

# TETON COUNTY DEVELOPMENT PERMIT REGULATIONS

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## **Article 1: PURPOSE, AUTHORITY AND GENERAL PROVISIONS**

### **1.1 Title & Authority**

This document shall be known as the Teton County Development Permit Regulations hereinafter referred to as "these regulations". These standards constitute land use regulations as adopted pursuant to the Montana Code Annotated (MCA) Section 76-2-201 through 76-2-228.

### **1.2 Purpose**

The purpose of these regulations is to:

1. Promote policies and recommendations in accordance with the growth policy.
2. Lessen congestion in the streets.
3. Secure safety from fire, panic, and other dangers.
4. Promote public health and general welfare.
5. Provide adequate light and air.
6. Prevent the overcrowding of land.
7. Avoid undue concentration of population that represents an inefficient use of land.
8. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
9. Preserve the character of the unique areas and districts and its peculiar suitability for particular uses.
10. Conserve the value of buildings.
11. Encouraging the most appropriate use of land throughout the jurisdictional area.
12. Promote development that is compatible with existing land uses and that minimizes negative impacts on neighboring uses.
13. Promote clean industries or industries that use sustainable development techniques.
14. Avoid environmental degradation and protect the quality of air, groundwater, and public water supplies.
15. Protect the rivers and streams in the County.
16. Provide for appropriate and safe development in sensitive areas with concerns regarding floodplains, slopes, scenic quality and soils.
17. Preserve agricultural land and promote an environment for successful agricultural operations.
18. Prevent blighting influences.

### **1.3 Severability**

If any portion of these regulations is held invalid by a court, such judgement affects only that part held invalid.

### **1.4 Repeal of Previous Regulations**

Upon the adoption of these regulations, any existing zoning or development regulations are hereby repealed.

### **1.5 Jurisdiction**

These regulations shall govern the development of land within the jurisdictional area of the Teton County Board of County Commissioners, excluding federal land ownership and the incorporated communities of Choteau, Fairfield, and Dutton.

### **1.6 Scope of Provisions**

1. No building, structure, or land shall hereafter be used, occupied, or changed, and no building, structure or part thereof shall hereafter be erected constructed, reconstructed, moved or structurally altered unless it is in conformity with all of the regulations herein specified for the area in which it is located. However, the following activities are specifically exempt from the requirements of these regulations:
  - a. Any interior or exterior remodeling which does not alter the existing shape of the building or structure or change its use.
  - b. The tearing down or removal of buildings or structures.
2. No building or other structure shall hereafter be erected or altered that:
  - a. Exceeds the maximum height, size or bulk standards set forth in these regulations
  - b. Accommodates or houses a greater number of families in a dwelling unit than is specified in these regulations
  - c. Occupies a greater percentage of lot area than is permitted by these regulations
  - d. Has a narrower or smaller rear, front, or side yard or other open spaces than the minimum required by these regulations
3. No part of any yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with these regulations, shall be included as part of a yard, open space, or off-street loading space similarly required for any other building.
4. No part or lot existing at the time of adoption of these regulations shall be reduced in dimension or area below the minimum requirements established by these regulations.
5. The following activities are specifically exempt from the requirements of these regulations:
  - a. Any interior or exterior remodeling which does not alter the existing shape of the building or structure or change its use.
  - b. The tearing down or removal of buildings or structures.

### **1.7 Interpretation**

1. These regulations supplement all other regulations, and where they are at variance with other laws, regulations, ordinances, or resolutions, the more restrictive requirements shall apply.
2. These regulations are not intended to abrogate any easement, covenant, or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement, or restrictions, the requirements of these regulations shall govern.
3. All requirements in these regulations shall be interpreted as being the minimum necessary to promote the public health, safety, and general welfare, and implement Teton County Growth Policy Plan and is specifically designed for consistency with that plan and should be construed to achieve its intent.
4. Rules of Construction - For purposes of this Ordinance, the following conditions and interpretations apply:
  - a. Words used in the present tense include the future tense.
  - b. Words used in the singular tense include the plural: words used in the plural include the singular, unless the natural construction of the wording indicates otherwise.
  - c. The word "person" includes a firm, association, corporation, trust, organization, partnership or company, as well as an individual.
  - d. The word "lot" includes the words "parcel" or "tract".
  - e. The word "shall" is mandatory; the word "may" is permissive."

### **1.8 Burden-of-Proof**

The burden of proof shall, in all proceedings pursuant to these regulations, rest with the developer, applicant or property owner.

### **1.9 Vested Rights**

Vested rights applies only to developments that have obtained a valid development permit, but were not completed, on the effective date of this code. A vested right to proceed with development initiated prior to the adoption of this code may be established only as provided herein.

1. Any development for which a development permit has been obtained in compliance with all provision of the previous regulations, or previous to subsequent amendments to these regulations, has a vested right. Such vested rights expire if the permit expires for any reason.
2. Any subdivision for which final approval has been obtained in compliance with all provision of the previous regulation, or previous to subsequent amendments to these regulations, has a vested right to proceed precisely as it was approved. The development or subsequent division of lots must comply with these regulations or subsequent amendments.
3. Development with vested rights must be in strict compliance with approved plans. Any change from the approved plans or development agreement must comply with the current version of these regulations.

### **1.10 Effective Date**

This code shall become effective upon publication and adoption as required by MCA.

**Article II: Definitions**

**II - A**

Access: Shall mean a way or means of vehicular entry onto a property.

Accessory Structure or Use: The use or structure on the same lot with and customarily secondary or subordinate to, the principal use or structure.

Agricultural: Montana Code Annotated contains definitions for the words "agriculture" and "agricultural" as follows:

41-2-103, MCA. Definitions. As used in this part, the following definitions apply: (1) "Agriculture" means: (a) all aspects of farming, including the cultivation and tillage of the soil; (b)(i) dairying; and (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act [12 U.S.C. 1141j(g)]; (c) the raising of livestock, bees, fur-bearing animals, or poultry; and (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

81-8-701, MCA. Definitions. Unless the context requires otherwise, in this part the following definitions apply: (1) "Agricultural and food product" includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

Automobile wrecking or salvage yard: See motor vehicle wrecking facility

**II - B**

Berm: A man-made land form, typically built as an earth mound.

Block: A group of lots, tracts or parcels within well defined and fixed boundaries.

Building: Any structure erected for support, shelter or enclosure of persons, animals, or property of any kind.

Building Height: The vertical distance from the highest point of a structure to the finished grade of the ground.

Buffer area: Land area used to visibly separate one use from another or to shield or block noise, lights, or other nuisances. Buffer areas may include fences, berms, shrubs, or tree to mitigate impacts of the more intense use.

**II - C**

Church: A building designed and used for public worship by a religious body.

Commercial Use - Retail business and service establishments, professional offices, and developed recreational uses.

Conditional Use: A use that is allowed in a specific district if the use meets certain requirements in order to maintain and assure the health and safety of the community and to maintain the character of the district.

Covenant: A limitation contained in a deed that restricts or regulates the use of real property.

**II- D**

Drive-In: An establishment which by design, physical facilities, service, or by packaging procedures encourages or permits customers to receive services, obtain goods, or be entertained while remaining in their motor vehicles.

Dwelling: A building or portion thereof providing complete, independent and permanent living facilities for one or more families.

Dwelling, Multiple Family: A building or portion thereof designed for residential occupancy by three or more families living separately.

Dwelling, Two-Family: A building designed for residential occupancy by two families living separately.

Dwelling Unit: A building or portion thereof providing separate cooking, eating, sleeping and living facilities for one family.

**II- E**

Easement: Authorization by a property owner for another to use the owner's property for a specified purpose such as irrigation, drainage, maintenance, or utilities.

Engineer (Registered Professional Engineer): A person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, Chapter 67, MCA) to practice engineering in the State of Montana.

**II - F**

Family: One or more persons living together as a single housekeeping unit and occupying a dwelling unit, provided that unless all members are related by blood or marriage the family shall not exceed five persons. Domestic resident employees serving on the premises are exempt from the five-person limit.

Flood: The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage.

Flood of 100 Year Frequency: A flood magnitude expected to recur on the average of one every 100 years, or a flood magnitude which has a one percent chance of occurring in any given year.

Floodplain: The area adjoining the watercourse or drainage which would be covered by the floodwater of a flood of 100 year frequency.

Floodway: The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainage.

**II - G**

Grade: The point of elevation of the finished surface of ground at the exterior wall of the building.

Governing Body: The governing authority of a county, city, town, or consolidated local government organized pursuant to law.

**II - H**

Hazardous material. "Hazardous material" means a substance or material, defined or listed as a hazardous material in Title 49, Code of Federal Regulations, in a quantity and form that may pose an unreasonable risk to health and safety or property when transported.

Hotel/Motel: A building, or buildings, containing six or more rooms designed and rented for sleeping purposes for transients, and where only a general kitchen and dining room may be provided within the building or in an accessory building.

**II - I**

Impervious Cover: Surfaces that do not absorb rain. All buildings, parking, areas, driveways, sidewalks, and any areas in concrete and asphalt shall be considered impervious cover.

Industrial Uses: Storage, processing, and shipping of agricultural or timber products; minerals extraction and production, storage, processing, shipping or conversion to energy, fabrication, assembly, servicing manufacture, or storage of other products.

Institutional Uses: Churches, schools, hospitals, residential care facilities, other public or quasi-public uses.

**II - J**

Junk vehicle: Means a discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, that is not lawfully and validly licensed and remains inoperative or incapable of being driven.

Junkyard: lot, land, building, structure, or part hereof, used primarily for the collecting, storage, and/or sale of scrap metal, or for the collecting, dismantling, storage, salvaging of machinery appliances, or inoperable vehicles.

**II - K**

**II - L**

Land Use Change: Refers to the conversion of a parcel from its present use to any new use, for example, from agricultural to residential. The creation of a subdivision is by definition, a land use change even though lots are not immediately conveyed and may remain in their present use for some time.

Livestock: Horses, cattle, sheep, goats, swine, donkeys and mules.

Loading space, off street: An off-street space conveniently located at a building to allow service pickups and deliveries by commercial vehicles.

Lot: A parcel, plot, or other land area created by subdivision for sale, rent, or lease.

Lot, Corner: A lot located at the intersection of two or more streets.

Lot, lines: The lines bounding a lot as defined herein.

Lot Measurements:

- a. Lot Depth -- The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
- b. Lot Width -- The average width of the lot.
- c. Lot Frontage -- The width of the front lot line.
- d. Lot Area -- The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way.

Lot Types:

- a. Corner Lot: A lot located at the intersection of two streets.
- b. Interior Lot: A lot with frontage on only one street.
- c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.

**II - M**

Mobile Home: A detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, "trailer homes," "house trailers," and "manufactured homes" whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include "modular" or "factory-built buildings" that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.

Motor vehicle graveyard: A collection point established by a county for junk motor vehicles prior to their disposal.

Motor vehicle wrecking facility means:

- a. A facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or
- b. A facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

**II - N**

Nursing Home: A building used to house and care for ambulatory, aged, or infirm persons under the care and supervision of a professional staff.

**II - O**

Office, Professional, business, administrative and government: Offices occupied by accountants, architects, dentist, doctors, engineers, attorneys, insurance agents, real estate agents, public employees and other professions.

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

## **II - P**

Parking space, Off-Street: A space located off any public right-of-way that is available for parking a motor vehicle.

Planning Board: A planning board formed pursuant to Title 76, Chapter 1, MCA.

## **II - Q**

## **II - R**

Recreational Camping Vehicle: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.

Recreational Vehicle Park: A tract of land available to and principally used by the public for camping, where persons can park recreational vehicles for camping and sleeping purposes.

Recreational Vehicle Space: A designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle and the exclusive use of its occupants.

Residential Uses: Homes, residences, structures with eating, sleeping, and living facilities.

Residential, Major: A cluster of residential uses that is located in an incorporated area, that is served by a public water or sewer system, or has been platted as a major subdivision. This definition also includes multiple family dwelling units.

Restaurant: A public eating facility that does not provide curbside or drive-up automobile service.

Right-of-way: An area of land dedicated or acquired for a specific uses; usually public in nature, such as a road or utility right-of-way.

## **II - S**

Setback: The horizontal distance required between any structure and a lot line measured at right angles to the lot line.

Sign: Any lettered or pictorial device or structure designed to inform or attract attention.

Street Types: For purposes of these regulations, street types are defined as follows:

- a. Alley: A street used primarily for vehicular access to the rear of properties which abut on and are served by public roads.
- b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of

providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.

- c. Collector: A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
- d. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
- e. Half-Street: A portion of the width of a street, usually along the outside perimeter of a subdivision, where the remaining portion of the street must be located on adjacent property.
- f. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.
- g. Loop: A local street which begins and ends on the same street, generally used for access to properties.
- h. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.

Structural alteration: The modification of a building that changes its exterior dimensions or its roof line(s).

Structure: That which is constructed or erected at a fixed location on the ground, or attached to something having fixed location on the ground. Structures include buildings, manufactured homes, walls, fences, and billboards or signs.

## **II - T**

Temporary Use: A use established for a limited period of time with the intent to discontinue such use upon the expiration of such time. Such uses are subject to the time restrictions contained in these regulations. No temporary use shall involve the construction or alteration of any permanent structure.

Truck stop: A commercial use where gasoline, kerosene, or any other motor fuel lubricating oil or grease for operating motor vehicles is offered for sale to the public, and deliveries are made directly into motor vehicles, including greasing and oiling on the premises, and including minor repairs. The use also includes facilities for the overnight parking of semi-trailers.

Truck Terminal: a premises which is used for loading or unloading of trucks upon which storage of cargo is incidental to the primary function of motor freight shipment or shipment point and which is designed to accommodate the simultaneous loading or unloading of five (5) or more trucks.

## **II - U**

## **II - V**

Vegetation: Shall mean lawns, trees, shrubs, groundcover, annual or perennial flowers, or natural growing plants.

Visibility triangle: Shall also known as site distance triangle. The area at an intersection that should remain unobstructed in order for motorist to have a clear vision of oncoming traffic.

**II - W**

**II - X**

**II - Y**

Yard, Front: A required open space unoccupied by any structure or portion of a structure and extending across the full width of the lot between the front building line and front lot line.

Yard, Rear: A required open space unoccupied by any structure or portion of a structure and extending across the full width of the lot between the rear building line of the principal building and the rear lot line.

Yard, Side: A required open space unoccupied by any structure or portion of a structure and extending from the side building line to a side lot line running from the front to the rear of the lot.

**II - Z**

### **Article III: Administration and Enforcement**

#### **3.1 Permit Officer**

1. The County Commissioners shall designate a Permit Officer to administer and enforce these regulations. The Permit Officer may direct county personnel or departments to provide assistance as appropriate.
2. The Permit Officer shall receive applications for development permits, conditional use permits, sign permits, amendments and variance request.
3. The Permit Officer shall review applications and plans, issue development permits, and coordinate inspection of premises and properties.
4. Where the Permit Officer finds that any of the provisions of these regulations are being violated, he/she shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He/she shall order discontinuance of illegal buildings or structures or of illegal additions, alterations, or structural changes; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.
5. The Permit Officer shall serve as an advisor to the Planning Board, Board of Adjustment and County Commission on matters relating to administration and enforcement of these regulations; shall prepare reports as required under these regulations; shall prepare and maintain records of all proceedings required or authorized under these regulations.

#### **3.2 Roles and Responsibilities of Boards and Commissions**

1. Planning Board
  - a. A Planning Board has been established, as authorized by 76-1-101, MCA. The Board shall have duties assigned by state law and including the duties listed herein.
  - b. The Planning Board shall recommend appropriate land use regulations and where appropriate boundaries for various districts within the County. The county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only.
  - c. The Planning Board shall review proposals and make recommendations to the County Commission regarding proposals for the amendment of these regulations.
  - d. The Planning Board shall review and make recommendations for conditional use permits under the procedures set forth in these regulations.
2. Board of Adjustment
  - a. A Board of Adjustment is hereby established as provided by 76-2-221, MCA. The Board shall operate in accordance with state law and shall have duties assigned by state law and including the duties listed herein.
  - b. The Board shall have the powers enumerated in Article 4 of these regulations.

3. County Commission

- a. The County Commission having adopted these regulations must approve any amendments following the procedure provided herein.
- b. The County Commission shall appoint a Permit Officer.
- c. The County Commission shall appoint members to the Planning Board and Board of Adjustment in accordance with State Law.
- d. The County Commission shall make the final decision on conditional use permits.

**3.3 Application for Permits**

1. Permission to enter subject property: Submission of an application as required in this Title authorizes the permit officer, officials and employees of the county, or other designated agents to enter the subject property to verify information in the application and to conduct other site investigations as may be necessary to review the application. This does not authorize any individual to enter any building on the subject property in the absence of the property owner or his/her authorized agent. Failure to allow access to the subject property shall be sufficient grounds to deny the application.
2. Revocation of approval due to false or inaccurate information: The County Commission may revoke, suspend, or reconsider any permit or other authorization if it determines that the information in the application or otherwise provided by the applicant or the applicant's agent is false or inaccurate, and that the misrepresentation materially altered the final outcome.
3. Effect of an outstanding violation: No permit or approval of any kind may be given on a parcel that is in violation of this Title, except to correct the violation.
4. Concurrent review: To the extent possible, development projects requiring multiple reviews shall be done concurrently. Where one approval is a condition precedent to approval of another application, the approvals shall be issued in the requisite order.

**3.4 Development Permit – Purpose and Scope**

1. The purpose of development permits is to ensure conformance with these regulations. Such permits are authorized by 72-2-207 of the MCA.
2. No building, structure, or land shall hereafter be used, occupied, or changed, and no building, structure or part thereof shall hereafter be erected constructed, reconstructed, moved or structurally altered unless it is in conformity with all of the regulations herein specified for the area in which it is located. However, the following activities are specifically exempt from the requirements of these regulations:
  - a. Any interior or exterior remodeling which does not alter the existing shape of the building or structure or change its use.
  - b. The tearing down or removal of buildings or structures.
3. No building or other structure shall hereafter be erected or altered that:
  - a. Exceeds the height or bulk standards in these regulations

- b. Accommodates or houses a great number of families than allowed in these regulations
  - c. Occupies a greater percentage of lot area than allowed in these regulations
  - d. Have a narrower or smaller rear yard, front yard, side yard or other open spaces than the minimum required by these regulations.
4. No part of any yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with regulations shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.
  5. No part of a lot existing at the time of adoption of these regulations shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of these regulations shall meet at least the minimum requirements established by these regulations.

### **3.5 Development Permit Review Requirements**

1. Before conducting a use, or constructing, erecting, expanding, altering or modifying a building or structure, a person must submit the following to the Permit Officer.
  - a. A completed development permit application form.
  - b. Site Plan, drawn to scale showing the actual dimensions and shape of the lot, the exact sizes and location of existing and proposed building and other structures, parking and loading spaces, access drives, water features, easements, required landscaped or screening areas/features, freestanding signs, and other relevant information. The site plan shall indicate adjacent land uses.
  - c. Applications Fee as established by the County Commission.
  - d. Other information as required by these regulations or by the Permit Officer as may be necessary to determine conformance with this Ordinance.
2. Within two working days of submittal, the Permit officer shall determine whether the submitted application is complete or incomplete and shall notify the applicant, in writing, of any deficiencies. If the application is deemed incomplete, the applicant has 20 days to resubmit the application or forfeit the application fee. The Permit Officer shall take no further steps to process the application until the deficiencies are remedied.
3. Within three working days after a determination of completeness, the permit officer shall approve the application or deny the application based on the criteria in these regulations. Should the Permit Officer find that the proposal is compliant with all the requirements in these regulations, a development permit shall be issued.
4. Should the Permit Officer find that the proposal does not conform to all requirements of these regulations, the reasons for denying the application shall be stated in writing and sent to the applicant.
5. If the application is denied, the applicant has 20 days to submit a revised application or forfeit the original application fee.

6. The applicant and/or aggrieved person may appeal a final decision made pursuant to this article by filing an appeal with the Board of Adjustment within 30 days of the final decision.
7. Construction, installation, alteration placement or use must comply with the plans approved by the Permit Officer.
8. A Permit shall be in effect for one-year from the date of approval.

### **3.6 Conditional Use Permit – Purpose and Scope**

1. The purpose of conditional use permits is to provide for specific uses which may be appropriate if developed with certain safeguards or conditions. The conditional use permitting process is intended to provide a detailed and comprehensive review of proposed developments that potentially could have significant adverse impacts on adjacent land uses.
2. The Planning Board recommendation and the County Commission decision shall be based on the following findings.
  - a. The conditional use as proposed is consistent with the Growth Policy and purposes of these regulations.
  - b. The establishment, maintenance or operation of the conditional use will not be detrimental to, or endanger the public health, safety, or general welfare.
  - c. The conditional use will not be injurious to the use and enjoyment of other property within the area and will not substantially diminish and impair property values within the area.
  - d. Adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.
  - e. Adequate measures have been or will be taken to provide ingress and egress so as to minimize traffic congestion in the public streets and to ensure safe circulation.
  - f. The conditional use shall conform to the applicable standards of these regulations.
3. Conditional Uses are listed in Article VII of these regulations. This section describes the requirements and procedures for reviewing conditional uses. Any use that is listed as a conditional use must obtain approval in accordance with the review process described in these regulations and must comply with all requirements of these regulations and any additional requirements that are prescribed by the County Commission in its final approval. Such conditions may relate to the following:
  - a. Adequate ingress and egress to 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. Adequate off-street parking and loading areas, where required, with particular attention to access, traffic flow and vehicular and pedestrian safety.
  - c. Availability and compatibility of infrastructure in suitable locations.
  - d. Adequate screening and buffering, with attention to type, dimensions and character.

- e. Signs, with attention to preventing glare and promoting traffic safety and harmony with adjacent properties.
  - f. Required yards and open space.
  - g. General compatibility with adjacent and nearby properties and abatement of negative impacts on these properties.
4. A conditional use process may not grant relief from these regulations. Such relief must follow the process for variances and be approved by the Board of Adjustment. Hearings may be held concurrently but a development permit shall not be issued unless there is approval for both actions.

### **3.7 Conditional Use Permit – Review Process**

1. Before submitting an application the applicant or the applicant's agent shall meet with the Permit Officer for a pre-submittal conference. The applicant shall provide a sketch plan as the basis for discussion. The purpose of the pre-submittal conference is to review the applicable regulations and procedures; review the applicable goals and strategies in the County's growth policy plan, and to review the proposal concept as it relates to these matters.
2. The applicant must submit an application for a proposed conditional use to the Permit Officer. Such application shall include the following:
  - a. A completed conditional use permit application form.
  - b. Site Plan, drawn to scale showing the actual dimensions and shape of the lot, the exact sizes and location of existing and proposed building and other structures, parking and loading spaces, access drives, water features, easements, required landscaped or screening areas/features, freestanding signs, and other relevant information. The site plan shall indicate adjacent land uses.
  - c. Architectural elevations of any buildings or structures.
  - d. Applications Fee as established by the County Commission.
  - e. Other information as required to by these regulations or by the Permit Officer as may be necessary to determine conformance with this Ordinance.
3. Within two working days of submittal, the Permit officer shall determine whether the submitted application is complete or incomplete and shall notify the applicant, in writing, of any deficiencies. If the application is deemed incomplete, the applicant has 20 days to resubmit the application or forfeit the application fee. The Permit Officer shall take no further steps to process the application until the deficiencies are remedied.
4. Following the determination of completeness, the Permit Officer shall schedule a public hearing at the next available Planning Board meeting and to allow for proper public notice. The Permit officer shall publish the notice for the public hearing and notify adjacent land owners in compliance with public notice requirements in Article 4 of these regulations.
5. The Permit Officer shall prepare a written staff report for the Planning Board recording a review and evaluation of the proposed conditional use. This evaluation shall describe the compliance or deviation with the requirements of these regulations, shall review the application of relevant growth policies, comments received by other County and State

Department involved in the review, recommended conditions of approval (if any) and a recommended action.

6. At the public hearing the Planning Board shall take public comment, shall make findings of fact to support the recommendation to the County Commission. The Planning Board may recommend to approve the conditional use permit, approve the conditional use permit with conditions, or deny the conditional use permit. Within ten days of the close of the public hearing (unless the applicant consents in writing to an extension of the review period) the Planning Board shall conclude its proceedings and forward its recommendation to the next scheduled County Commission meeting.
7. Within thirty days of the Planning Board recommendation, the County Commissioners shall review the evaluation, public comment, findings of fact, Planning Board recommendation and shall make a final decision to approve the conditional use permit, approve the conditional use permit with conditions, or deny the conditional use permit.
8. Prior to the decision of the County Commission, an applicant may request an extension to the review period if the applicant wishes to amend the application with new or different information. If the County Commission approves the extension, the Planning Board will rehear the amended application with appropriate notice and follow the procedures for hearings in these regulations.
9. If the application is denied the applicant shall be notified in writing of the decision that includes the findings for the decision. The applicant may not reapply for substantially the same conditional use within one year of the decision.
10. Upon approval of a conditional use permit, the applicant must apply for a development permit in compliance with these regulations. A conditional use shall be developed in compliance with the approved drawings with accompanying conditions. Minor changes in location, siting and height of buildings may be authorized if engineering or other physical limitations of the site, not foreseen at the time of approval warrant the change.
11. Major amendments that increase lot coverage, reduce parking and loading spaces, increase access points, increase traffic volumes or reduce landscaped areas are considered major amendments and applicants must apply for a new conditional use permit.
12. Approval for a Conditional Use Permit shall be in effect for one-year from the date of approval and shall expire unless substantial work has commenced under the permit and continues in good faith to completion. If a conditional use is discontinued for a period of more than one year, it shall expire. One extension may be granted by the County Commission of up to one-year.

### **3.8 Sign Permit**

1. A sign permit shall be required before any new sign is located within the unincorporated area of the County or any existing sign is expanded reconstructed, or moved any distance. Before erecting a sign a person must submit the following to the Permit Officer.
  - a. A completed sign permit application form.
  - b. An elevation drawing of the sign drawn to scale that shows the overall dimensions and materials with a site plan showing the location of the sign in relation to buildings and road right-of-ways.

- c. Application Fee as established by the County Commission.
  - d. Other information as required by these regulations or by the Permit Officer as may be necessary to determine conformance with this Ordinance.
2. Within two working days of submittal, the Permit officer shall determine whether the submitted application is complete or incomplete and shall notify the applicant, in writing, of any deficiencies. If the application is deemed incomplete, the applicant has 20 days to resubmit the application or forfeit the application fee. The Permit Officer shall take no further steps to process the application until the deficiencies are remedied.
  3. Within three working days after a determination of completeness, the permit officer shall approve the application or deny the application based on the criteria in these regulations. Should the Permit Officer find that the proposal complies with all the requirements in these regulations, a sign permit shall be issued.
  4. Should the Permit Officer find that the proposal does not conform to all requirements of these regulations, the reasons for denying the application shall be stated in writing and sent to the applicant.
  5. If the application is denied, the applicant has 20 days to submit a revised application or forfeit the original application fee.
  6. The applicant and/or aggrieved person may appeal a final decision made pursuant to this article by filing an appeal with the Board of Adjustment within 30 days of the final decision.
  7. Construction, installation, alteration, and placement of sign must comply with the plans approved by the Permit Officer.
  8. A Permit shall be in effect for one-year from the date of approval.

### **3.9 Interpretation**

1. In the event a question arises concerning any provision or the application of any provision of these regulations, the Permit Officer shall be responsible for interpretation of the provision. This shall not be construed as overriding the responsibilities specifically given to any commission, board, or official named in other parts of these regulations.
2. The individual requesting the interpretation shall submit the question in writing to the Permit Officer. The Permit Officer shall render the interpretation shall make a written decision within 15 days of receiving the request. The Permit Officer shall keep a written record of all interpretations and make them available for public inspection.
3. In consultation with the County Attorney and others as appropriate, the interpretation shall evaluate the provision(s) in question; consider the overall intent of the code; review the findings and purpose statements as appropriate; and review other applicable interpretations that have been made, and make a decision giving the regulations its most reasonable application.
4. An interpretation once rendered shall have full effect as if set forth in this Title. Where appropriate, interpretations should be addressed through the amendment process.
5. The applicant and/or an aggrieved person may, without time constraint, appeal an interpretation made pursuant to this article by filing an appeal with the Board of Adjustment.

### **3.10 Appeals**

1. Any person aggrieved by a decision of the permit officer or other official involved in the enforcement of this ordinance may file an appeal with the Board of Adjustment consistent with this part. Such appeal may allege that there is an error in any order, requirement, decision or determination made by the permit officer or body in the enforcement of this Ordinance.
2. The applicant shall submit a written appeal to the Permit Officer prior to the expiration of any permit being issues by the Permit Officer.
3. The permit officer shall provide a copy of the appeal to the Board of Adjustment along with a complete and accurate of record of all action or correspondence relating to the appeal.
4. Allowing for proper public notice and notice to the parties in interest, the board shall conduct a public hearing to hear the appeal and consider the written record and testimony as may be provided.
5. Within 45 days of the date the appealed was filed, the board shall decide to affirm the administrative decision, set aside the decision, or modify the decision.
6. The board shall notify in writing both the applicant and the officer of its final decision. The concurring vote of 4 board members shall be necessary to reverse any administrative decision.
7. An appeal shall stay all legal proceedings in furtherance of the action from which the appeal is made, unless the officer from whom the appeal is taken certifies to the board that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application, with notice to the officer from whom appeal is made, and on due cause shown.

### **3.11 Enforcement & Violations**

1. Section 76-2-210, MCA, authorizes the County enforce these regulations including the authority to:
  - a. prevent unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
  - b. restrain, correct, or abate a violation;
  - c. prevent the occupancy of such building, structure, or land; and
  - d. Prevent any illegal act, conduct, business, or use in or about such premises.
2. Each separate action that is not in full compliance with this Title or with the conditions of an issued permit or similar approval statement shall constitute a separate and distinct violation.
3. After observing or receiving a complaint of an alleged violation, the County shall investigate to determine if in fact a violation does exist. If the County determines that a violation does not exist, it shall notify the complainant, if any, explaining the finding. If the County determines that a violation does exist the County shall notify the property owner of the violation. The notice shall include the following:

- a. A description of the violation.
  - b. The section(s) of the code being violated.
  - c. A statement describing the measures that would remedy the violation.
  - d. The date by which the violation must be remedied and when a stop work order shall be issued if the
  - e. Violation is not remedied.
  - f. Information concerning penalties for continued non-compliance.
4. Once a violation notice has been issued pursuant to this part all work on the premises that is directly related to the violation, except that which is done to ensure compliance, shall cease. All other work that is in compliance may continue. The County may not issue any other permits or approvals for any development on the premises that is directly related to the violation.
  5. If a violation continues after the date established in the notice, the appropriate department permit officer shall:
    - a. send a stop work order, as described in this part, by certified mail to the property owner or deliver it in person to the property owner, contractor, builder, or any other person engaged in work covered by the order; and
    - b. Post a stop work order in a prominent location on the site.
  6. Once a stop work order has been issued pursuant to this part all work on the premises shall cease until such time as it is lifted. The City may not issue any other permits or approvals for any development on the premises until such time as the order has been lifted.
  7. Upon substantial evidence that the violation has been removed or otherwise corrected, the permit officer shall lift the stop work order.
  8. The Permit Officer shall work with the County Attorney to initiate court action as provided by this part if work does not immediately cease on the premises, except to ensure compliance, or if the violation is not remedied within 30 days of the stop work order.
  9. The City or any aggrieved person may apply to a court of competent jurisdiction for temporary and/or permanent injunctive relief to enjoin and restrain any person violating a provision of this Title, and exercise all other rights and remedies provided by law or in equity.
  10. Any person who violates any provision of these regulations shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$500 for each separate violation or imprisonment in the county jail for not more than 6 months, or both. Each day a use is in violation of these regulations after a stop work notice is issued shall constitute a separate violation.
  11. In addition to the other remedies provided for in this article, if a responsible party fails to meet the requirements of these regulations and there is a compelling public health or safety concern, after reasonable notice to the responsible party, the County may perform such necessary work to place the facility in proper working condition. The responsible party shall pay for the cost of such work and there shall be a lien on the property until paid.

### **3.12 Non-Conformities**

1. Purpose
  - a. Within the context of these regulations or future amendments to these regulations, there may exist lots, uses, structures, and signs which were lawful before the adoption of this

title, or amendment, but which are nonconforming under the provisions of this title or amendment thereto.

- b. It is reasonable to generally allow, but not encourage, nonconformities to continue until such time as they are removed or discontinued.
  - c. Nonconformities that are removed, discontinued, changed, extended, or enlarged shall be made to conform with the regulations that apply to all other parcels of land within the district.
  - d. It is reasonable to allow a nonconforming use to resume in certain circumstances if the structure in which it takes place is only partially damaged or destroyed.
2. A nonconforming use of land or a nonconforming use of a structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
- a. A nonconforming use shall not be enlarged, increased, or expanded and shall not occupy a greater area than what existed at the effective date of this title or any amendment thereto which creates said nonconforming use.
  - b. A nonconforming use shall not be moved in whole or in part to any other portion of the lot or to another structure than what was occupied at the effective date of this title or any amendment thereto which creates said nonconforming use.
  - c. If a nonconforming use ceases for any reason for more than 12 months, any subsequent use of such land or structure shall conform to this Title, except as provided for in this section.
3. A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
- a. Change in extent. A nonconforming structure shall not be enlarged or altered in a way to increase its nonconformity.
  - b. Conformance required if moved. If a nonconforming structure is moved for any reason for any distance, it shall thereafter conform to this title.
4. If the structure housing a nonconforming use is damaged by fire or other cause, and the damage is less than 50 percent of the market value of the structure, the nonconforming use may resume or structure repaired, subject to the following conditions:
- a. construction or repair begins within 12 months of the event causing the damage and continues in good faith to completion;
  - b. the use resumes immediately following the completion of the structure;
  - c. the area of the structure devoted to the nonconforming use shall not exceed its original area;
  - d. the structure shall be constructed at its original location; and
  - e. the structure complies with all state and local regulations that apply.

5. Discontinuance of a use or structure due to structural damage greater than 50% of market value. If the structure non-conforming or houses a nonconforming use and is damaged by fire or other cause, and the damage exceeds 50 percent of the market value of the structure, the nonconforming use may not be reestablished.
6. Unsafe conditions, ordinary maintenance, and remodeling. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof, ordinary repair and maintenance, or remodeling, provided that the work conforms to the provisions in this chapter.
7. Nonconforming sign
  - a. Amortization. All signs and supporting structures that do not conform to the provisions of this section, but were constructed in compliance with previous regulations are regarded as nonconforming. Nonconforming signs may remain for 10 years after the adoption of these regulations or any amendments, if they are repaired and maintained in accordance with the sign regulations.
  - b. Actions requiring conformance. All nonconforming signs must be brought into full compliance with this title, in conjunction with the following activities:
    1. Change in occupancy
    2. Exterior renovation of the building housing the occupancy.
    3. Gross floor area of the building is increased by 20 percent. Repeated expansions, constructed over any period of time commencing after the effective date of this title, shall be combined in determining whether this threshold has been met.
  - c. Actions not permitted. A nonconforming sign shall not be:
    1. Structurally changed to another nonconforming sign.
    2. Structurally altered to prolong the life of the sign, except to meet safety requirements.
    3. Altered in any manner that increases the degree of nonconformity.
    4. Expanded.
    5. Reestablished after damage or destruction.
    6. Continued in use when a conforming sign is erected on the same premise.
    7. Continued in use when the structure housing the occupancy has been vacant for 6 months.
8. Removal. The permit officer may order the removal of any sign that is not in compliance with the provisions of this title. Removal is the responsibility of the owner of the sign or the property owner. Failure of the property owner or sign owner to comply with the removal notice will result in the removal of the sign by the permit officer or designee. Removal costs and administrative fees will be assessed against the property.

### **3.13 Map**

1. If zoning districts are adopted or regulations adopted that require showing any boundaries or setbacks from natural features the County shall create a map to indicate these districts, boundaries, or setbacks. The Official Teton County Development Regulations Map and all notations, references and other information shown on the map are hereby incorporated by reference and made a part of this Ordinance.
2. The Official Teton County Development Regulations Map shall be available in the office of the County Clerk and Recorder and shall bear certificate with the signature of the Chairman of the Board of County Commissioners attested by the Clerk and Recorder and the date of adoption.

3. When any changes are made to district boundaries in accordance with the procedures of this Ordinance, those changes approved by the County Commission shall be promptly entered on the Official Map. Changes to the map shall be treated as an amendment to these regulations.

## **Article 4: Hearings and Procedures**

### **4.1 Board of Adjustment**

1. The Board of Adjustment (herein after referred as “the Board”) is hereby established in accordance with Sections 76-2-221 through 76-2-224 MCA. The Board of Adjustments shall consist of five members, each to be appointed for a term of two years.
2. The Board of Adjustment shall have the following powers:
  - (a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, determination made by an administrative permit officer in the enforcement of these regulations or any amendment adopted pursuant thereto:
  - (b) to authorize in specific cases such variance from the terms of these regulations as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these regulations result in unnecessary hardship and so that the spirit of the regulations shall be observed and substantial justice done.
  - (c) In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with Section 3.10 of these regulations, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

### **4.2 Variances**

1. Any person may submit an application for a variance to the Board of Adjustment as provided by the rules of the Board by filing the application with the Permit Officer.
2. The application for a variance must specifically set forth the grounds for requesting the variance, as indicated on the Application form.
3. At the hearing any party may appear in person, or be represented by agent or attorney.
4. To grant a variance the Board must make a finding that the granting of the variance will be harmony with the general purpose and intent of this Ordinance, will not be injurious to the neighborhood, is the minimum variance that will make possible reasonable use of the land, building or structure, and will not be detrimental to the public welfare. In addition the Board must determine:
  - a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
  - b. That literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same circumstances under the terms of these regulations;
  - c. That the special conditions and circumstances do not result from the action of the applicant;
  - d. That granting the requested variance will not confer on the applicant any special privilege that is denied by these regulations to other lands, structures, or building in similarly situated;

6. Under no circumstances may the Board of Adjustment grant a variance, nor the County Commission grant an appeal, that would allow a use not permissible under the terms of these regulations in a location or district that expressly or by implication prohibits the use.

#### **4.3 Variance Procedures**

1. The applicant shall submit a completed application to the Permit Officer with the application fee. Within 10 days of submittal, the Permit Officer shall determine if the application is complete. If the application is deemed incomplete, it shall be returned to the applicant and the applicant has 6 months to resubmit the application or forfeit the application fee. The Permit Officer shall take no further steps to process the application until the deficiencies are remedied.
2. The Permit Officer shall provide for public notice and property owner notification in accordance with these regulations.
3. The director shall prepare a written staff report as described in this section and provide a copy to each member of the Board of Adjustment, the applicant, and the applicant's agent, if any, no later than 3 days prior to the public hearing. He/she shall also provide a copy to interested people upon request. At a minimum, the staff report shall contain the following information:
  - a. a summary of the comments received from the interdepartmental/agency review;
  - b. findings for each of the decision criteria listed in this article;
  - c. a preliminary list of conditions if approval is recommended; and
  - d. a recommendation to approve the application, approve it with conditions, or deny the application.
4. The Board of Adjustment shall hold a public hearing to review the application. Within 30 days of the close of the hearing, the Board of Adjustment shall approve the application, approve it with conditions, or deny it. Such decision shall be in writing and shall include the findings in support of its decision and if approved any conditions as may be imposed. Within 5 days following the decision, the director shall mail the applicant the original (signed) copy of the decision and retain a copy for the public record.
5. If the board grants the variance, the applicant shall then follow other review procedures as may be required. An approved variance merely sets aside the rule or regulation from which relief is sought. All other rules and regulations not part of the variance decision must be followed.
6. The variance shall expire one year after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion.

#### **4.4 Amendments**

1. Proposals to amend, supplement, modify or real any of the provisions or the district boundaries established by this Ordinance or hereafter established, may be initiated by the County Commission, Planning Board, or by petition of any interested resident or property owner. A request for an amendment shall include:
  - a. Application Form
  - b. Fee as established by the County Commission
  - c. Text of any amendment

- d. Legal description of any map amendment
2. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for any districts and in the adoption or amendment to these regulations.
3. If the proposed change involves a change to the Official Map, notice of the hearing shall be mailed to all property owners within the affected area and all owners of property within 150 feet of the affected area.
4. Notice of a public hearing on the proposed amendment of these regulations must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:
  - a. the boundaries of the proposed district;
  - b. the general character of the proposed regulations;
  - c. the time and place of the public hearing;
  - d. that the proposed regulations are on file for public inspection at the office of the county clerk and recorder.
5. The Permit Officer shall prepare a staff report that includes at a minimum:
  - a. Application of relevant growth policies
  - b. Comments received by other County and State Departments,
  - c. Facts of the case related to the review criteria, and a
  - d. Recommendation.
6. At the public hearing, the planning board shall give the public an opportunity to be heard regarding the proposed zoning district and/or regulations. The Planning Board shall make findings of fact and shall consider the following applicable review criteria in its recommendation:
  - a. Is the proposed amendment in accordance with the Growth Policy Plan?
  - b. Is the proposed amendment designed to lessen congestion in the streets?
  - c. Will the proposed amendment promote health and general welfare?
  - d. Will the proposed amendment secure safety from fire, panic and other dangers?
  - e. Will the proposed amendment provide adequate light and air?
  - f. Will the proposed amendment prevent the overcrowding of land?
  - g. Will the proposed amendment avoid undue concentration of population?
  - h. Will the proposed amendment facilitate the adequate protection of transportation, water, sewer, schools, parks, police, and other public facilities?

- i. Does the proposed amendment give particular consideration to the peculiar suitability of the property of a particular use?
  - j. Does the proposed amendment give reasonable consideration to the character of the district?
  - k. Will the proposed amendment be adopted with a view to conserving the value of buildings.
  - l. Will the proposed amendment encourage the most appropriate use of land?
7. After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.
  8. The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district or to amend these regulations.
  9. The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:
    - a. the boundaries of the proposed district;
    - b. the general character of the proposed regulations;
    - c. that the proposed regulations are on file for public inspection at the office of the county clerk and recorder;
    - d. that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.
  10. Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the freeholders within the district whose names appear on the last-completed assessment roll or if freeholders representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 MCA or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year.

#### **4.5 Notice Requirements**

1. The County shall pay for all notice required under this article which may be recouped through the associated application fees. When required, the official responsible for processing the application shall place public notice in a newspaper of general circulation. The notice shall be published at least 15 days prior to, but no more than 30 days prior to the public hearing or the first day that a decision could be made.
2. When required, the official responsible for processing the application shall mail notices to all property owners within 150 feet of the property involved in the application consistent with the following provisions:

- a. The notices shall be mailed at least 15 days prior to the first scheduled hearing or date of decision.
- b. The notice shall include the date, time and location of the hearing. A brief description of the action to be considered, and the address or legal description of any property that is subject to the action.
- c. The names of property owners shall be deemed to be those listed on the most current ad valorem tax roll maintained by the county.
- d. The failure of an owner required by this section to receive mailed notice shall not invalidate or otherwise have any effect upon a public hearing or other action taken on the application.
- e. The measurement of all right-of-way shall be excluded in the measuring of the 150 feet from the perimeter of the subject property.
- f. Where the applicant is the owner of the land adjoining the property involved in the application, the permit officer responsible for processing the application may require that notices be mailed to additional property owners as appropriate.

#### **4.6 Hearings**

1. All public hearings shall be conducted in a place that is open to the public. The body conducting the hearing shall keep minutes of the proceedings, indicating the attendance of each member, and the vote of each member on each question. The body conducting the hearing shall approve the minutes, and upon approval shall become part of the public record.
2. Once a public hearing is opened, it shall only be closed by a majority of a quorum of the hearing body. By its own motion, or on approval of requests by applicants or their authorized agents, the hearing body may continue the public hearing from time to time. Continuances shall be permitted only for good cause and shall be continued to a certain date and time. If the time and place of the commencement of the continued public hearing is not announced in the motion, such continuances shall require a new public notice in accordance with these regulations.
3. Applicants or their authorized agents, may request an amendment of an application by submitting a request in writing to the body conducting the hearing. The request shall specify the proposed amendment and purpose for making the request. If the request to amend is denied, the hearing and decision in the case shall proceed. If the request to amend is granted, the hearing body shall make a finding as to whether there is substantial difference between the case as described in the public notice and the case as amended. If substantial difference is found, a new public notice shall be required, with fees paid by the applicant before the hearing of the case may proceed.

**Article 5: Development Standards**

**5.1 Parking and Loading Purpose and Scope**

1. The intent of off-street parking requirements is to provide convenient and safe access to property, reduce the need for on-street parking and thus congestion on streets, alleviate hazards associated with access to traffic generating business and industrial uses, provide adequate and safe parking for residents and business customers, protect residential uses from the undesirable effects of abutting traffic, and maintain the traffic carrying capacity of the road system serving the jurisdiction.
2. All developments shall provide and maintain the minimum number of parking spaces and loading areas required by these regulations. Such parking spaces and loading areas shall be designed in accordance with these regulations. No new development may decrease existing parking or loading areas below the required minimum without providing adequate replacements.

**5.2 Parking Design Standards**

1. The minimum dimensions for parking spaces in different configurations shall comply with the following table.

Table 5.2.1 – Design Standards for Parking Spaces

Parking space angle

	<b>45</b>	<b>60</b>	<b>90</b>	<b>Parallel</b>
Width of Parking Space	12'	10'	9'	9'
Length of Parking Space	19'	19'	19'	23'
Width of Driveway Aisle	13'	17'6"	25'	12'

2. Parking spaces in commercial, industrial, institutional, and public parking lots should be clearly marked with painted lines or dividers. Parking areas accommodating over ten vehicles should have continuous (as opposed to dead-end) circulation.
3. Parking area surfaces shall have an all-weather surface and at a minimum shall have a gravel surface. Parking areas for business or industrial uses containing 20 or more spaces shall be surfaced with asphalt, concrete or other hard surface.
4. Off-street parking areas shall be graded and any needed swales, culverts or other drainage facilities installed to remove surface run-off in a manner that does not adversely affect adjacent, public streets or surface waters. Parking areas over one acre in size shall submit a drainage plan prepared by a professional engineer. Parking areas shall have a minimum slope of one percent and a maximum slope not to exceed five percent.
5. Parking areas over one acre in size shall have 10% of the parking area in landscaping in addition to required yards or buffers. Such parking areas shall be screened along lot lines of any adjoining residential use in compliance with screening and buffering requirements in
6. Parking areas shall be accessible from public streets.

7. Parking areas serving residential uses must be located on the same lot as the dwelling, and may not be located in any front yard setback except in the driveway.
8. Parking areas serving commercial, industrial, public or institutional uses must be located within 500 feet of the use, and may not be located in required front yards setbacks or buffer zones.
9. Commercial and business parking areas shall have adequate lighting for security purposes. No lighting used to illuminate a parking area shall face or have its light source directly visible from any residential use. Luminaries shall be shielded and have a cut-off angle of not less than ninety degrees.

### **5.3 Parking Spaces Number Required**

1. Where this Article does not specify a use, the number of parking spaces required for that use shall be equal to the number for the most similar uses which appears in the Table of Required Parking Spaces in this Article.
2. In the case of mixed uses or businesses with multiple components, the total requirements for off-street parking facilities shall be the sum of the requirements for the various uses computed separately.
3. The square footage used to determine parking space requirements will be the gross square footage devoted to a use's principal function. Service and support spaces such as restrooms, utility areas and closets will not be included.
4. When the units of measurement determining the number of required parking spaces result in requirements of a fractional space, any fraction shall require one parking space.
5. Developments may utilize joint parking or loading areas if those joint areas are of adequate size according to the standards in these regulations. Joint parking areas shall be within 600 feet of all uses served. Development with differing peak activity periods may utilize joint parking areas with a consequent reduction in parking space requirements. Such developments must submit a written agreement between the owners of such uses regarding joint use of parking.
6. Accessible parking spaces shall be provided subject to this part, the Americans with Disability Act (ADA), "ADA Standards for Accessible Design", CFR 36 revised as of July 1, 1994 and amendments thereto. Each accessible space shall be so designated with a sign and with pavement markings.
7. The number of parking spaces provided in a ground surface parking lot may not exceed the minimum number by more than 20 percent. Any additional spaces above 20 percent shall be allowed only as a conditional use and shall be granted upon a finding that additional spaces are needed for that particular use and/or location.

Table 5.3.7: Required Parking Spaces

Use	Required Spaces
<b>Residential</b>	
Single family and mobile home	2 per dwelling unit
Multiple-family	1.5 per dwelling unit
Boarding houses, rooming houses	2 per unit
<b>Commercial</b>	
Auto Repair, body shops	2 per service bay
Banks, financial institutions	2 per 1000 square feet
Bowling Alleys	4 per lane
Drive-in Restaurant	1 per 50 feet of floor area
Hotels, motels	1 per room
Medical, dental clinics	1 per 250 square feet
Offices - Business, professional & governmental	1 per 300
Retail	1 per 300 square feet
Restaurants - Sit-down	1 per 100 square feet
Service Stations	1 per pump station plus one per service bay in addition to requirements for retail and restaurant space
Theatre, arena, sport facility or other assembly use	1 per four seats or per four persons at maximum capacity
Outdoor sales area (autos, boats, RV's, implements...)	1 space per 1000 square feet up to 10 spaces and an additional space for each additional 5000 square feet
Other commercial uses	1 per 500 square feet
<b>Institutional</b>	
Churches	1 per four seats
Hospital and nursing homes	1 per 2 beds
Libraries, museums	1 per 500 square feet
Schools - elementary	1 per classroom plus one per 8 seats in auditorium
Schools - secondary	1 per classroom plus 1 per 4 students
Day-Care Center	1 per employee plus 1 additional space for every 10 children served
Golf Course	1 per tee plus spaces for restaurants
<b>Industrial</b>	
Motor Freight Companies, Production and manufacturing & Warehousing	1 per 1000 square feet

#### 5.4 Loading and Access Drives

1. Approaches onto public roads shall be at least 125 feet apart, have grades of less than 6 percent and have widths as follows: Residential – 24 feet Non-Residential – 40 feet
2. Plantings, buildings and other structures may not be located within 125 feet of the center of road intersections, or in a manner which will obstruct line of sight within 125 feet of the intersection.
3. Access drives to State maintained highways must obtain a permit from the Montana Department of Transportation in compliance with the Montana Code Annotated.
4. Off-street loading spaces shall be provided on the same lot as the use they serve, and shall not occupy the front yard of the lot. Each loading space shall be designed to have access to a public street a manner that does not interfere with traffic movement. No loading facility shall be located within 75 feet of a residential use.
5. Each loading space shall be at least 12 feet wide and at least 45 feet long and have a least 14 feet of vertical clearance. All loading areas shall have cement or asphalt surface.
6. Loading spaces shall be required for each commercial or industrial uses in accordance with the following requirements

Table 5.4.6: # of Required Loading Spaces

Floor Area	# of Spaces
Less than 24,999	0
25,000 to 50,000	1
50,001 to 100,000	2
For each additional 100,000	1 additional space

#### 5.5 Signs - Purpose

Sign regulations are intended to promote and protect the public safety and welfare by regulation of existing and proposed outdoor advertising signs and signs of all types. The purpose of this section is to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, and business climate, enhance and protect the physical appearance of the county, and preserve the scenic and natural beauty of designated areas by regulating existing and proposed outdoor advertising signs, and outdoor signs of all types. It is further intended to reduce sign or advertising distraction and obstructions that may contribute to traffic accidents, reduce hazards, provide more open space, and curb the deterioration of the natural environment. Nothing in these regulations is intended to interfere with the constitutional rights related to free speech.

### **5.6 Standards Not Requiring a Permit**

The following signs are allowed without a permit.

1. Signs advertising the sale, lease or rental of the premises upon which the sign is located, and which do not exceed 12 square feet in area.
2. Signs bearing only property numbers, post box numbers, names of occupants of premises, or other identification of premises not having any advertising.
3. Flags and insignia of any government except when displayed in connection with commercial promotion.
4. Legal notices; identification, information or directional signs erected or required by governmental bodies.
5. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights.
6. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.
7. Bulletin boards for churches, schools, or other public, religious or educational institution provided the sign is located a minimum of 10 feet from the established right-of-way line of any street or highway and does not obstruct traffic visibility at street or highway intersections.
8. Political or campaign signs erected temporarily and removed no later than 15 days following the election.
9. Temporary signs or banners smaller than 32 square feet and are erected for a period of less than 60 days.

### **5.7 Standards for On-Premise Signs**

All on-site signs that are accessory to businesses and industrial uses require a permit and are subject to the following provisions;

1. No sign shall be erected or placed closer than 50 feet from a side or rear lot line abutting a residential use.
2. Lighting: An illuminated sign or lighting device may emit only light of constant intensity and no sign may be illuminated by or contain flashing, intermittent, rotating or moving lights. An illuminated sign or lighting device may not be placed or directed so that the beams and illumination from the sign cause glare or reflection that may cause a traffic hazard or nuisance. All wiring, fittings and materials used in the construction, connection and operation of electrically illuminated signs shall be accordance with the provision of the state electrical code.
3. One free standing sign per frontage is permitted for each building, regardless of the number of businesses or industrial uses conducted in the building. No freestanding sign shall exceed 30 feet in height except for businesses with frontage on the Interstate highway may have a sign with a maximum height of 50 feet. No sign shall exceed 50 square feet in surface area.

4. No wall sign shall exceed 100 square feet in surface area. In no case shall any sign or combination of signs on one wall face exceed more than 25% of the wall area where the sign(s) is located. Each business in the building is permitted one wall sign.
5. Electronic reader boards and time and temperature signs are permitted.

### **5.8 Off-Premise Advertising Signs**

All off-premise advertising signs shall require a permit and are subject to the following provisions.

1. No sign shall be erected or placed closer than 100 feet from a side or rear lot line abutting a residential use, school or church.
2. Lighting: An illuminated sign or lighting device may emit only light of constant intensity and no sign may be illuminated by or contain flashing, intermittent, rotating or moving lights. An illuminated sign or lighting device may not be placed or directed so that the beams and illumination from the sign cause glare or reflection that may cause a traffic hazard or nuisance. All wiring, fittings and materials used in the construction, connection and operation of electrically illuminated signs shall be accordance with the provision of the state electrical code.
3. No freestanding sign shall exceed 25 feet in height. No sign shall exceed 50 square feet in surface area. Signs must be set back at least 15 feet from the right-of-way.
4. All such off-premise signs shall be separated by a minimum of 50 feet from any on-site freestanding signs and shall be separated by a minimum of 660 feet from any other off-premise sign(s).
5. All such signs shall comply with the Montana Code Annotated. Whenever these regulations may be in conflict with the MCA which ever provision is more restrictive shall apply.

### **5.9 Screening and Buffering**

1. The purpose of this section is to provide buffering between parcels of incompatible land uses.
2. Whenever a buffer zone is required, fences and landscaping shall comply with the requirements in this section.
3. Fence – Fences shall have a minimum height of six feet and a maximum height of 10 feet. Fences shall be at least 75% opaque. Masonry walls of more than 50 feet in length shall have significant design variations every 15 such as different colors, texture, or other architectural feature. Chain link fences are not appropriate screening.
4. Landscaped areas/Buffer yards – Minimum of 10 feet in width. Within the buffer yard at least 75% of the area shall be live turf or ground cover. Buffer areas shall include the plantings of shrubs or trees with a minimum of three plant units for each 40 feet in length of the yard. At least half of the plant units shall be of the evergreen variety. Shrubs shall be at least 2 gallon container size at the time of planting and trees shall be at least four feet in height at the time of planting. Buffer yards shall be kept free of obstructions and no parking is allowed in the buffer yards.

5. Berms – Small shrubs used in combination with a berm to achieve an overall height of four feet may be substituted for the required buffer yard. Berms shall not exceed a slope of 3:1. They shall be graded to appear as smooth, rounded naturalistic forms.
6. Where terrain or other natural features effectively serve as a screen, the permit officer may allow an exemption from these requirements.
7. The owner shall maintain all plant material and shall replace all plant materials that have died by the next planting season. The owner shall keep fences in good repair and shall replace rotting or missing fence panels. Planting areas shall be kept free of trash, litter and weeds.

## **Article 6: Performance Standards for Commercial and Industrial Uses**

### **6.1 Performance Standards for Commercial and Industrial Uses – Purpose**

The purpose of performance standards are to provide certain restrictions regarding location, operation or screening that certain uses should comply with in order to minimize potential land use conflicts with surrounding uses. Performance standards are a set of criteria or limits relating to nuisance elements which a particular use or process may not exceed. Performance standards reviewed as part of the administrative process for a development permit to determine compliance with such standards.

### **6.2 Performance Standards for all Commercial Uses**

1. Lot area shall not be less than one acre unless community water and sewer facilities are available. A larger lot size may be required based on estimated sewage flows and soil conditions upon recommendation by the Montana Dept. of Environmental Quality.
2. There shall be a minimum front yard setback of 20 feet, a minimum side yard setback of 10 feet and rear yard setback of 20 feet.
3. Maximum building height shall be 32 feet.
4. No commercial use shall be located within three hundred feet of three or more of a major residential use.
5. Access must be from a public street maintained by the County or the State. Access may not be from a street platted as part of a residential subdivision.

### **6.3 Industrial and Manufacturing Uses**

1. Lot area shall not be less than one acre unless community water and sewer facilities are available. A larger lot size may be required based on estimated sewage flows and soil conditions upon recommendation by the Montana Dept. of Environmental Quality.
2. There shall be a minimum front yard setback of 40 feet, a minimum side yard setback of 20 feet and rear yard setback of 40 feet.
3. No industrial or manufacturing use shall be located within eight hundred feet of a major residential use.
4. Any condition or operation which results in the creation of odors of such intensity and character as to be detrimental to the health and welfare of the public or which interferes unreasonable with the comfort of the public shall be removed, stopped or so modified as to mitigate the odor to acceptable levels. Specifically there shall be no odor detectable from the lot line from dead or decaying matter, storage of waste, garbage or untreated sewage, animal offal and similar by products.
5. No person shall cause or permit any materials to be handled, transported, or stored in a manner which allows any particulate matter to become airborne.
6. There shall be no operation with flashing lights. No lighting of the property shall have a light source directly visible from any major residential area.

7. No use shall cause earth vibrations or concussions detectable beyond its lot lines without the aid of instruments, with the exception of vibrations produced as a result of construction activity.
8. All activities and all storage of flammable and explosive materials at any point shall be provided with adequate safety and fire fighting devices in accordance with State of Montana Code and with requirements of local fire districts.
9. No use shall produce heat perceptible beyond its lot lines which would damage adjacent properties.
10. Access must be from a public street maintained by the County or the State. Access may not be from a street platted as part of a residential subdivision.

#### **6.4 Performance Standards for Casinos**

1. At a minimum, no casino shall be located closer than 660 feet from the following uses.
  - a. A commercial family day care facility;
  - b. A public or private preschool or nursery school;
  - c. A public or private primary or secondary school;
  - d. A public park;
  - e. A church, temple, mosque, synagogue, chapel or other similar religious facility;
2. In calculating the distance between a casino use and a use listed in the previous section the distance shall be measured by extending a straight line between the nearest lot line of each use.

#### **6.5 Performance Standards for Landfills and Waste Transfer Stations**

1. Such operations shall provide evidence that it has complied with all Federal and State licenses, certifications, and other regulations.
2. Such operations shall provide a buffer yard in compliance with these regulations for all yards adjacent to a public right-of-way.
3. No such use shall be located within 1,320 feet of a major residential use, institutional use, park or state or federal public lands.
4. Any operation including facilities for drop-off materials shall have a plan for regular shipping or reprocessing of such materials. In no event shall any drop-off waste be allowed to accumulate outside of the containers provided for drop off. Such areas shall provide appropriate measures to prevent debris from blowing off-site.

**6.6 Performance Standards for Salvage Yards**

1. Such operations shall provide evidence that it has complied with all Federal and State licenses, certifications, and other regulations.
2. Such operations shall provide a buffer yard in compliance with these regulations for all yards adjacent to a public right-of-way. In addition to the buffer yard, a combination of berms, landscaping and fencing shall screen such uses from the public right of way.
3. No such use shall be located within 1,320 feet of a residential, institutional use, park or state or federal public lands.

## **Article 7: Conditional Uses**

### **7.1 Conditional Uses – Purpose**

The purpose of the conditional use is to provide a procedure for review of certain uses that have the potential to create significant land use conflicts and negatively affect property values of nearby properties if not developed appropriately. The conditional use process provides a detailed and comprehensive review of such developments and provides an opportunity for the public to comment on such uses to make certain their concerns are adequately addressed.

### **7.2 List of Conditional Uses**

The following uses are conditional uses and shall follow the review and permit procedures in Section 3.6 and 3.7 of these regulations. At a minimum, conditional uses shall comply with the performance requirements in this section. The County Commission may impose additional requirements as a condition of approval.

1. Adult Entertainment Uses as defined herein
2. Concentrated Animal Feeding Operations as defined herein
3. Hard Rock Quarries as defined herein
4. Wind Farms as defined herein

### **7.3 Standards for Adult Entertainment Uses**

1. Purpose – To mitigate negative impacts such as decrease in property values. To separate adult uses from land uses that involve children or minors. To prevent a concentration of adult uses that may create incidental traffic or unlawful activities.
2. Definition - Adult entertainment use means a commercial establishment defined herein as an adult arcade, adult cabaret, adult motel, adult motion picture theater, or adult retail store or any establishment distinguished or characterized by a predominant emphasis on entertainment, retail sales, or viewing of matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas. “Specified anatomical areas” means the male genital in the state of sexual arousal even if completely and opaquely covered; or less than completely and opaquely covered human genitals, and/or the vulva or more intimate parts of the female genitals. “Specified sexual activity” means and includes any of the following: (1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; (2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; (3) masturbation, actual or simulated.
3. At a minimum, any adult entertainment uses shall be located no closer than 1,320 feet from the following uses.
  - a. A major residential use
  - b. A multiple-family residential use
  - c. A commercial family day care facility;
  - d. A public or private preschool or nursery school;

- e. A public or private primary or secondary school;
  - f. A public park;
  - g. A church, temple, mosque, synagogue, chapel or other similar religious facility;
  - h. Another adult entertainment use
4. In calculating the distance between an adult entertainment use and a use listed in the previous section the distance shall be measured by extending a straight line between the nearest lot lines of each use.
5. The Planning Board may recommend and the County Commission may impose conditions to mitigate noise and visual impacts.

#### **7.4 Standards for Concentrated Animal Feeding Operations**

1. Purpose – To avoid conflict with major residential uses in regards to odor, noise, dust, and traffic conflicts. To protect environmental resources such as water and air quality. To adequately handle the disposal and treatment of waste. To review operations to make certain there are adequate public facilities to serve the use.
2. Definitions
- a. Animal Feeding Operation – A facility where cattle (or equivalent livestock) are confined for 45 days or more in a year and where crops or vegetation are not sustained during the normal growing season.
  - b. Concentrated Animal Feeding Operation – An animal feeding operation that has between 300 or more than 1000 cattle (or equivalent livestock as defined by the Department of Environmental Quality) and has a potential to discharge wastes to state waters.
3. All animal feeding operations and concentrated animal feeding operations must comply with the Department of Environmental Quality regulations and permitting requirements.
4. No animal feeding operation may be located within one-half mile of the following uses. No concentrated animal feeding operations may be located within one-mile of the following:
- a. Corporate limits of any municipality or lots within the unincorporated towns of Bynum, Power, or Pendroy.
  - b. A major residential use or multiple-family residential use
  - c. A commercial family day care facility; hospital, or nursing home facility
  - d. A public or private preschool or nursery school; primary or secondary school;
  - e. A church, temple, mosque, synagogue, chapel or other similar religious facility;
5. Operations defined as “Large Concentrated Animal Feeding Operations” by the Montana Department of Environmental Quality, shall be required to obtain a conditional use permit from the County.

6. In addition to the submittal requirements for a conditional use, the applicant shall submit the following:
  - a. The applicant shall submit plans for odor control for swine operations including relevant information pertaining to prevailing winds over the site.
  - b. Evidence of compliance with the Dept. of Environmental Quality permitting and other regulations.
  - c. Plans for site clean-up if use is abandoned.
7. Large Concentrated Animal Feeding Operations shall be set back at least 500 feet from the property lines.
8. The Planning Board may recommend and the County Commission may impose conditions to mitigate impacts from odor, noise, waste treatment and disposal, and other environmental impacts.

### **7.5 Standards for Quarries**

1. Purpose – To avoid conflict with major residential uses in regards to noise, dust, and traffic. To protect environmental resources such as water and air quality. To adequately handle and store materials and wastes. To review operations to make certain there are adequate public facilities to service the use.
2. Open Cut Quarry operations are defined as processed or crushed rock operations which entail the extraction, stockpiling, processing and sale of bedrock geologic deposits. Incidental uses may include asphalt batch plants, cement concrete batch plants, equipment storage yards, and other accessory structures.
3. All open cut quarries must comply with requirements of Chapter 82 of the Montana Code Annotated and must obtain all required permits and be in compliance with permit requirements from the Montana Department of Environmental Quality.
4. No such open cut quarry shall be located be located within 1,320 feet of a major residential use measured at the nearest lot line of both properties.
5. Any open cut quarry meeting the following conditions shall be required to obtain a conditional use permit under the requirements of these regulations.
  - a. Any open cut quarry permitted by DEQ for a period of operation of more than 5 years.
  - b. Any open cut quarry located within one-mile of a major residential use.
6. In addition to the submittal requirements for conditional use permits, quarries shall be required to submit with the application information regarding the following:
  - a. Affected lands – area that is disturbed by opencut mining operations, including the area from which material is to be removed, roads constructed to gain access to the sedimentation ponds, and material stockpile areas on or contiguous to the opencut site.
  - b. Location of accessory structures and incidental uses and size of operation.

- c. Hours of Operation
- d. Reclamation Plans
- e. Hauling routes
- f. Evidence of DEQ permitting compliance

7. The Planning Board may recommend and the County Commission may impose conditions to mitigate impacts from noise, dust, vibration, truck traffic and other environmental impacts.

## **7.6 Standards for Wind Farms**

1. Purpose – To reduce conflicts with major residential uses in regards to noise, shadows, and public safety. To site such facilities so as not to interfere with aviation uses, wildlife habitat or migration corridors. To protect areas of high scenic value in the county.
2. Definitions
  - a. Wind energy conversion systems (WECS) – A device, such as a wind charger, windmill or wind turbine, which converts wind energy to a form of useable energy.
  - b. Wind farm means a single wind turbine tower exceeding one hundred and twenty (120) feet in height above grade or more than one wind energy conversion system of any size on the same parcel that is interconnected to an electric utility system.
3. A conditional use permit is required for any wind farm. A private wind energy system does not require a permit.
4. All wind turbine tower bases must be set back from all property lines a distance equal to twice the associated wind turbine tower height. At its discretion, the county may require a simulation of shadow casting to be submitted with the application.
5. All wind turbine tower bases must be set back from all dwellings, not located on the same parcel, at least 1600 feet. At its discretion, the County may request noise studies to be submitted with the application.
6. Wind farms proposed to be located within four miles of the nearest point of the nearest runway of the nearest airport available for public use must provide evidence of complying with all the requirements imposed by the Federal Aviation Administration (FAA) and provide a written statement from the FAA that sets forth the FAA comments and requirements, if any for the proposal.
7. Wind farms shall avoid areas of concentrated bird activity such as areas of high nesting or seasonal density, or in the range of a threatened or endangered species. Wind farms proposed within three miles of any state of federal public lands (except school trust lands) shall submit plans to the managing agency for comments regarding avian impacts, migration corridors, and habitat disturbance. At its discretion, the County may request such review for any wind farm under review.
8. Wind farms shall be located so as not to be visible from any highway designated as a scenic route by State or Federal agencies.

9. Visual representations of the project shall be submitted with the application. In general turbine designs shall be set against the landscape to blend in by being well-ordered, following contours of a ridge line, and avoiding unsightly roads or clutter.

## **Article 8: Standards for Development in Sensitive Areas**

### **8.1 Riparian Areas - Purpose**

The purpose of this section to improve the overall water quality of the major rivers and streams and to maintain the integrity of the water resources by removing pollutants, reducing erosion and sediment entering the stream, stabilizing streambanks, maintaining native vegetation and providing riparian wildlife habitat.

### **8.2 Riparian Areas - Definitions**

1. Buffer – A vegetated area, including trees, shrubs, and herbaceous vegetation, that exist or is established to protect a stream system, lake, reservoir, or coastal estuarine area.
2. Floodplain 100-year Floodplain. The area that would be covered by the floodwater of a flood of 100 year frequency as defined by the Teton County Floodplain Management Ordinance and applicable state and federal regulations.
3. Impervious Surface – any paved, hardened, or structural surface which does not allow for complete on-site infiltration of precipitation. Such surfaces include but are not limited to buildings, driveways, streets, parking lots, swimming pools, dams, tennis courts, and any other structures that meet the above definition.
4. Non-point Source – Pollution that is generated by various land use activities rather than from pollution from an identifiable or discrete source and is conveyed to waterways through natural processes, such as rainfall, storm water runoff, or groundwater seepage rather than direct discharges.
5. Ordinary High Water Mark – the ordinary high water mark means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water mark.
6. Riparian Area – Riparian area are plant communities contiguous to perennial, intermittent and ephemeral rivers, streams, or drainage ways. They have one or both of the following characteristics: 1) distinctively different vegetative species than adjacent areas; and/or 2) species similar to adjacent areas but exhibiting more vigorous or robust growth forms.
7. Stream - Means any natural perennial flowing stream or river, its bed, and its immediate banks.
8. Water Pollution – A land use or activity that causes a relatively high risk of potential water pollution.
9. Wetland – Wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturation soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

### **8.3 Development Standards - Applicability**

1. This ordinance shall apply to all streams classified as perennial streams by a State or Federal Agency.
2. This permit shall apply to all new construction and ground disturbing activities in Teton County and to any activities that are causing or contributing to, including non-point source pollution of the waters covered by this ordinance.
3. Agricultural uses and activities and residential uses are exempt from these provisions although it is recommended that such uses refer to these standards as guidelines for development.

### **8.4 Riparian Areas – Development Standards**

1. Buffer Area – A buffer area shall be provided adjacent to each stream. The required width for buffer area shall be one-hundred 100 feet from the ordinary high water mark. The width of the buffer area shall be increased in size in accordance with the following conditions:
  - a. Where the 100-year floodplain is wider than the buffer area, the buffer area shall be extended to the edge of the floodplain.
  - b. Where the slope of the buffer area is greater than 10%, the width of the buffer area shall be increased by two (2) feet for every 1% of slope up to a maximum increase of 50 feet.
  - c. Where the buffer area includes or is immediately adjacent to a wetland as defined by State or Federal agencies, the buffer area shall be extended to the edge of the wetland.
  - d. Where the buffer area includes impervious areas, the width of the buffer area shall be extended by the width of the impervious area.
2. The following land uses and/or activities are designated as potential water pollution hazards, and are prohibited anywhere in the buffer area:
  - a. Storage of hazardous substances
  - b. Above ground or underground petroleum storage facilities
  - c. Drainfields from onsite sewage disposal and treatment systems
  - d. Solid waste landfills, junkyards or automobile salvage yards
  - e. Confined animal feedlot operations
  - f. Subsurface discharges from a wastewater treatment plan
3. The area within 25 feet of the ordinary high water mark shall be referred to as the “Streamside Zone”. Allowable uses in this zone include flood control structures, utility right-of-ways, footpaths, and road crossings.
4. The area starting at the outer edge of the streamside zone, and for a distance of 50 feet perpendicular to the edge of the streamside zone, shall be known as the “Middle Zone”. Allowable uses in this zone include any use allowed in the streamside zone, biking or hiking paths, recreational uses that do not require permanent structures, fences, flagpoles, play equipment, and other uses that do not require a permanent foundation.

5. The area starting at the outer edge of the middle zone, and extending to the outer edge of the buffer area, shall be referred to as the “Outer Zone”. Allowable uses in this zone include any use allowed in the middle zone, temporary structures, open outdoor storage and encroachments from permanent structures of no more than 10 feet. Such encroachments may include bay windows, decks, chimneys, and similar architectural features but does not include the permanent foundation of the building. Outdoor storage may not increase the impervious area in the buffer area and the footprint of the storage area within the buffer area may not exceed 50% of the permanent structure on the lot and shall not comprise more than 25% of the area in the outer zone of the buffer area . There shall be not discharge of motor oil or other pollutant in this area.
6. A natural vegetation strip shall be maintained in the streamside and middle zone. This vegetation strip shall be left in its natural state and shall consist of native vegetation (trees, shrubs, and other vegetation) that shall not be killed, destroyed, removed, or moved, provided, however that dead, diseased, unsafe or fallen trees, and poisonous plants and noxious weeds may be removed. Selective removal or trimming of trees for access or lot improvement, landscaping, or public utility lines to service dwellings is permitted as long as such activities do not change the overall nature of the buffer area.
7. The buffer area shall be managed and maintained to enhance and maximize the unique value of the water resource. The following practices and activities are restricted in the streamside and middle zone.
  - a. Clearing of existing vegetation except as specified in the previous sections.
  - b. Soil disturbance by grading, stripping or other practices.
  - c. Filling or dumping
  - d. Draining by ditching, underdrains, or other systems,
  - e. Storage of motorized vehicles
8. The middle zone and outer zone of the buffer area may be reduced by 50% if measures are taken to make the buffer area more functional. Such measures may include streambank restoration, sedimentation control measures, soil enhancements or other generally accepted practices. Such request to reduce the buffer area shall be submitted in writing along with the development permit application and shall include a conservation plan for the buffer area. Such conservation plan shall include the following information:
  - a. Schematic representation of the proposed activity by means of maps, graphs, charts or other written or drawn documents so as to enable the development permit officer to make a reasonable informed decision regarding the proposed activity.
  - b. A location or vicinity map.
  - c. Delineated streams, springs, seeps, bodies of water and wetlands (include a minimum of 200 feet into adjacent properties.
  - d. Field delineated public lands if any
  - e. Limits of the 100 year floodplain, if any
  - f. Hydric soils mapped in accordance with the NRCS soil survey of the site area

- g. Steep slopes greater than 15 percent for the areas adjacent to within 200 feet of streams, wetlands, or other water bodies,
  - h. A narrative of the species and distribution of existing vegetation within the buffer.
  - i. Grading Plan
9. The development permit officer may consult with the Department of Natural Resource District, Soil Conservation District or applicable watershed groups to determine if proposed measures are adequate to enhance the functionality of the buffer area and to suggest modifications to the conservation plan. The development permit officer must make a written determination if the 50% reduction will or will not be granted and shall make findings to support the decision. Such decision may be appealed in accordance with procedures in these regulations.

### **8.5 Groundwater Protection Areas - Purpose**

The purpose of this section is to protect the public health and safety by minimizing contamination of and protecting sources of drinking water supplies.

### **8.6 Groundwater Protection Area - Definitions**

1. Contamination shall mean an impairment of water quality by chemicals, radionuclides, biologic organisms, or other extraneous matter whether or not it affects the potential or intended beneficial use of water.
2. Development. The carrying out of any construction, reconstruction, alteration of surface or structure or change of land use or intensity of use.
3. Facility. Something that is built, installed, or established for a particular purpose.
4. Hazardous Material. A material which is defined in one or more of the following categories:
  - a. Ignitable: A gas, liquid or solid which may cause fires through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline. Carcinogenic: A gas, liquid, or solid which is normally considered to be cancer causing or mutagenic. Examples: PCB's in some waste oils.
  - b. Explosive: A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.
  - c. Highly Toxic: A gas, liquid, or solid so dangerous to man as to afford an unusual hazard to life. Example: chlorine gas. Moderately Toxic: A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man. Corrosive: Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.
5. Primary Containment Facility. A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.
6. Release. Any unplanned or improper discharge, leak, or spill of a potential contaminant including a hazardous material.
7. Shallow or Surficial Aquifer. An aquifer in which the permeable medial (sand and gravel) starts at the land surface or immediately below the soil profile.

8. Secondary containment facility. A second tank, catchment pit, pipe, or vessel that limits and contains liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery are required.

### **8.7 Ground Water Protection Area - Development Standards**

1. The drinking water impact zone is defined as the area within 1000 feet of a public water supply well.
2. Expansion of existing nonconforming uses are exempt provided they meet the appropriate performance standards outlined in these regulations and are designed so as to prevent any groundwater contamination.
3. The following uses are prohibited within a drinking water impact zone.
  - a. Automobile body/repair shop;
  - b. Gas station;
  - c. Fleet/trucking/bus terminal;
  - d. Dry cleaner;
  - e. Electrical/electronic manufacturing facility;
  - f. Machine shop;
  - g. Metal plating/finishing/fabricating facility;
  - h. Chemical processing/storage facility;
  - i. Wood preserving/treating facility;
  - j. Junk/scrap/salvage yard;
  - k. Mines/gravel pit
  - l. Irrigated nursery/greenhouse stock
  - m. Confined animal feeding operations
  - n. Land divisions resulting in high density (>1 unit/acre) septic systems;
  - o. Equipment maintenance/fueling areas;
  - p. Injection wells/dry wells/sumps, except for single-family residences directing gutter downspouts to a drywell;
  - q. Underground storage tanks, (except those with spill, overflow, and corrosion protection requirements in place);
  - r. All other facilities involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste having potentially harmful impact on groundwater quality;
4. Performance standards within the drinking water impact zone are as follows:
  - a. Any facility involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or wastes, unless granted a special exception either through permit or another ordinance, must have a secondary containment system which is easily inspected and whose purpose is to intercept any leak or release from the primary containment vessel or structure. Underground tanks or buried pipes carrying such materials must have double walls and inspectable sumps.
  - b. Open liquid waste ponds containing materials referred to in item (1) above will not be permitted without a secondary containment system.
  - c. Bulk storage of petroleum products at one locality in one tank or series of tanks must be in elevated tanks; such tanks must have a secondary containment system/
  - d. All permitted facilities must adhere to appropriate federal and state standards for storage, handling and disposal of any hazardous waste materials.

- e. An acceptable contingency plan for all permitted facilities must be prepared for preventing hazardous materials from contaminating the shallow/surficial aquifer should floods, fire, or other natural catastrophes, equipment failure, or releases occur.
  - f. All abandoned wells should be properly plugged according to local and state regulations.
5. Nothing in this section shall be construed to imply that Teton County has accepted any of an owner/developer's liability if a permitted facility or use contaminates groundwater in any aquifer.
  6. Uses shall comply with all state, Federal, and local regulations regarding flood control and fire control.

### **8.8 Airport Safety Areas - Purpose**

The purpose of this section is to protect lives and property on lands which lie within the transition and approach zones surrounding an airport or landing field. Also, the district is intended to prevent the establishment of air space obstructions through height restrictions and other land use controls for the safety of persons airborne. This section shall be applied to lands where airports are classified by the Federal Aviation Administration as visual (paved), utility, non-precision and precision runways.

### **8.9 Airport Safety Areas - Development Standards**

1. The dimensions of the transition and approach zones shall be determined by the current Federal Aviation Administration use classification and standards.
2. Uses such as schools, churches, auditoriums, etc. where large groups of people assemble shall not be allowed within the transition and approach zones.
3. No use shall be permitted within transition and approach zones which would foster an increased bird population and thereby increase the likelihood of a bird strike problem.
4. No structure shall be constructed or located, nor any tree allowed to grow to a height in excess of 1 foot in height for each 20 feet in horizontal distance beginning at a point 200 feet from the end of each runway and extending to a distance 5,000 feet from the end of the runway. The above requirement shall apply to an area having a width of 250 feet beginning at a point 200 feet from the end of each runway, widening thereafter uniformly to a width of 1,250 feet at a distance of 5,000 feet beyond the end of the runway, its centerline being the continuation of the centerline of the runway.
5. All towers and other structures shall meet licensing and permitting requirements by the Federal Aviation Administration.

### **8.10 Agricultural Right-to-Farm - Purpose**

The purpose of this section is to provide notice to potential homeowners regarding the effects of agricultural operations in the vicinity of their property and to provide a basis for agricultural operators to continue such operations in accordance with good agricultural practices.

### **8.11 Agricultural Right-to-Farm - Provisions**

1. Agricultural activities shall be defined in accordance with the MCA Section 76-2-902.

2. Agricultural activities shall be entitled to a presumption that the activity does not constitute a nuisance if the agricultural activity meets all of the following conditions.
  - a. It is conducted in conformity with federal, state and local laws and regulations
  - b. It is consistent with good agricultural practices
  - c. It is established prior to surrounding non-agricultural activities
  - d. It has not significantly changed since the commencement of the prior surrounding non-agricultural activity
3. Any subdivision approval or development permit for a residential use within one-quarter of a mile of an agricultural activity shall include the following disclosure:

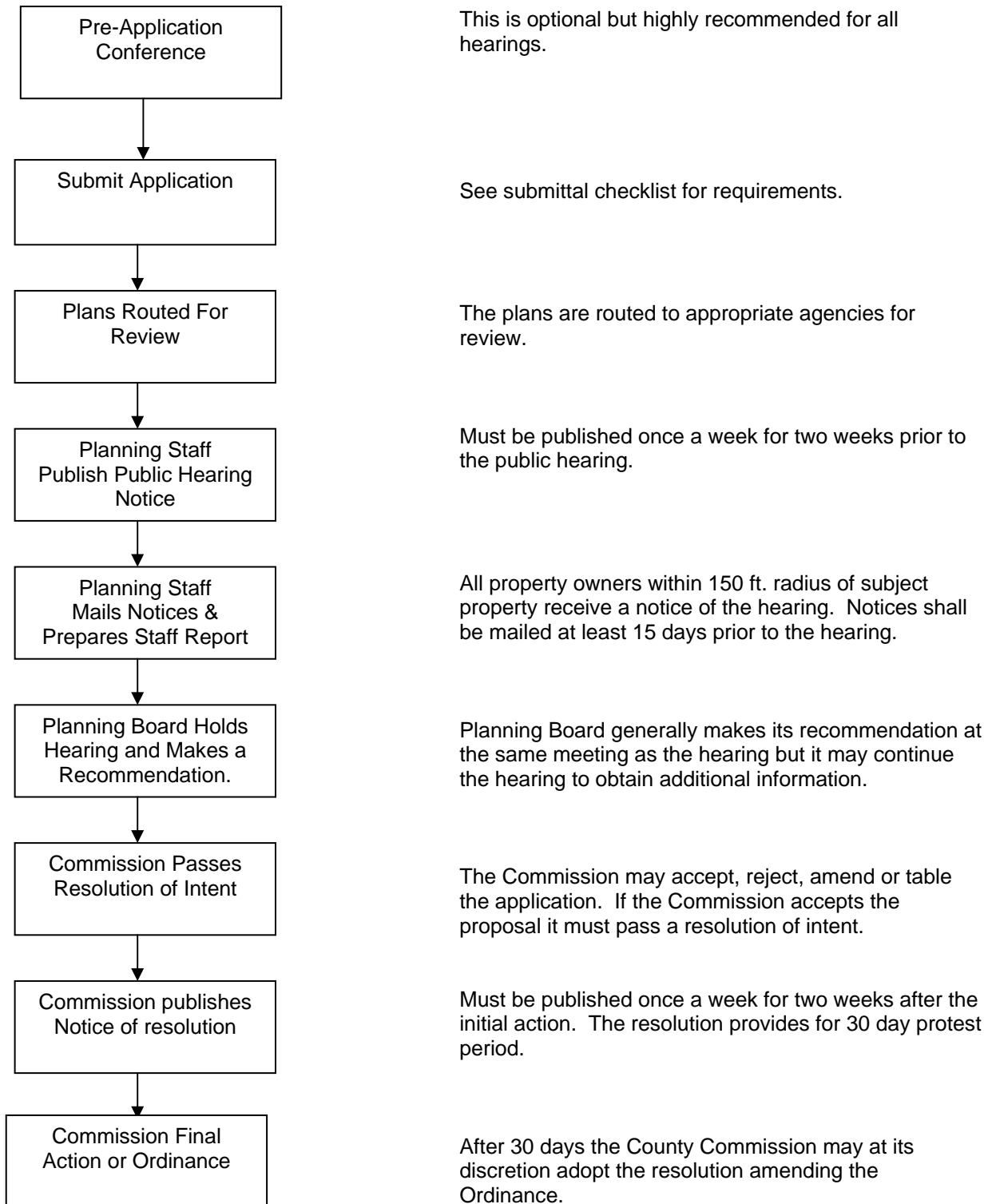
"This notice is to inform prospective residents that the real property they are about to acquire lies within one-quarter mile of an agricultural of the property boundary of an agricultural activity. Generally accepted agricultural and management may be utilized by the activity and may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are presumed not to be a nuisance to nearby properties."

#### **8.12 Flood Hazard Areas**

Development in flood hazard areas shall comply with Flood Plain Regulations as adopted by the Teton County Commission.

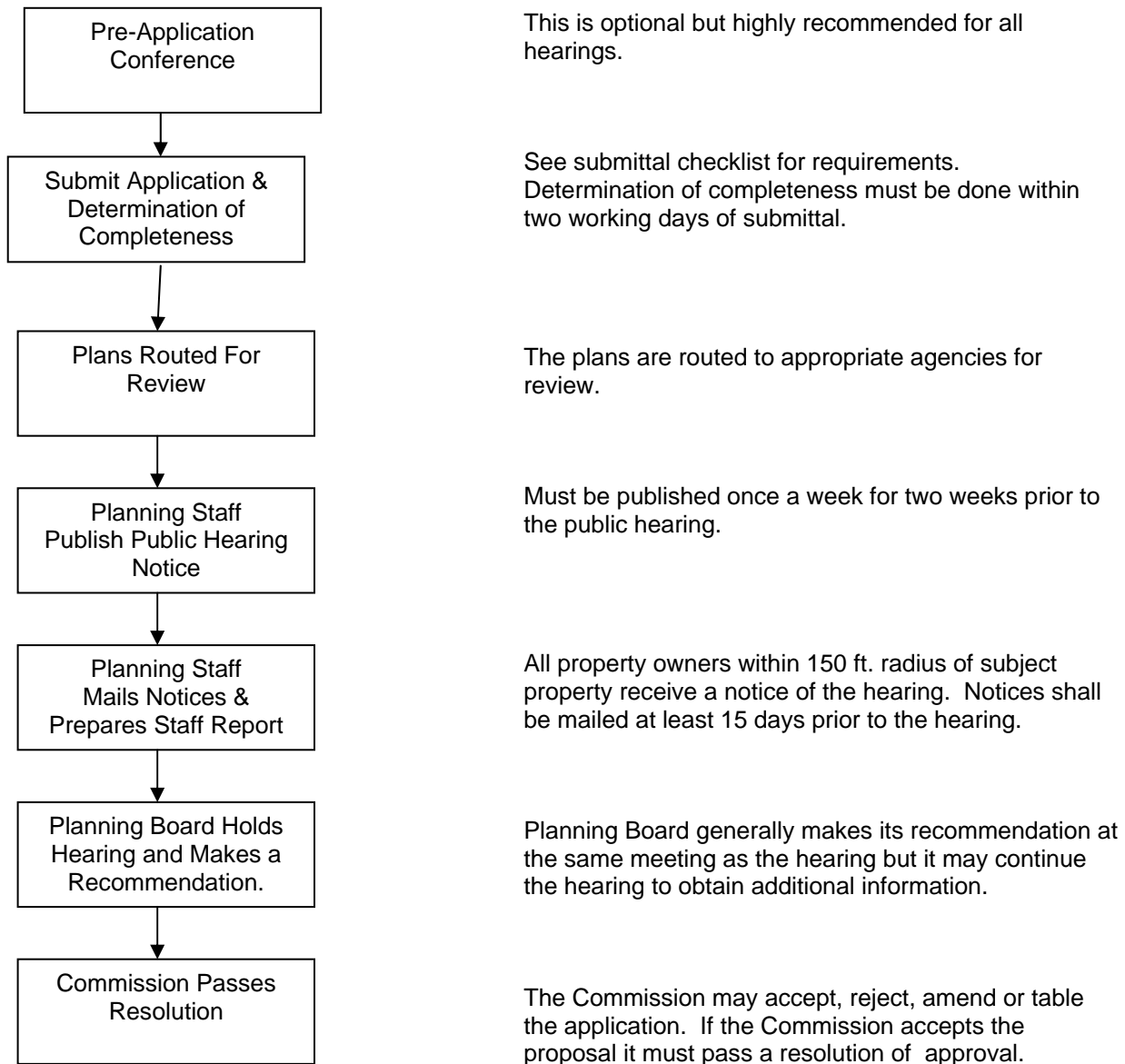
# HEARINGS – Amendments

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# HEARINGS – Conditional Uses

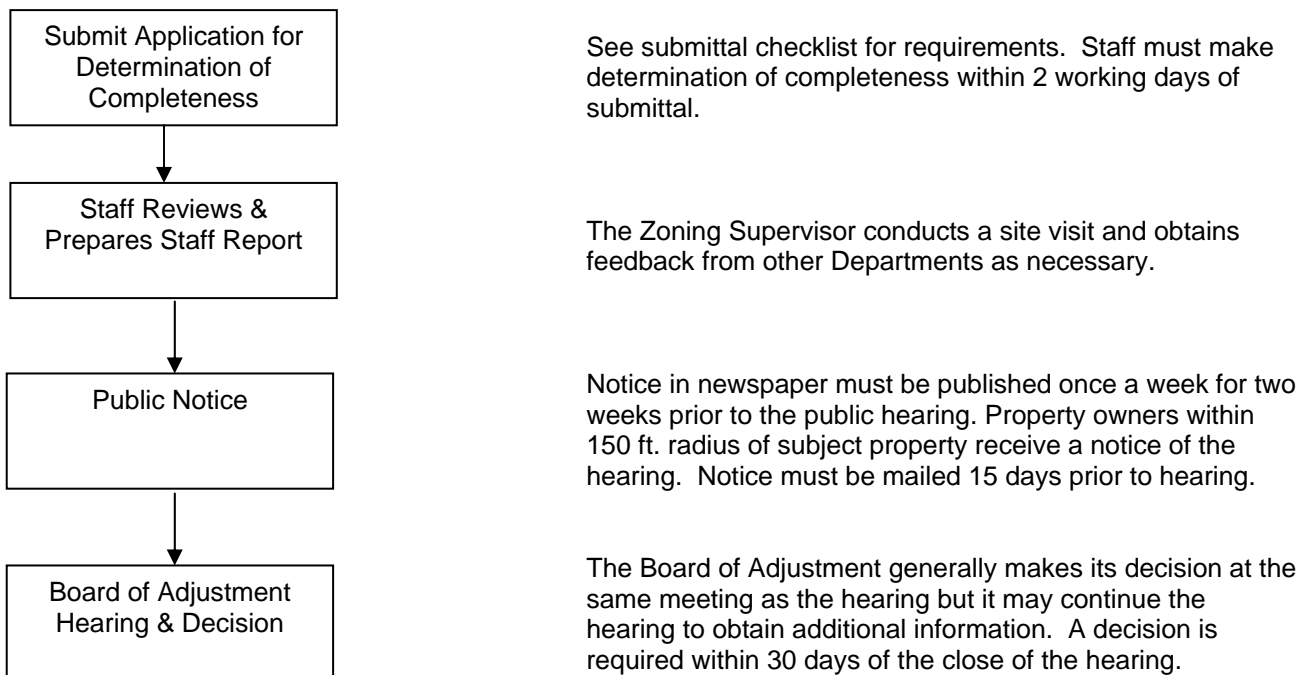
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# HEARINGS - Variance

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Following is the process for reviewing a variance request.



**Application for Sign Permit  
Teton County**

Date: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_

Location: \_\_\_\_\_

Type of Sign:	Freestanding	_____
	Wall	_____
	Off-Premise	_____
	Electronic Reader Board	_____

Square Feet in Area: \_\_\_\_\_

Height: \_\_\_\_\_

Total Square Footage of Other Signs on Building: \_\_\_\_\_

1. Wall Signs: Include elevation drawing of sign and building with dimensions for signs and buildings.
2. Freestanding Signs: Include drawing of freestanding signs with dimensions. Include site plan showing location of sign and adjacent land uses and right-of-ways.
3. Off-Premise Signs: Include drawing of freestanding signs with dimensions. Include site plan showing location of sign and adjacent land uses and right-of-ways. Submit required approvals from Montana Dept. Of Transportation.

**Affidavits**

I the undersigned hereby does (do) certify that the information contained herein and attached hereto is true and correct to the best of my (our) knowledge. (If the applicant is not the owner of record, the signature of the owner must also be obtained.)

Applicants Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Owners Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Administrative** (For Office Use Only - To be completed by Staff)

1. Application Accepted by:

2. Date Accepted:

3. Fee Paid: \$

4. Receipt No:

5. Final Disposition:      Approved

Disapproved

# DEVELOPMENT APPLICATION

Please type or print in ink. Complete all pages included in the application packet. Additional information may be attached. See submittal checklist for all materials to be submitted with application. Applicants will be advised by mail of the hearing dates. Make checks payable to Teton County.

<b>Section 1: Requested Action</b> (Please check the box for the action you are seeking.)			
Development Permit	<input type="checkbox"/>	Variance Request	<input type="checkbox"/>
Conditional Use	<input type="checkbox"/>	Administrative Appeal	<input type="checkbox"/>
Amendment	<input type="checkbox"/>	Conservation Plan	<input type="checkbox"/>

<b>Section 2: Contact Information</b> (Complete all fields that apply.)	
<b>1. Applicant</b>	
Name:	_____
Address:	_____
Phone:	_____ E-Mail: _____
<b>2. Owner</b> (If other than applicant. If there are several owners list on separate page & attach.)	
Name:	_____
Address:	_____
Phone:	_____ E-Mail: _____
<b>3. Applicant Representative:</b> (Architect, Engineer, Attorney, . . .)	
Name:	_____
Address:	_____
Phone:	_____ E-Mail: _____

<b>Section 3: Property Information</b> (Complete all fields that apply.)			
1. Legal  Descr.			Check if legal Description is attached
2a. Section:	2b. Township:	2c. Range:	
3. Current Land Use:			
4. Proposed Land Use:			
5. Lot Area:		6. Lot Dimensions:	

<b>Section 4: Project Information</b> (Complete all fields that apply)	
1. Number and type of Residential Units:	2. Building Sq. Ft.
3. Number of Parking Spaces:	4. Number of Employees:
5. List any encumbrances on the property (covenants, easements, liens, . . .). Attach a copy or exhibits if necessary.	
6. List any previous subdivision or development restrictions placed this property.	

5. Special Conditions:	Indicate Yes or No
1. Is the property located within 4 miles of an airport?	
2. Are there performance standards required for this use?	
3. Is the property adjacent to a stream or does a stream dissect the property?	
4. Is there a public drinking water supply source on the property or within 1000 feet of the property?	
5. Does the property have slopes of greater than 15%?	
6. Is any portion of the property in a 100-year floodplain?	
7. Describe other special conditions that may affect development of this property.	

**Section 6: Affidavits**

I the undersigned hereby does (do) certify that the information contained herein and attached hereto is true and correct to the best of my (our) knowledge. (If the applicant is not the owner of record, the signature of the owner must also be obtained.)

Applicants Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

Owners Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**Section 7: Administrative** (For Office Use Only - To be completed by Staff)

1. Application Accepted by:

2. Date Accepted:

3. Fee Paid: \$

4. Receipt No:

5. Planning Board Hearing Date:

6. Commission Hearing Date:

7. Final Disposition:      Approved

Disapproved



- d. That granting the requested variance will not confer on the applicant any special privilege that is denied by these regulations to other lands, structures, or building in similarly situated;

# Grant of Variation

This form shall be completed upon approval of the variance request. One Copy shall be maintained in the file with exhibits and one copy shall be sent to the applicant.

I. Agenda Item #:
II. Legal Description of Subject Property:
III. Street Address of Subject Property:
IV. Date of BOA Public Hearing:
VI. Code Section (s) Board is Granting Relief From:
VII. Description of Variance:
VIII. Conditions of Approval:
IX. List of Exhibits:

THE GRANT OF VARIATION IN CASE NO. \_\_\_\_\_ IS HEREBY APPROVED

\_\_\_\_\_  
Board of Adjustment - Chair

\_\_\_\_\_  
Development Permit Officer

## Submittal Checklist

Item	Dev. Permit	Cond. Use	Amendment	Variance
Application Form	X	X	X	X
Site Plan	X	X		X
Fee	X	X	X	X
Variance Justification				X
Landscape Plan/Buffer Area (May be included on site plan)	X	X		
Project Data (Lot coverage, densities, open space, . . .)	X	X		X
A topographic map with contour intervals at least 20 feet (USGS Topo Map may be used)	X	X		X
Hillside Conservation Plan	For development on slopes greater than 15%			
Riparian Buffer Area Conservation Plan	For Riparian Areas proposed to be less than minimum required buffer			

Site Plan Requirements	Check if Complies
Lot Boundaries & Dimensions	
Size and location of Existing and proposed buildings and structures	
Parking and Loading Spaces, Access Drives	
Water features	
Easements	
Proposed landscaped and screening areas & features	
Required riparian buffer area	

Location of any public water drinking supply	
Adjacent Land Uses	
Location of Freestanding Signs	

<b>Riparian Buffer Area Plan Requirements</b>	<b>Check if Complies</b>
A location or vicinity map. Lot Boundaries & Dimensions	
Size and location of Existing and proposed buildings and structures	
Delineated streams, springs, seeps, bodies of water and wetlands (include a minimum of 200 feet into adjacent properties.	
Schematic representation of the proposed activity by means of maps, graphs, charers or other written or drawn documents so as to enable the development permit officer to make a reasonable informed decision regarding the proposed activity.	
Limits of the 100 year floodplain, if any	
Hydric soils mapped in accordance with the NRCS soil survey of the site area	
Steep slopes greater than 15 percent for the areas adjacent to within 200 feet of streams, wetlands, or other waterbodies,	
A narrative of the species and distribution of existing vegetation within the buffer	
Field delineated public lands if any	
Grading Plan	