulations may:

- a. Request an inspection by the Planning Department to show that the property has been brought in compliance within the allowed 30-day period.
- b. File a written request for an extension of time to attain compliance and enter into good faith negotiations with the Planning Board to resolve the noncompliance.
- c. File an appeal to the Board of Adjustment in accordance with the provisions of Chapter X of these regulations.

**X-B-4. Where a person fails** to attain compliance within the specified time period, or to show on appeal that a violation did not occur, the Planning Board shall request that the county attorney commence legal action, as authorized under 76-2-210 or 76-2-211, MCA.

**X-B-5. Failure to comply** with any requirements of these regulations, including conditions and safeguards established in connection with the granting of a Variance, CUP, Development Certificate or any of the requirements for conditions imposed by the County Commissioners, shall constitute a misdemeanor. Penalties for a misdemeanor are contained in 76-2-211, MCA.

**X-B-6. The owner or tenant of any building**, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in,

assists or maintains such failure to comply may be found guilty of a separate offense and suffer the penalties specified above.

**X-B-7.** Nothing set forth in this section shall prevent the county from taking other lawful action as is necessary to prevent or remedy any violation.

## **CHAPTER XI – AMENDMENTS TO THESE REGULATIONS**

**XI-A. Proposals** – Proposals to amend, supplement, modify or repeal any of the provisions of these regulations may be initiated by the County Commissioners, the Planning Board or on petition by any interested resident or property owner. A complete Development Regulation Amendment Application shall be submitted to the County Commissioners through the Planning Board. The Planning Board shall review the petition, consider its merits and make a recommendation to the County Commissioners.

**XI-B. Planning Board Recommendations** – The Planning Board shall make written recommendations to the County Commissioners regarding proposed amendments to these regulations.

**XI-C. Procedures by County Commissioners** – The County Commissioners shall follow procedures established in 76-2-205, MCA.

## **CHAPTER XII – DEFINITION OF TERMS USED IN THESE REGULATIONS**

**ACCESSORY STRUCTURES/USES:** Accessory structures. Size and use may be considered in determining whether it is an accessory structure. Utility structures may not be used for commercial use. Examples of residential accessory structures are standard garages, storage sheds, greenhouses and personal use workshops.

**ADJACENT LANDOWNER:** The owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road, watercourse or deeded right-of-way.

**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:

- a. Any buildings, structures, machinery, equipment and practices associated with such production.
- b. 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.
- c. Any agricultural residence as defined in these regulations.
- d. Any land classified as agricultural by the Powell County Assessor at the time of application.

“Agriculture” does not include commercial agricultural uses, as defined in these regulations, nor does it include “game farms.”

**CAMPGROUNDS:** An area used for recreational purposes including temporary residence in tents, RVs or trailers.

**CHICKEN FARMS:** An area not previously so used where more than 500 chickens are kept for commercial purposes. A chicken farm is not meant to include a family flock.

**COMMERCIAL AGRICULTURE:** Any premises, facility or use of land for the processing, storage, disposal, loading or transporting of (1) agricultural products produced off the premises or by other than the owner of facility, or (2) commercial products for use by agricultural operators. “Commercial agriculture” includes, but is not limited to, facilities such as grain elevators, railroad loading facilities, crop and meat processing plants, rendering plants, slaughterhouses, fertilizer plants, alfalfa dehydration plants and commercial feedlots as defined in these regulations.

**COMMERCIAL FEEDLOT:** A permanently constructed confined area or facility within which the property is not grazed or cropped annually, and that is used and maintained for purposes of engaging in the business of the reception and feeding of livestock for hire. This definition does not include a ranch owner or operator constructing and utilizing a confinement area or areas for

use in confining the ranch owners or operator's livestock, and this definition does not include the leasing of pasture for the grazing of livestock owned by others. Any feedlot operation in existence prior to 2004 shall not require a permit under 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.

**CONDITIONAL USE PERMIT (CUP):** A permit granted by the Planning Board authorizing a specific change in land use

**COVENANT CONDITION:** A limitation contained in a deed or other document that restricts or regulates the use of the real property.

**DENSITY:** The number of dwelling units per gross acre. For the purposes of these regulations, density is based on gross acreage and includes the entire development (roads, common open spaces, etc.). Density is not synonymous with lot size.

**DEVELOPMENT CERTIFICATE:** A document issued by the Planning Department, authorizing construction of a residence.

**DRAINAGE:** Usually a low depressional area that runoff water will collect and flow off of a site.

**DWELLING UNIT:** A building or portion of a building providing cooking, eating, sleeping and living facilities for one family.

**EXCAVATION:** Excavation is the removal of soil, rubble, tailings or other earth materials. Tillage (plowing, disking, harrowing, etc.) for agricultural, gardening and landscaping purposes is not excavation. Excavation is included in the term "grading," which also includes filling.

**EXPANSION:** Expansion is any remodeling, addition to or replacement of a nonconforming structure that alters its exterior dimensions and/or results in an increase in lot coverage; or any change in a nonconforming use that expands the area occupied: i.e. an increase in the area occupied by parking spaces, outdoor sales or display area, or outdoor materials storage.

**HOME OCCUPATION:** A home occupation shall mean an accessory use consisting of a vocational activity conducted inside a dwelling unit or its accessory structures, and used only by the individuals who reside therein, provided that the home occupation:

- a. Does not result in noise or vibration, light, odor, dust, smoke or other air pollution noticeable at or beyond the property line.
- b. Is clearly subordinate to the use of the lot for dwelling purposes and does not change the character of the lot.

- c. Does not include the outside unscreened storage of goods, materials or equipment.
- d. Has signage limited to a non-illuminated identification sign 2 square feet or less in size.
- e. Does not exceed one-half the total floor area of the dwelling, including activities carried out in an accessory structure with the exception of child care, which may exceed this limit.
- f. Does not produce traffic volumes exceeding that produced by the dwelling unit by more than 16 average daily trips.
- g. Does not include nursing homes, restaurants, boarding houses or retail store fronts.

**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, truck storage yards, and gasohol or ethanol plants.

**MANUFACTURED HOME:** A structure, transportable in one or more sections, which, when erected on site, is 320 or more square feet, and is built on a permanent chassis. These homes are designed to be used for residential purposes, with or without a permanent foundation when connected to the required utilities, and contain the necessary plumbing, heating, air-conditioning and electrical systems. A home that does not meet the minimum size requirements stated above, is a manufactured home if it either (1) is certified as such by HUD pursuant to the federal Manufactured Home Construction and Safety Standards Act, 41 U.S.C Section 778 5401. et.seq., as amended, or (2) complies with the NFPA 501BANSI A 119.1 (1973, 1974 and 1975 editions).

**MINIMIZE:** For the purposes of these regulations, to minimize (as in the number of access points or impacts on visually sensitive areas) means to show that no alternative plan for the proposed development will result in a smaller impact.

**MOBILE HOME:** A transportable structure that exceeds either 8 feet in width or 32 feet in length, is built on a chassis and is designed, when connected to the required utilities, to be used as a year-round dwelling unit with or without a permanent foundation.

**OPEN SPACE:** Land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.

**OUTDOOR MATERIAL HANDLING OR STORAGE:** Stockpiling, storage, processing or packaging of materials for any reason (it need not be for commercial use), including the long-term storage of construction materials and inoperative machinery or vehicles, that is not enclosed in a building and that is visible from a public street or road.

**PARCEL OF LAND:** Any contiguous quantity of undivided land in the ownership of the same person, group of persons, corporation or claimant.

**PIG FARM:** An area not previously used where more than five breeding sows are kept for commercial purposes or as pets. However, the seasonal raising of pigs such as for 4-H projects, or the continued operation of pig raising, regardless of fluctuations through the years, on existing ranches, are not considered “pig farms” for the purpose of these regulations.

**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, 76-3-103 (10), MCA.

**PLANNING BOARD:** For matters affecting lands within any joint city-county planning area, planning board means the city-county Planning Board; for matters affecting lands in Powell County outside of any joint city-county planning area, Planning board means the Powell County Planning Board.

**PLANNING DEPARTMENT:** That unit in the Powell County government that contains staff that receives and processes applications for subdivisions and land use permits, develops findings of fact and recommendations for Planning Board and County Commissioner action, monitors subdivisions and permitted land uses for compliance, and acts as staff to the Planning Board.

**PUBLIC FACILITY OR PUBLIC IMPROVEMENT:** Any structure or facility constructed to serve more than one lot in a subdivision that is dedicated to the public or otherwise acquired by a government entity for public use. Examples of typical public improvements include parks, streets or roads, sidewalks, curbs, gutters, and street lighting, utilities, and systems for water supply, sewage disposal, drainage, or fire protection.

**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.

**RESIDENTIAL STRUCTURE:** A structure used as a private dwelling place or a sleeping place for one or more people.

**SET BACK:** The horizontal distance required between any structure and a specified object, boundary, lot line or right-of-way line.

**SKETCH PLAN:** A general or conceptual site plan of a development. It must include the approximate location of all lot lines and streets, the approximate location and exterior dimensions of all structures, the approximate location, size and circulation pattern of all parking areas, and the approximate location and dimensions of all landscaped buffers.

**STRIP DEVELOPMENT:** A subdivision that is only one lot deep and more than eight lots long.

**STRUCTURAL ALTERATION:** The modification of a building that changes its exterior dimensions or its roof line(s).

**STRUCTURE:** Any object constructed or placed at a fixed location on the ground. Structures include buildings, mobile homes, walls, fences and signs.

**SUPERFUND:** Refers to federal laws and programs addressing the problem of hazardous and toxic substances.

**TEMPORARY SIGNS:**

- a. A sign or banner that is placed in service for a period of not more than 30 days.
- b. A realtor sign placed upon the property for the sole purpose of advertising that particular piece of property for sale.
- c. A sign advertising agricultural operations or equipment for sale during the harvest or sale period.
- d. Political campaign signs, which are governed by state or federal law.

**VARIANCE:** The approved relaxation of the strict application of the terms of these regulations, where, owing to special conditions, a literal enforcement of the provisions of these regulations will result in an unnecessary hardship, where it will not be contrary to these regulations, and where the spirit of the ordinance will be observed and substantial justice done. "Hardship" does not refer to financial or economic difficulty but is instead a situation in which the property cannot be developed at all because of the regulation.

**WIND GENERATION TOWER:** A tower that supports an electrical generator that is wind powered.