

# UPPER O'REA CREEK ZONING REGULATION

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**Resolution No. \_\_\_\_\_**

**UPPER O'REA CREEK ZONING DISTRICT**

**SECTION ONE TITLE, CREATION AND ADOPTION**

This resolution shall be known as the Upper O'Rea Creek Zoning Resolution and is adopted specifically for the Upper O'Rea Creek Zoning District. The district has been created by resolution of the Board of County Commissioners, Park County, Montana.

Pursuant to Section 76-2-101, MCA there has been created a Planning and Zoning Commission for the Upper O'Rea Creek Zoning District which consists of the three County Commissioners, the County Clerk & Recorder, the County Sanitarian, and two citizen members from different zoning districts.

Pursuant to Section 76-2-101, MCA, there is hereby adopted a development pattern consisting of the Upper O'Rea Creek Zoning Resolution and Zoning Map.

The Planning and Zoning Commission shall have all the powers given to it by the state statutes of the State of Montana and by this Resolution.

**SECTION TWO PURPOSE**

Article IX, Sec. 1(1) of the Montana State Constitution provides that "the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations". The purpose of the Upper O'Rea Creek Zoning District is to promote health, safety, peace, morals, comfort and general welfare of the community, and to:

- 1) Maintain the rural character and atmosphere, and allow development that is consistent and compatible with existing growth patterns.
- 2) Preserve scenic resources, traditional viewsapes and open space.
- 3) Preserve air and water quality and minimize soil erosion.
- 4) Preserve fish and wildlife habitat and migratory corridors.
- 5) Prevent the spread of noxious weeds.
- 6) Provide adequate open space, light and air.
- 7) Prevent overcrowding and undue population concentration.
- 8) Ensure high water quality standards.
- 9) Maintain the natural flow and levels of all existing creeks, springs, and wells.
- 10) Protect agricultural lands from the effects of urban encroachment.
- 11) Conserve property values and amenities commensurate with use.
- 12) Avoid unplanned impacts and demands upon public services associated with new development.

13) Ensure beneficial use of water.

**SECTION THREE BOUNDARIES**

The land included in the Upper O'Rea Creek Zoning District is:  
Parts of Township 1 South, Range 8 East, Sec. 33, 34, 35, M.P.M., Park County, Montana, and  
Parts of Township 2 South, Range 8 East, Sec. 3 and 4, M.P.M., Park County,  
Montana

The district boundaries are shown on the attached Official Zoning Map.

**SECTION FOUR ESTABLISHMENT OF DISTRICTS**

The jurisdiction of the Upper O'Rea Creek Zoning District is hereby divided into zones or "districts", as shown on the official zoning map, which together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Resolution.

For the purposes of this regulation, the Upper O'Rea Creek Zoning District may be divided and classified into the following districts:

<u><b>DISTRICT</b></u>	<u><b>DESIGNATION</b></u>
<b>Residential</b>	<b>R</b>
<b>Agriculture and Forestry Exclusive</b>	<b>AFE</b>

Certificate

The Official Map shall be available in the County Clerk and Recorder's Office and shall bear a certificate with the signature of the Chairman of the Board of County Commissioners attested by the County Clerk and the date of adoption of this Resolution. The Certificate should read as follows:

This is to certify that this is the Official Zoning Map referred to in Sections 3, 4, 33, 34, and 35 of the Upper O'Rea Creek Zoning District Resolution.

**CHAIRMAN, BOARD OF COUNTY COMMISSIONERS**

Attested \_\_\_\_\_

Date of Adoption \_\_\_\_\_

If any changes to the map are made by amendment of this Resolution in accordance with Section 14, such changes shall be made to the Official Zoning Map and signed, dated, and certified upon the map or upon the material attached thereto.

Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map kept in the office of the County Clerk and Recorder shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the zoning district.

#### Replacement of Official Zoning Map

In the event that the official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes or additions thereto, the Upper O'Rea Creek Planning and Zoning Commission may adopt and certify a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or admissions in the prior map, but no such corrections shall have the effect of amending the original Zoning Map or any subsequent amendment thereof.

"This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted \_\_\_\_\_ as part of the Zoning Resolution for Upper O'Rea Creek Zoning District, Park County, Montana.

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

Attested \_\_\_\_\_

Date \_\_\_\_\_

Interpretation of Uses - If questions arise concerning the appropriate classification of a particular use, or if the specific use is not listed, the Planning and Zoning Commission shall determine the appropriate classification for that use.

In interpreting use classification, the Planning and Zoning Commission shall determine:

1. That the use and its operation are compatible with the uses permitted in the district wherein the use is proposed to be located.
2. That the use is similar to one or more uses permitted in the district wherein it is proposed to be located.
3. That the use will not cause substantial injury to values of property in the neighborhood or district wherein it is proposed to be located.

4. That neither the intent of the resolution nor the intent of the district will be abrogated by such classification.

## SECTION FIVE

## DEFINITIONS

- A. Accessory Building**  
A subordinate structure on the same lot as the principal or main building and the structure is devoted to a use incidental to the principal use.
- B. Agricultural Use**  
Any management of any land for agriculture; raising of cows, horses, pigs, poultry and other livestock; forestry; horticulture or orchards; including the sale of products grown or raised directly on such land; and including the construction, alteration or maintenance of agricultural buildings, roads, drainage systems, irrigation systems, farm ponds, and fish ponds. Agricultural use does not include commercial hog or chicken establishments or commercial feed lots.
- C. Beneficial Use of Water**  
The use of a reasonable amount of water necessary to accomplish the purpose of the appropriation without waste; i.e.: domestic, household, irrigation, livestock, municipal, recreation.
- D. Best Management Practices (BMP)**  
Practices designed to prevent or reduce point and non-point source water pollution.
- E. Building**  
Any structure including attached decking having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind or nature.
- F. Building Height**  
The vertical distance from the average elevation of the proposed finished grade at the front of a building to the highest point of a flat roof, the deck line of a mansard roof and the mean height between eaves and ridge for gable, hip, and gambrel roofs.
- G. Clearcutting**  
Harvesting of all or almost all trees in an area in one cutting.
- H. Coal Bed Methane (CBM)**  
A natural gas found deep inside and around coal seams. The gas has an affinity to the coal and is held in place by pressure from groundwater. Mining for coal

bed methane involves drilling into coal seams and discharging groundwater to release the gas.

**I. Commercial Feed Lot**

A confined area or structure used for feeding, breeding or holding of livestock for eventual sale. Persons other than the landowner own the livestock. This definition does not include barns, pens or other structures used for livestock operations by the owner of the property.

**J. Commercial Use**

Any use involving the sale, rental, or distribution of goods, services, or commodities, either retail or wholesale, or the provision of recreation facilities or activities for a fee, except as may be allowed as a conditional use home occupation.

**K. Conditional Use**

Uses, other than permitted uses, that may be allowed in a specific zoning category, but which require a public hearing by the governing body to consider additional safeguards to maintain and assure the health, safety, peace, morals and general welfare of the community and to maintain the character of the Upper O'Rea Creek Zoning District.

**L. Development Well**

A well drilled in proven territory (usually within one mile of an existing well).

**M. Dwelling Unit**

A structure or portion thereof which is used exclusively for human habitation and contains complete facilities for cooking, sanitation, living and sleeping. For the purposes of this Resolution, mobile homes and recreational type vehicles are not acceptable dwelling units and shall not be used as such.

**N. Erosion**

1. The loosening and transportation of rock and soil by wind, rain, or running water.
2. The gradual wearing away of the upper layers of the earth.

**O. Family**

One or more persons occupying a premises and living as a single non-profit housekeeping unit, as distinguished from a group occupying a hotel, club, communal development, fraternity or sorority houses. A family unit shall be deemed to include necessary domestic help and may include up to four boarders.

**P. Groundwater**

Water under the earth's surface, often confined to aquifers capable of supplying wells and springs.

**Q. Guest House**

An accessory building designed for use on a temporary basis for occupancy by the landowner's guests.

**R. Hazardous Substance**

A substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare, or to the environment, including but not limited to:

1. A substance identified by the administrator of the United States Environmental Protection Agency as a hazardous substance pursuant to § 102 of CERCLA, 42 U.S.C. 9602, as amended;
2. A substance that is defined as a hazardous substance by § 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14) as amended;
3. A substance that is identified as a hazardous waste pursuant to § 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in Title 40 of the Code of Federal Regulations, part 261; or any petroleum product.

**S. Home Occupation**

Any occupation carried on entirely within a residence or accessory structure by the occupants thereof, which activity is clearly incidental to the use of said residence as a dwelling and does not change the residential character thereof, and is conducted in such a manner as to not give any outward appearance nor manifest any characteristic of a business in the ordinary meaning of the term, and does not infringe upon the rights of neighboring residents to enjoy a peaceful occupancy of their homes.

**T. Individual Tree Selection**

Removal of individual trees from certain size and age classes over an entire timber stand area, maintaining an uneven aged stand through natural regeneration.

**U. Junk Yard**

The use of more than two hundred (200) square feet of the area of any parcel, lot, or continuous lots, for the storage of junk and/or autos, including scrap metals, or other scrap material, and/or for the dismantling or "wrecking" of automobiles or other vehicles or machinery.

- V. Legally Existing**  
The use is in full compliance with all applicable laws, rules, and regulations, including but not limited to possession of and compliance with any permit, license, or other approval required under Federal, State or Local regulations.
- W. Lot or Parcel**  
A parcel or plot of land shown as an individual unit of ownership on the most recent plat or other record of subdivision.
- X. Mitigation Measures**  
Methods or procedures developed for the purpose of reducing or lessening the impacts of an action.
- Y. Mobile Home**  
A portable unit built to be transportable on its own chassis, comprised of frame and wheels, and designed to be used as a dwelling when connected to appropriate utilities.
- Z. Permit**  
Written authorization issued by the Zoning Officer on behalf of Park County or by the Planning and Zoning Commission pursuant to these regulations.
- AA. Permitted Use**  
A use or activity which is allowed by the district regulations for which a permit may be required.
- BB. Principal Use**  
The predominant use of the property.
- CC. Prohibited Use**  
A use or activity which is not allowed within the Zoning District.
- DD. Reclamation**  
Returning the land and surface resources back to the time of pre-surface disturbance activities. This usually involves regrading, replacement of topsoil, revegetation, and other work necessary to restore it for use.
- EE. Release Cutting**  
Removal of competing vegetation to allow desired tree species to grow.
- FF. Residential Single Family Dwelling**  
Any detached building containing one dwelling unit and designed for permanent occupancy by one family.
- GG. Slope or Grade**

The degree of deviation of a surface from horizontal. For the purposes of these regulations slope or grade is expressed in percent.

**HH. Small Group Selection**

Harvesting patches of trees to open the forest canopy and encourage reproduction of uneven aged timber stands.

**II. Split Estate**

Surface and minerals of a given area in different ownership.

**JJ. Stand of Trees/Timber Stand**

A group of forest trees of sufficiently uniform species, composition, age and condition to be considered a homogeneous unit for management purposes.

**KK. Stewardship**

Caring for the land and its resources to pass healthy ecosystems to future generations.

**LL. Stream/Creek**

A natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously flowing water.

**MM. Structure**

Anything constructed or erected above or below ground, affixed to the ground, or attached to something fixed to the ground.

**NN. Surface Water**

Water located on the earth's surface that is associated with a natural watershed or watercourses.

**OO. Thinning**

A cutting made in an immature stand of trees to accelerate growth of the remaining trees.

**PP. Timber Stand Improvement**

Actions to improve growing conditions for trees in a stand, such as individual tree selection, small group selection, thinning or release cutting.

**QQ. Use**

The purpose for which land or premises or a building thereon is designed, arranged or intended, or for which it is occupied or maintained.

**RR. Variance**

Relief afforded to a landowner by the Planning and Zoning Commission from the standards contained in these regulations in accordance with 76-2-223 MCA.

**SS. Viewshed**

The area within view from a defined observation point.

**TT. Water Quality**

The chemical, physical, and biological characteristics of water with respect to its suitability for a particular use.

**SECTION SIX APPLICATION OF DISTRICT REGULATIONS**

Upon passage of these regulations no new building, structure, or land shall be used or occupied, and no new building, structure, or part thereof shall be erected, constructed, reconstructed, moved or structurally altered unless it is in compliance with these regulations.

**SECTION SEVEN DISTRICT REGULATIONS - RESIDENTIAL (R)**

**A. Intent**

The intent of regulations within the Residential District is to establish the area as a scenic and pastoral or forested mountain residential area of the highest possible quality, value, desirability and attractiveness; where the natural beauty and view and the natural and unspoiled state of the property and its watershed will be preserved as near as may be; and where persons may reside and find seclusion and a pleasant environment.

**B. Permitted Uses**

1. Residence. Only one single-family dwelling may be built on any tract or subdivision thereof. Such single-family residence shall not accommodate more than a single family, servants and occasional guests. Only such structures and buildings that are incident to a single-family residence may be built on any tract; and they shall be of compatible design to the residence and comparable in structural quality to the residence.
2. Guest House. One guesthouse subordinate and incidental to the single family dwelling on the same building site may be constructed.

3. Division of Property. No lot or combination of lots shall be divided to contain less than 10 acres. Any such division and any divisions thereafter shall be subject to these terms, conditions, and restrictions.
4. Livestock. Livestock shall be grazed according to accepted range management standards for control of erosion and protection of vegetation.
5. Dogs. All dogs shall be strictly controlled by their owners to prevent any interference with livestock or surrounding property.
6. Trees. No live trees shall be cut except:
  - a) For necessary road, parking and building construction.
  - b) To open a view to surrounding mountains or hills, when a residence is constructed.
  - c) To remove diseased trees or terminally insect infested trees.
  - d) To remove trees which are by reason of defects a hazard to animals and humans.
  - e) As required to create defensible space from wildfire surrounding a structure.
  - f) For forest stewardship through best management practices (BMP) for timber stand improvement to protect property, livestock, animals and people from the dangers of wildfire. The sale of such merchantable timber as is yielded from appropriate culling and thinning is permitted in this instance only.
7. Home Occupation. In accordance with Sec. 10 (1-6).
8. Utilities. All utilities must be buried; including but not limited to electrical lines, cables, communication lines, pipe lines, sewers, and drains.
9. Residents may use temporary living quarters with an approved septic permit for a period of up to two years. Temporary living quarters may include campers, recreational vehicles or other temporary structures.

**C. Conditional Uses**

1. Home Occupation accessory buildings greater than 500 square feet.
2. An existing stick built residence that is moved onto the premises.
3. Mining, quarrying, drilling, boring, exploring or removal of oil, gas or other hydrocarbons, stone, gravel, earth or any other minerals.
4. Use of property for any purpose other than residential or as otherwise detailed in this Resolution.

5. Community receiving antennas, microwave relay stations and high voltage electric transmission lines.

**D. Prohibited Uses**

All uses not specifically allowed as a permitted use or may be allowed as a conditional use are expressly prohibited, including but not restricted to the following activities:

1. No signs larger than 15 square feet shall be placed except for the sale of the property, or identity of the property; signs shall be in keeping with the scenic nature of the area. Signs shall not be illuminated.
2. Automobiles, boats, trailers, campers, machinery or other such objects not in operating condition shall not be permitted to be stored except in enclosed buildings or screened from view. Junkyards are prohibited.
3. No property shall be used at any time for business or commercial activity, other than provided in Sect. 10. Feed lots are prohibited.
4. No residential structure shall be used for living purposes other than what it was designed to accommodate comfortably. No improvement or personal property shall be used as a residence or for living purposes other than the single-family residence permitted.
5. All property, including improvements shall be kept and maintained by the owner in a clean, safe, attractive and sightly condition and in good repair.
6. No activities shall be conducted and no improvements constructed which are or might be unsafe or hazardous to any person or property. No open fire shall be lighted or be permitted except in a contained barbecue unit while attended and in use for cooking purposes, or within a safe and well designed interior fireplace; except such campfires or picnic fires or such controlled and attended fires required for clearing, maintenance of land, or creating defensible space. All open burning shall be in compliance with county burn regulations.
7. Any noxious or offensive activity which may become an annoyance, nuisance, or disturbance to others including but not limited to:
  - a) Noise, fumes, odors that infringe upon the rights of neighboring residents to enjoy a peaceful occupancy of their homes.
  - b) Outdoor lighting shall not illuminate or be reflected upon adjacent property.
  - c) Traffic and noise that is in greater volume than would be normally expected in the neighborhood.
  - d) Activities which cause dust, fine particulate matter, or other air quality degradation in excess of Federal EPA standards.

8. Refuse, garbage and trash shall be kept at all times in a bear-proof container, and kept within an enclosed structure or appropriately screened from view.
9. No hunting shall be permitted.
10. No contaminated water, hazardous substances of any kind, or other water quality degradation shall be allowed to accumulate or be allowed to flow into ground water, creeks, springs or wells. In addition, it is not permitted to contaminate water in excess of Federal EPA standards.
11. No commercial use of private shared roads is permitted except for the purpose of construction of single family structures and their incident structures.
12. No water shall be wasted but must be diverted for a purpose and used beneficially.

**E. Density**

1. One primary residential unit per ten (10) acres.

**F. Structures**

1. The principal residence shall have a minimum of 600 square feet gross area, computed as follows: Interior space will be counted as 1:1, covered decks and garages as 1/2 of the actual area and patios and decks as 1/4 of the actual area.
2. The principal residence shall be constructed with a pitched roof, overhanging eaves at least 18", and a perimeter foundation. No mobile homes allowed.
3. All structures shall have an exterior surface of wood, stone, brick or glass or a combination thereof. Other materials may be used for exterior walls provided that such materials are designed and located in harmony with surrounding structures and natural land features. No exterior siding shall be reflective, tarpaper, or asphalt.
4. Tanks used for storage for gas, fuel, oil or gasoline must be buried or kept concealed.
5. Non-agricultural accessory structures of a permanent nature shall be architecturally compatible with the primary dwelling.
6. No structure of a temporary character (trailer, camper, tent, shack, garage, barn or other outbuilding) shall be maintained at any time either temporarily or

permanently as a residence or for any other purpose except as provided in Section 7(B)9.

7. Setback: Minimum setbacks for residential buildings shall be fifty (50) feet from any property line, road right-of-way or road easement, and one hundred (100) feet from any creek.
8. Accessory structures shall meet setback requirement. Exception: One (1) 2-car garage may be located twenty-five feet from any property line, road right-of-way or road easement. One hundred (100) foot setback from any creek remains the same.
9. The exterior of a construction must be completed within two years after commencement thereof.
10. Fences:
  - a) All fences to be constructed to contain or exclude livestock and be in harmony with the surrounding structures and natural land features.
  - b) No gates shall be constructed across any road when such a road is a means of access to another tract. However, a cattle guard may be installed with the cattle guard to be maintained in such condition as not to slow or hinder the passage of vehicular traffic.
11. Structure height shall not exceed 35 feet as measured from the average ground elevation.

**G. Land Division**

All land divisions shall conform to the requirements of the zoning regulations.

**H. Existing Uses**

Nothing in this regulation shall be construed to prevent or prohibit the use of any legally existing building, structure, lot, or premises in use at the time of adoption of such Resolution.

**SECTION EIGHT**

**DISTRICT REGULATIONS - AGRICULTURE AND FORESTRY EXCLUSIVE (AFE)**

**A. Intent:**

It is the intent of this Regulation to preserve agriculture, grazing, forestry, wildlife habitat, and leisure time as occupational and recreational pursuits and economic endeavors in the upper O'Rea Creek area. Furthermore, it is the intent of this Agriculture and Forestry Exclusive District to protect and preserve

the existing rural character of the upper O'Rea Creek area and to preserve existing developed and undeveloped farm, grazing and forested lands from clear-cutting and unplanned residential, commercial and industrial development by enacting this District. In recognition of the fragile nature of the soil and flora and fauna in this drought-prone Montana area and the precious nature of scarce water resources, water shall be put to beneficial uses without wasting. Respect for the streams, riparian areas, fish and wildlife shall be a high priority. The purpose of the Agriculture and Forestry Exclusive District is, when applied to particular land, to encourage the following land uses:

- a) The cultivation of ground, including the preparation of soil, planting or seeding and managing of trees and crops.
- b) The raising, feeding and managing of livestock, poultry and other animals.
- c) Incidental uses which are customarily and necessarily related to and included within an agricultural and forestry pursuit.
- d) Incidental unrelated uses that are necessary to protect and promote a clean and healthy environment, safety, welfare and convenience of rural residential citizens in an atmosphere free of constant industrial noise and activity.

**B. Permitted Uses**

1. One (1) single-family dwelling on each 40-acre parcel.
2. Grazing, growing, harvesting, raising, breeding, feeding, managing, selling of crops, grains, flowers, livestock, poultry, fish, birds and other animals and related activities connected therewith.
3. Forest stewardship through best management practices (BMP) for timber stand improvement to protect property, livestock, animals and people from the dangers of wildfire.
4. Commercial growing and harvesting of timber and other forest products in accordance with existing laws and guidelines, as detailed below, to protect water quality and quantity, minimize forest soil compaction and erosion, preserve wildlife habitat and migratory corridors, reduce risk of wildfire, and create conditions for regeneration of new trees:
  - a) 76-13-401 through 76-13-414 MCA (the Montana "Timber Slash" Law) requiring private landowner to obtain a Hazard Reduction Agreement from Department of Natural Resources & Conservation (DNRC) before cutting any timber.
  - b) 77-5-302(8) MCA (the Streamside Management Zone Law (SMZ)) prohibiting timber harvesting activities within 50' - 100' (depending on

slope) of any stream or body of water to conserve the integrity of streamside zones.

- c) DNRC's Water Quality 'Best Management Practices' (BMP) guidelines for road construction, stream crossings, harvest design, slash treatment, and clean-up to ensure water quality protection during private forestry operations.
5. Barns, corrals, stables and other outbuildings and structures accessory to the foregoing uses.
6. The sale on the premises of products produced thereon.
7. The packing, storing and processing of produce grown on the land, together with accessory buildings and structures required therefore.
8. The excavation of earth, the drilling of water wells, development of springs and ponds for agricultural, grazing, forestry, raising of fish, recreation and domestic uses in the exercise of water rights.
9. Road building and trails for site access, hiking, riding, all-terrain vehicles, snowmobiles, livestock, agriculture and forestry purposes.
10. Hunting in all areas within the Agricultural and Forestry Exclusive District not subdivided into 80 acres or less, in accordance with all Montana State hunting laws.
11. Parking of trucks, boats, boat trailers, recreational vehicles, all-terrain vehicles, snowmobiles, campers and vehicles and equipment normally used in association with grazing, forestry, agriculture and recreational uses, (not to be interpreted as junk yards).
12. Modular, factory-built homes, as long as they are on a permanent foundation.
13. Residents may use temporary living quarters with an approved septic permit for a period of up to two years.. Temporary living quarters may include campers, recreational vehicles or other temporary structures.
14. Power lines, sewers, water lines, for the purposes of agriculture, grazing, irrigation, forestry, recreation, domestic use and especially such utility lines as are pre-existing. Power and water lines serving buildings and residences are to be buried.
15. Posting of such notices as: No Trespassing, No Hunting.
16. This AFE District recognizes the nature of agricultural residences and buildings such as silos and barns. The building heights are to be appropriate for

agricultural pursuits. Setback: Minimum setbacks for all buildings shall be fifty (50) feet from any property line, road right-of-way or road easement, and one hundred (100) feet from any permanent stream.

17. Non-agricultural home occupations and hobbies when conducted within buildings and structures, the principal use of which is one of the foregoing uses.

**C. Conditional Uses**

1. Facilities for the purpose of selling products grown on the land, together with accessory picnic facilities and similar accommodations for the convenience of patrons.
2. Non-commercial airstrips for the use of aircraft used for agricultural purposes, together with accessory buildings and structures required therefore.
3. Residential buildings, including mobile homes, to house persons and families who labor, either continuously or seasonally, on the same farm, ranch, or land unit on which such buildings are situated (40 acre minimum does not apply).
4. Commercial feed lots, commercial chicken houses, commercial pig houses.
5. Mining, quarrying, drilling, boring, exploring or removal of oil, gas or other hydrocarbons, stone, gravel, earth or any other minerals.
6. Commercial snowmobile facilities.
7. Community receiving antennas, microwave relay stations and high voltage electric transmission lines.
8. Use of property for any purpose other than as detailed in this Resolution.

**D. Prohibited Uses**

All uses not specifically allowed as a permitted use or may be allowed as a conditional use are expressly prohibited, including but not restricted to the following activities:

1. Any forestry or agricultural practices that cause degradation of surface or groundwater, soil erosion, wildlife habitat fragmentation or viewshed degradation.
2. Junkyards.
3. No activities shall be conducted and no improvements constructed which are or might be unsafe or hazardous to any person or property. No open fire shall be lighted or be permitted except in a contained barbecue unit while attended and in use for cooking purposes, or within a safe and well designed interior fireplace;

except such campfires or picnic fires or such controlled and attended fires required for clearing, maintenance of land, or creating defensible space. All open burning shall be in compliance with county burn regulations.

4. Any noxious or offensive activity which may become an annoyance, nuisance, or disturbance to others including but not limited to:
  - a) Noise, fumes, odors that infringe upon the rights of neighboring residents to enjoy a peaceful occupancy of their homes.
  - b) Outdoor lighting shall not illuminate or be reflected upon adjacent property.
  - c) Traffic and noise that is in greater volume than would be normally expected in the neighborhood.
  - d) Activities which cause dust, fine particulate matter, or other air quality degradation in excess of Federal EPA standards.
5. Refuse, garbage and trash shall be kept at all times in a bear-proof container or kept within an enclosed structure.
6. No contaminated water, hazardous substances of any kind, or other water quality degradation shall be allowed to accumulate or be allowed to flow into ground water, creeks, springs or wells. In addition, it is not permitted to contaminate water in excess of Federal EPA standards.
7. No water shall be wasted but must be diverted for a purpose and used beneficially.

## **SECTION NINE NONCONFORMING USES AND LOTS**

### **Intent**

The lawful use of a building or premises existing at the time of the adoption of this Resolution may be continued, although such use does not conform with the provisions of the Resolution. It is the intent of this resolution that nonconformities shall not be enlarged upon, expanded or extended, nor used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nothing in this Resolution shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment to this Resolution. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation, demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation, demolition or removal shall be deemed to be actual construction.

Nonconforming Lots of Record - Lots of record that existed prior to the adoption of this Resolution may be used for any allowed use within the district providing that they can still meet other requirements of the district.

Where lots are larger than required by this Resolution, said lots may be subdivided into smaller lots except no parcel may be divided so as to create a lot smaller in area than required by this Resolution.

Nonconforming Uses of Land - Where at the time of passage of this Resolution lawful use of land exists which would not be permitted by the regulations imposed by this Resolution, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Resolution.
2. No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Resolution.
3. If any such nonconforming use of land ceases for any reason for a period of more than three (3) years, any subsequent use of such land shall conform to the regulations specified by this resolution.
4. No additional nonconforming structure in connection with the requirements of this Resolution shall be erected in connection with such nonconforming uses of land.

Nonconforming Structures - Where a lawful structure exists at the effective date of adoption or amendment of this Resolution that could not be built under the terms of this Resolution by reason of restriction on lot area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be altered or enlarged in any way that increases the nonconformity, but the structure may be altered to conform to this Resolution.
2. Should any nonconforming structure or nonconforming portions of a structure be destroyed by any means to the extent of more than 50 percent of its replacement cost, it shall if possible be constructed in conformity with the provisions of this Resolution. If it is not possible for the reconstruction to conform to the Resolution a variance shall be granted.

3. Should such a structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

Nonconforming Uses of Structures - If lawful use of a structure or of structures and premises exists on the date of adoption or amendment of this Resolution that would not be allowed in the district under the terms of this Resolution, the lawful use may be continued while it remains otherwise lawful providing that:

1. No existing structure devoted to a nonconforming use shall be enlarged, extended, constructed, or structurally altered, unless the use is changed to a permitted use.
2. Nonconforming use of building, structures, or premises may be changed to another nonconforming use, provided that a conditional use permit is obtained from the Planning and Zoning Commission determining whether or not to grant the conditional use permit. The Planning and Zoning Commission shall determine that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use.
3. Whenever nonconforming use of a structure or a premise cease for three years, the structure or premises shall not thereafter be used except in conformance with the regulations of the district in which it is located. The term "ceases" as used in this subsection shall mean that the activity in question has not been in operation for a period of three years.

Repairs and Maintenance - On any nonconforming structure or portion of the structure, work may be done on ordinary repairs and fixtures, wiring, plumbing, painting, or repair or replacement of non-bearing walls, provided that such work does not increase the size of the building. Nothing in this Resolution shall prevent the strengthening or restoring to a safe condition of any building or part declared to be unsafe by an official charged with protecting the public safety.

Conditional Uses - Conditional uses shall not be deemed a nonconforming use.

## **SECTION TEN      HOME OCCUPATIONS**

Home Occupations are permitted in the district. Home Occupation shall have no effect on the neighborhood. Home Occupations shall be required to obtain a zoning compliance permit. There will be no charge for a home occupation permit.

### Home Occupations

1. Work on the premises shall be carried on wholly within the principal building, or other accessory structure not to exceed five hundred square feet unless a conditional use permit for the accessory structure is obtained from the Planning and Zoning Commission.
2. Not more than four (4) people who are not a member of the applicant's immediate family and who are not a resident of the applicant's home may be employed on-site.
3. Home occupations will be prohibited from creating visible or audible interference in radio or television receivers or cause fluctuations in line voltage outside the dwelling unit.
4. There shall be no offensive noise, vibration, smoke, odors, heat or glare produced as a result of the home business.
5. The primary structure shall remain a residential dwelling structure; there shall be no exterior display or alteration that changes the residential character of the premises.
6. Signs shall not be greater than fifteen square feet, shall be attached to the dwelling or accessory structure, and shall not be illuminated. Signs shall be of material compatible with the structure to which they are attached.

## **SECTION ELEVEN            CONDITIONAL USES**

### **A.    Intent**

The intent of conditional use permits is to provide for specific uses, other than those specifically permitted in each district, which may be appropriate under certain safeguards or conditions. In so doing, these conditional uses will promote the public health, safety, peace, morals, and general welfare pursuant to Sec. 2 (Purposes) of this Resolution, including but not limited to:

1. Protect surface and groundwater quality.
2. Encourage the conservation of important wildlife habitat.
3. Prevent the degradation of soil, water, air and plant life from point and non-point sources.
4. Prevent erosion.
5. Improve air quality.
6. Protect views and viewsheds.
7. Require new industrial developments to contribute their appropriate share of the costs and impacts to public services and on public facilities.

### **B.    Conditional Use Requirements**

No structure or land may be used for any purpose in any district where such use is not a permitted use, unless such use is listed as a conditional use and approval for that use is obtained through the proper procedure.

**C. Conditional Use Permits (CUP)**

1. A CUP shall be granted only by the Planning and Zoning Commission when their findings are that:
  - a) The use conforms to the objectives of the Upper O'Rea Creek Zoning District and the intent of this Resolution, and;
  - b) Such use will not adversely affect nearby properties or their occupants, or that financial security has been provided to mitigate any such adverse affect. The establishment, maintenance, or operation of the use or building applied for will not under the circumstances of the particular case be detrimental to the Purposes (Sec. 2) of this Resolution.
  - c) Such use meets density, coverage, yard, height, and all other applicable regulations of the district in which it is to be located, unless otherwise provided for in this Resolution, and;
  - d) Public hearings have been held, after the required legal notices have been given and the public has been given a chance to be heard upon the matter.
2. All exploration, development, and production relating to oil, gas, mining and coalbed methane (CBM) including but not limited to test wells, production wells and compressor stations, shall require review under the conditional use permit process described in Section 11(E)2(a-1) (Conditional Use Permit Procedure).

**D. Permits, Terms of Issuance**

A conditional use permit may be issued for a revocable, temporary, permanent or term period. It may contain such conditions as are authorized by State statute or this Resolution, including but not limited to the regulation of:

1. Vehicular ingress and egress.
2. Right-of-way.
3. Lighting.
4. Noise.
5. Air Quality.
6. Erosion.
7. Water quality and quantity.
8. Time of activities that have off-site impacts.
9. Landscaping and its maintenance thereof.
10. Placement of uses on the property.
11. The method of water disposal.
12. The nature and extent of use.

13. The length of time such use may be permitted.
14. Noxious weeds.
15. Public safety measures, including fire protection.
16. Requirements for reclamation of property.

**E. Conditional Use Permit Procedure**

1. Applicants shall complete and return a conditional use permit application with appropriate supplemental information to the Planning and Zoning Commission, accompanied by a \$350.00 filing fee.
2. The following additional information shall be provided with a conditional use permit application for all exploration, development and production of oil, gas, mining and CBM well or associated structures or facilities:
  - a) Cover letter describing project and submittal material.
  - b) Copy of associated mineral leases.
  - c) Copy of order from the Montana Board of Oil and Gas Conservation, and associated stipulations.
  - d) Name and address of property owners within a one-and-a-half mile radius of proposed project, including postage for certified mail to each address.
  - e) Name and location of all water wells within a one-and-a-half mile radius of proposed site.
  - f) Detailed site inventory map and site development plan (1" = 50'), to include all existing and proposed structures, well pad location(s), rights-of-way, fencing, lighting, pipelines, pertinent surface features, areas of wildlife and wildlife habitat, and all development and mitigation measures associated with application. Applicant shall submit color photos of well location, and of area from well to north, south, east and west.
  - g) Complete written description of project including but not limited to: proposed hours of operation; duration of project; operation of project, including staffing schedule(s) and estimated trips per day; traffic study and/or other information as required by the Park County Road & Bridge Superintendent; fire and disaster mitigation plan(s); etc.
  - h) Submittal of a Noxious Weed Control and Revegetation Plan as approved by the Park County Weed Control District.
  - i) Plans for reclamation of all disturbances associated with project(s).
  - j) Plans for mitigation of identified environmental impacts.
  - k) Plans for how the developer will comply with §85-2-521, MCA, regarding disposal of all ground water involved with coal bed methane wells.
  - l) Any additional information as deemed necessary by the Planning and Zoning Commission.

3. The Planning and Zoning Commission shall then cause to be made such investigation bearing on the application as will provide necessary information to assure that the action on each application is consistent with the intent and purpose of this Resolution.
4. Upon completion of the investigation, the Planning and Zoning Commission shall hold a public hearing to gather needed facts from all interested parties. The Planning and Zoning Commission may continue such hearing, to take additional information. The Planning and Zoning Commission shall approve, conditionally approve or deny the application. Written findings of fact shall be sent to the applicant within fifteen (15) days of the Planning and Zoning Commission's decision.
5. Notice of public hearing for conditional use permits shall be published twice in a newspaper of general circulation within the county at least fifteen (15) days prior to the hearing. Adjacent property owners shall be notified by certified mail.

**F. Security**

The Planning and Zoning Commission shall require financial guarantees in the form of bonds, cash deposits and/or other evidences of compliance in order to secure compliance with conditions imposed.

**G. Expiration**

All CUPs issued for a definite term shall automatically expire at the end of the term.

**H. Authorized Use**

For purposes of this Resolution, a conditional use permittee shall not be considered as engaging in the authorized use on the site until all conditions of approval have been satisfied.

**I. Revocation or Modification of Permit**

Upon notice of public hearing, conditional use permits may be revoked or modified by the Planning and Zoning Commission under any of the following circumstances:

1. If the person holding this permit or variance has not engaged in the authorized use.
2. If the person holding the permit or variance has not complied with conditions, upon which it was issued.
3. If conditions have changed substantially from those at the time the permit was granted.

4. Revocation or modification is necessary to protect the health, safety and welfare of the are in which the subject property is situated or the residents of the County, or to preserve the integrity of existing use patterns in the area in which the subject property is situated.
5. If the person holding the permit has not materially changed his position by detrimentally relying on said conditional use permit.

Modification or revocation may only be had after following the same formal procedure for notice and hearing required for the granting of a permit or variance in the first instance. Appeals from modification or revocation shall be as set forth in the Resolution.

**J. Zoning Compliance Permits**

No zoning compliance permit shall be issued other than in accordance with the conditions and terms of the conditional use permit. No zoning compliance permit shall be issued until time for appeal on a conditional use permit has elapsed and all appeals finally decided.

**K. Fees, Charges and Expenses**

The applicable fees shall accompany all conditional use permit applications. Any consulting fees incurred by Park County during the review process of a conditional use permit shall be the responsibility of the applicant. A bond may be required as part of the mitigation measures if the Planning and Zoning Commissions deems it necessary. All fees, charges and expenses shall be paid before the conditional use permit is issued and before beginning construction. All required bonds or other assurances shall be in place.

**L. Complaints and Enforcement**

1. Whenever a violation of this Interim Regulation occurs or is alleged to have occurred, any person may file a written complaint with the County Commission or the Zoning Enforcement Agent. The complaint shall state fully the causes and basis for the complaint.
2. Upon receipt of a complaint, or upon its own initiative, the Zoning Enforcement Agent shall record the complaint, immediately investigate and refer the matter to the Commission for review of the staff investigation.
3. Injunction. Upon order of the Commission, the County Attorney may bring an action in the name of the County of Park and the Interim Zoning District in the District Court to enjoin violations of this Interim Regulation.

Authorization to Grant or Deny Variances - The Zoning Commission may authorize a variance from the requirements of this Resolution when it can be shown that because of special and unusual circumstances related to a specific piece of property, strict application of the Resolution would cause an undue or unnecessary hardship. No variance shall be granted to allow the use or development of property for a purpose not authorized within the zone in which the proposed development would be located. In granting a variance, the Zoning Commission may attach conditions it finds necessary to achieve compliance with the criteria of this Resolution.

Criteria for Granting a Variance - A variance may be granted only upon finding compliance with all of the following criteria.

1. Exceptional or extraordinary circumstances apply to the property that do not apply generally to other properties in the same zone or vicinity and that result from lot size or shape, topography, or other circumstances over which the owners of property have had no control since enactment of this Resolution.
2. The variance is necessary for the preservation of a property right of the applicant that is substantially the same as that possessed by owners of other property in the same area.
3. The variance would not be materially detrimental to property in the same zone or vicinity in which the property is located.
4. The variance requested is the minimum variance that would alleviate the hardship.

#### Procedure

1. Written applications for variance shall be filed with the Zoning Enforcement Agent. A fee of \$200.00 shall accompany each application. An application shall not be regarded as having been filed until the fee is paid.
2. The Planning and Zoning Commission shall designate the Zoning Enforcement Agent to review the application and determine if the application meets the requirements of the zoning Resolution.
3. There shall be a hearing for each variance application. The hearing shall be held at a time and place set by the Planning and Zoning Commission. Testimony shall be taken by the Planning and Zoning Commission from persons interested in said application and from the Zoning Enforcement Agent.
4. Notice of hearing shall be published twice in a newspaper of general circulation within the county at least fifteen (15) days prior to the hearing date. In addition, the county shall send a certified letter to record owners of property adjoining a proposed variance.

5. In approving an application for a variance, the Planning and Zoning Commission may designate such lawful conditions as will secure substantial protection for the public health, safety, and general welfare and shall find the request to meet the criteria set forth in this Resolution. Any approval under this section shall be subject to the terms of the conditions designated in connection therein.
6. Written findings of fact approving or denying the application shall be sent to the applicant within fifteen (15) days of the decision on the application.

## **SECTION THIRTEEN                      ADMINISTRATION**

Employees and Officers - In accordance with Section 76-2-102, MCA, the Upper O'Rea Creek Planning and Zoning Commission is hereby authorized to appoint and hire such employees and officers as shall be deemed necessary to carry out the provisions of this regulation, including a Zoning Enforcement Agent.

The Zoning Enforcement Agent may be an employee of the Park County and if so, shall perform duties hereunder without remuneration in excess of their regular salary.

If the Zoning Enforcement Agent shall find that provisions of this Resolution are being violated with respect to zoning requirements, the Agent shall notify in writing the person responsible for such violations, indicating the nature of the violation and requesting that action be taken to correct it. The Zoning Enforcement Agent shall request discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Resolution to ensure compliance with or prevent violation of its provisions.

The Planning and Zoning Commission shall appoint a volunteer local five member advisory committee to act in an advisory capacity to the Planning and Zoning Commission. The advisory committee shall advise the Planning and Zoning Commission on variances, zone changes and conditional uses.

Permits - No building or other structure shall be erected, moved, or added to and no land use shall be changed without a valid zoning compliance permit as prescribed herein. No zoning compliance permit shall be issued without a valid septic permit and any other permits required by the county, state, or federal government.

The zoning compliance permit shall be obtained from the Zoning Enforcement Agent.

The application shall include such information as lawfully may be required by the Zoning Enforcement Agent including existing or proposed buildings and land; the number of families, housing units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for enforcement of this Resolution.

Conformance - No permit of any type shall be issued unless in conformance with the regulations contained within this Resolution. Permits issued on the basis of plans and applications approved by the Zoning Enforcement Agent authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction. Use, arrangement, or construction at variance with that authorized shall be a violation of this Resolution.

Conditional use permits and variances by the Planning and Zoning Commission shall be considered to be in conformance with this Resolution. However, zoning compliance permits shall be issued only in accordance with the terms set forth in the conditional use permit and variance sections of this Resolution.

Expiration of Permits - Every zoning compliance permit issued by the Zoning Enforcement Agent under the provisions of this Resolution shall become null and void, if the building or work authorized by such permit has not commenced within six months from the date of issuance. If the permit is expired, a new permit shall be required. All exterior construction shall be completed within 18 months of the date of issuance of the zoning compliance permit.

Permits Issued Contrary to this Resolution - Any zoning compliance permit, or any authorization issued, granted, or approved in violation of the provisions of this Resolution, shall be null and void and of no effect without the necessity of any proceedings or a revocation or nullification thereof, and any work undertaken or use established pursuant to any such zoning compliance permit or other authorization shall be unlawful.

Duties of the Zoning Enforcement Agent - It shall be the duty of the Zoning Enforcement Agent to issue all zoning compliance permits and review all applications submitted to the Planning and Zoning Commission for conditional use permits, variances, rezoning requests and amendments to the Resolution. The Zoning Enforcement Agent and staff shall work for the Planning and Zoning Commission and be in an advisory capacity making recommendations on all requests. The Zoning Enforcement Agent and staff shall also investigate any possible violations to the zoning Resolution.

Appeals - Appeals from the decision of the Zoning Enforcement Agent concerning interpretation of this Resolution may be taken in writing to the Planning and Zoning Commission. Such an appeal from the decision of the Zoning Enforcement Agent must be taken within ten (10) working days in writing to the Planning and Zoning Commission.

A public hearing shall be held on any appeal only if the matter appealed was required by the terms of this Resolution to be decided after holding a public hearing. Such hearing shall be held in accordance with this Resolution.

Schedule of Fees, Charges and Expenses - The Planning and Zoning Commission shall establish a schedule of fees, charges, and expenses and a collection procedure for zoning compliance permits, appeals and other matters pertaining to this Resolution. The schedule of fees listed

below shall be effective and may be altered or amended only by the Planning and Zoning Commission.

No permit, zone change, conditional use, or variance shall be issued unless or until such costs, charges, fees or expenses listed below have been paid in full, nor shall any action be taken on proceedings before the Planning and Zoning Commission, unless, or until, preliminary charges and fees have been paid in full.

Amendments .....	\$350
Zoning Changes.....	\$350
Variance.....	\$200
Conditional Uses.....	\$350

Zoning compliance permits:

Value of Construction	
5,000-10,000.....	\$100
10,000-50,000.....	\$125
Greater than 50,000.....	\$150

**SECTION FOURTEEN                      MINIMUM REQUIREMENTS**

In their interpretation and application, the provisions of this Resolution shall be held to be the minimum requirements adopted for the promotion of the health, safety, and general welfare of the zoning district. Whenever the requirements of this Resolution are at variance with the requirements of any other lawfully adopted rules or regulations the most restrictive, or that imposing the higher standards shall govern.

**SECTION FIFTEEN                      AMENDMENTS AND CHANGES**

Zoning Resolution Amendments - This Resolution may be amended whenever the public necessity and convenience and general welfare requires such amendment and according to the procedure prescribed by law, and this Resolution.

An amendment may be initiated by:

1. The petition of one or more land owners of property affected by the proposed amendment, which petition shall be signed by petitioning land owners and shall be filed with the Zoning Enforcement Agent by a fee of \$350.00 payable to the County of Park, no part which shall be returnable to the petitioner; or
2. Resolution of intention of the Board of County Commissioners; or
3. Resolution of intention by the Planning and Zoning Commission. Such amendment shall not become effective until after a public hearing has been held before the Planning and Zoning Commission, legal notice of which shall have

been given in a newspaper of general circulation in the County not less than fifteen (15) days prior to the date of hearing.

**SECTION SIXTEEN VIOLATION OF RESOLUTION**

Compliance Regarding Violations - Whenever a violation of this Resolution occurs or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Planning and Zoning Commission or the Zoning Enforcement Agent. The Zoning Enforcement Agent shall then properly record the complaint and immediately investigate and take action thereon as provided by this Resolution.

Penalties - Failure to comply with the provisions of this ordinance or failure to comply with any of its requirements, including conditions and safeguards established in connection with the grant of variances or conditional uses or any of the requirements for conditions imposed by the Planning and Zoning Commission constitutes a violation of this ordinance. If any person is in violation of the ordinance or fails to comply with any of its requirements *Park County shall take action to obtain an injunction against the violator to prevent further action, plus costs and damages.*

**SECTION SEVENTEEN INVALIDATION**

If any Section, subsection, subdivision, sentence, clause, paragraph or phrase of this regulation or any attachments hereto is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of these regulations to render the same operative and reasonably effective for carrying out the main purpose intention of the regulation.

**SECTION EIGHTEEN ADOPTION**

This entire regulation was adopted on \_\_\_\_\_, by the Upper O'Rea Creek Planning and Zoning Commission.

\_\_\_\_\_  
Ed Schilling Chairman

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Dan Gutebier Member

\_\_\_\_\_  
Ed Carrell Member

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Denise Nelson                      Member

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C. Randall Taylor                  Member

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Member

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Member