

(DRAFT)

**PARK COUNTY AGRICULTURAL AND RESIDENTIAL
PRESERVATION ZONING DISTRICT REGULATIONS**

May 16, 2022

I. TITLE

These regulations and the accompanying map(s) shall be known as, and shall be cited and referred to as, the “Park County Agricultural and Residential Preservation District or District” in accordance with and exercising the authority of Section 76-2-201, MCA.

II. PURPOSE

In addition to the stated purposes below, the Agricultural and Residential Preservation Zoning District is designed to promote public health, safety, morals and general welfare [Section 76-2-203,1,b,ii, MCA] by minimizing and/or eliminating impacts resulting from certain non-residential and non-agricultural land-use developments within the District. In addition, the District and Regulations will:

- A. Help secure safety from fire and other dangers, as well as facilitate adequate provisions of transportation, water, sewerage, schools, parks and other public requirements by considering all aspects of non-residential or agricultural land-use developments against specific criteria, designed to identify and mitigate associated impacts [Section 76-2-203,1,b,i,iii, MCA].
- B. Consider the reasonable provision of adequate light and air, impacts to motorized and non-motorized transportation systems, and the character of the district and its peculiar suitability for particular uses [76-2-203,2,a,b, MCA] through specific review criteria found in section XI of these Regulations;
- C. Conserve the value of buildings and encourage the most appropriate use of land throughout the jurisdictional area [Section 76-2-203,2,d, MCA] through specific review criteria found in section XI of these Regulations;
- D. To protect agricultural production throughout the district;
- E. To protect residential development throughout the district;
- F. To consider all forms of development through thoughtful discussion and mitigation of associated impacts;
- G. To provide the local governing body the ability to address the concerns of county residents through a specific public process for considering/reviewing non-residential and non-agricultural development proposals;
- H. To mitigate impacts from development on county infrastructure, including, but not limited to, roads, bridges, culverts, etc.;

- I. To mitigate impacts from development on county services, including, but not limited to; water supply, sewage disposal, law enforcement, fire protection, emergency services, transportation systems, noxious weed control;
- J. To protect wildlife and wildlife habitat;
- K. To minimize wildlife and human conflicts;

III. AUTHORITY & ADMINISTRATION

- A. The Park County Agricultural and Residential Preservation Zoning District is adopted under the authority of Section 76-2-201, MCA.
- B. The Planning Department is designated by the County Commissioners of Park County, Montana, to administer these regulations and is hereby referred to as the Zoning Administrator.

IV. SEVERABILITY

If any provision of this District is held invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this District are declared to be severable.

V. BOARD OF ADJUSTMENTS

The County Commissioners shall create and appoint a Board of Adjustment. The Board of Adjustment shall consist of five members of the public residing within the boundaries of the District. Board members shall serve without compensation. Board of Adjustment members shall be appointed for a term of 2 years, with staggered terms. The Board of Adjustments will review and determine all Conditional Use Permit Applications under Section XI of these regulations.

VI. APPLICABILITY

- A. This District applies to all unincorporated areas of Park County, with the exception of the community of Gardiner [as defined by the Gardiner Resort District] and the area encompassed by the Cooke City-Silvergate-Colter Pass Zoning District.
- B. In their interpretation and application, the provisions of this District may be regarded as the minimum requirements for the protection of the public health, safety, and general welfare.
- C. This District is not intended to abrogate or annul any other regulations applicable to a tract of land, including but not limited to, other zoning, building codes, private covenants, or floodplain regulations.
- D. Where the provisions of this District impose a greater restriction on land, buildings, or structures than is imposed or required by such existing provisions of law, ordinance, resolution, contract, or deed, the provisions of this District shall control. The powers, duties, and terms of office for the Board of Adjustment shall comply with Sections 76-2-221 through 76-2-228, MCA, which grant the following powers:

- i) To hear and decide appeals where it is alleged there is error in any order, requirement, decision. Or determination made by an administrative official in the enforcement of this part or of any resolution adopted pursuant thereto;
- ii) To hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution;
- iii) To authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution shall be observed and substantial justice done;
- iv) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the provisions of this part, 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.

VII. DEFINITIONS

- A. Applicant: A property owner(s), or representative granted with power of attorney, applying for a Conditional Use Permit under section X of these regulations.
- B. Agricultural: See definition included under section VIII.B.2 [Permitted Land Use].
- C. Bed and Breakfast Establishment: A private owner or manager occupied residence that is used as a private residence but in which; breakfast is served and is included in the charge for a guest room; and the number of daily guests served does not exceed 18 (See ARM 37.111.302 and Section 50-51-102, MCA).
- D. Agricultural Water User Facilities: Any part of an irrigation system historically used to produce an Agricultural product on property used for Agricultural purposes as defined in these Regulations.
- E. Conditional Use Permit: A permit which allows certain land use not otherwise permitted under section VIII [Permitted Land Use] of these regulations, and outlined under section X of these regulations.
- F. Day Care Facilities: Daytime care for the needs of people who cannot be fully independent, such as children or elderly people.
- G. District: District refers to the “Park County Agricultural and Residential Zoning District Map and Regulations.”
- H. Government Facilities: Any Structure, Development or Land Use owned and maintained by a State, Tribal, Local or Federal Government
- I. Home Occupations: Any occupation, trade, profession, or craft carried on by an occupant of a residential property, building, or any accessory structure, and which is secondary to the residential use of the building(s) or property, and which is not generally open to the public, does not advertise open hours, and does not provide Public Accommodations.
- J. Long-Term Rental: Any Residential Dwelling Unit that is rented or leased for thirty (30) consecutive days or longer.

- K. Nonconforming: Any land use not otherwise permitted under section VIII of these regulations, and in place prior to the adoption of these regulations.
- L. Park County: A political Subdivision at the State of Montana.
- M. Permanent Structure: Any structure used for residential purposes that has a permanent foundation, a connected water service, and a connected sanitary sewer service. Structures otherwise referred to as mobile homes or manufactured home shall also be classified as permanent structures when they meet these requirements.
- N. Permitted Land Use: See definition included in section VIII of these regulations.
- O. Public Establishment: ARM 37.111.101(4)—means any facility providing sleeping accommodations to the public, such as a hotel, motel, tourist home, or rooming house, including boarding house, hostel, or vacation rental. For the purpose of this chapter, establishment does not include a “bed and breakfast, guest ranch or outfitting and guide facility, as defined under the Administrative Rules for Montana (ARM).”
- P. Public Health and Safety: A condition of optimal well-being, free from danger, risk, or injury for community at large, or for all people, as well as for the welfare of a specific individual or small class of persons.
- Q. Residential: See definition included under section VIII.B.1 [Permitted Land Use].
- R. Residential Dwelling: Any permanent structure used for human habitation by one family unit for any period of time, including manufactured homes and mobile homes
- S. Short-Term Rental: Any Residential Dwelling that is rented/leased on a daily or weekly basis. Does not include Short-Term Rental(s) which are classified as a Campground, Glampground, Hotel, Motels, RV Parks under Chapter 50, Part 52, MCA, or Hotels or Motels under ARM 37.111.101;
- T. Wildlife: Wildlife are animals (e.g. mammals, birds, reptiles, fish) that are neither human nor domesticated, existing in their natural environment.
- U. Wildlife Habitat: Wildlife habitats are geographic areas containing physical or biological features essential to wildlife for breeding, rearing, nesting, and/or winter feeding and forage, or important for migratory patterns; and/or essential to the conservation of listed endangered and threatened species under the Endangered Species Act.
- V. Zoning Administrator: Park County Planning Staff designated by the Park County Commission to administer zoning regulations and enforcement.

VIII. REQUIREMENTS OF DISTRICT

- A. This District will regulate land use within the District boundaries. No type of land use is strictly prohibited, but may be prohibited if a Conditional Use Permit is required and associated impacts are not mitigated through the Conditional Use Permit process under Section X of these regulations. All Land Uses under Section VIII.B (below) do not require a physical permit prior to

implementation. Landowners are encouraged to contact the Park County Planning Department prior to development or use of land to ensure compliance with these Regulations.

B. Permitted Land Uses: The following land uses are permitted within the District and do not require review and approval under these Regulations prior to implementation.

1. Residential: The following Residential land uses are permitted under these regulations:

- a. Single family dwelling, attached or detached, which are for use as permanent human habitation, seasonal human habitation or long-term rental(s) and shall include an approved residential wastewater management system connected to each dwelling unit, and including all accessory structures and uses;
- b. Short-Term Rental(s); Residential Dwellings with an approved residential wastewater management system connected to each dwelling, and shall be comprised of Permanent Structures only, including all associated buildings and uses. Does not include Short-term rental(s) which are classified as a Campground under Chapter 50, Part 52, MCA, or Glampgrounds, RV Parks, Hotels, Motels or other Public Establishments under ARM 37.111.101;
- c. Bed and Breakfast Establishment;
- d. Accommodations for a licensed Guest Ranch, Outfitting or Guide Facility, as defined under Montana ARM 37.111.101;
- e. Non-Commercial Recreation Activities;
- f. Home Occupations;
- g. Schools;
- h. Day Care Facilities;
- i. Government Facilities

2. Agricultural: Activities related to the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery and horticultural crops that are raised, grown, or produced for commercial purposes on lands taxed as agricultural by the State of Montana. Also includes all commercial and non-commercial farming, and all 4-H related projects.

3. Land Use under existing County Regulations: Any proposed land use or development falling under one of the following existing regulations is exempt from review under the District and Regulations;

- a. Subdivisions: Subdivisions, reviewed under the Montana Subdivision and Platting Act and the local Subdivision Regulations, do not require consideration within the District Regulations. Subsequent use of a subdivided lot which is not considered a Permitted Land Use under this section will only be permitted with a Conditional Use Permit under Chapter X of these Regulations.

- b. Buildings for Lease or Rent: Any proposed land use or development which falls under the purview and authority of the Park County Buildings for Lease or Rent Regulations, and requires a permit under the Buildings for Lease or Rent Regulations is exempt from review under the District Regulations. Proposed land use or developments under this section must obtain approval by the Governing Body (Park County Commission) in order to maintain exempt status under this provision.
 - c. Citizen Initiated Zoning District(s): Any proposed land use or development which falls under an existing Citizen Initiated Zoning District, and which already contemplates impacts resulting from the proposed land use or development, is exempt from review under the District Regulations.
- C. Conditional Land Use: All land uses which do not meet the definition of “Residential” or “Agricultural” land use (above), and are not exempt under section B.3 or IX of these Regulations, shall apply for and receive an approved Conditional Use Permit under section X of these Regulations prior to implementation.

IX. PREEXISTING NONCONFORMING LAND USE

A Nonconforming Land Use in place before the adoption of this District may continue as nonconforming until one of the following occurs:

- A. The Nonconforming Land Use ceases to operate for a period of one year or longer. If a Nonconforming Land Use ceases for a period of one year or longer, as determined by Park County, the landowner will be required to either receive an approved Conditional Use Permit, or remove the nonconforming land use and associated development;
- B. The Nonconforming Land Use is increased or modified, as determined by Park County, and in a manner which increases the footprint of the non-conforming use by twenty-five percent or greater, or increases the total square footage of structure(s) by twenty five percent or greater, and does not bring the land use in compliance with the Permitted Land Use Definitions under Chapter VII-B of these Regulations. Under this provision, a determination by Park County of a twenty-five percent increase or modification of a nonconforming use, will require either, receipt of a Conditional Use Permit under Chapter X of these Regulations, or removal of any Land Use or development not permitted under Chapter VIII-B of these Regulations.

X. CONDITIONAL USE PERMITS

All landowner(s) are required to receive a Conditional Use Permit for any land use or development not otherwise permitted in the District under section VIII.B. or permitted as a Preexisting Nonconforming Land Use under section IX, prior to the construction/placement of any structures or infrastructure associated with a proposed land use.

- A. Conditional Use Permit Application: All landowners seeking a Conditional Use Permit shall first obtain the required Conditional Use Permit Application provided by the Park County Planning Department. Landowners are encouraged to meet with Planning staff prior to submittal to go over the District requirements and review process.

B. Conditional Use Permit Application Review Process: All Conditional Use Permit Applications and the required review fee _____ shall be submitted to the Park County Planning Department in electronic and written form.

1. After-the-fact Application: If a Conditional Use Permit Application follows enforcement proceedings for failure to comply with the District regulations, the landowner will be required to submit an additional \$200.00 after-the-fact application fee, in addition to the regular Conditional Use Permit Application fee.
2. Upon receipt of a Conditional Use Permit Application and the required review fee, the Zoning Administrator shall review the application for completeness/sufficiency and determine compliance with the District regulations and application requirements within fifteen (15) working days of receipt of the application.
3. If the Zoning Administrator determines the application to be incomplete or insufficient, or does not comply with the District regulations and application requirements, the landowner will be notified in writing of all deficiencies and no further action will be taken on the application until such time as the application deficiencies have been corrected. Incomplete or insufficient applications will remain on file for no longer than ninety (90) calendar days from the day after the landowner is notified of any deficiencies, after which time, the application will be nullified, requiring a complete resubmittal of the application and review fee for any landowner wishing to advance the original application.
4. If the Zoning Administrator determines the application to be complete and sufficient for review, the Zoning Administrator shall notify the landowner in writing and schedule a public hearing before the Board of Adjustments for review and consideration within forty-five (45) working days following notification of the landowner.
5. The public hearing and general information pertaining to the Conditional Use Permit Application shall be legally noticed in an official publication of general circulation between fifteen (15) and thirty (30) calendar days of the scheduled public hearing.
6. All adjoining landowners shall be notified by certified mail of the public hearing and the nature of the Conditional Use Permit Application. For the purpose of this provision, Adjoining Landowner means any owner of property whose property shares a common boundary with the property in which a Conditional Use Permit Application under these Regulations has been submitted. An Adjoining Landowner also includes property that has common boundary across a water-course or road(s) right-of-way.
7. The Zoning Administrator shall generate a staff report for review by the Board of Adjustments and shall provide a recommendation to the Board of Adjustments based upon the general requirements of the District Regulations, and the review criteria outlined under section XI of these Regulations.
8. During the scheduled public hearing, the Board of Adjustments will make all final decisions regarding Conditional Use Permit Applications after having considered the Conditional Use Permit Application and supporting documentation, the Zoning Administrator's Staff Report and recommendation, all public comments, and any other pertinent information. The Board of Adjustments shall make specific findings of fact justifying the final determination. In making the final determination, the Board of

Adjustments shall either approve, conditionally approve, or deny the proposed Conditional Use Permit Application.

9. The Zoning Administrator shall provide the Applicant a written determination of the Board of Adjustment within fifteen (15) working days following the final determination made by the Board of Adjustment.
10. Applicants may appeal any determination made by the Board of Adjustment to the Park County Commission as outlined under Section 76-2-227, MCA.

XI. REVIEW CRITERIA

The Zoning Administrator and the Board of Adjustments shall review all complete and sufficient Conditional Use Permit Applications for compliance with the review criteria below, and identify any potential associated impacts. The Zoning Administrator shall recommend and the Board of Adjustments shall make specific findings of fact related to each review criteria and shall ensure all criteria have been addressed. If, during the analysis of the Conditional Use Permit Application, the Zoning Administrator and/or Board of Adjustment determines impacts may be associated with the proposed land use, and based upon the criteria below and specific findings of fact, the Zoning Administrator shall recommend denial of the proposed Conditional Use Permit Application, or recommend specific conditions of approval in order to mitigate any determined impacts. The Board of Adjustment may either, deny the proposed Conditional Use Permit Application, or require specific conditions of approval in order to mitigate any determined impacts. Conditions may include, but are not limited to: setbacks; hours of operation; dust control; lighting control; noise abatement; restrictive covenants. Required conditions may be designed to ensure continued compliance after the Conditional Land Use Permit Application has been approved. Criteria for granting a Conditional Use Permit Application include:

- A. Will the proposed land use create impacts to agricultural land uses in the surrounding area, including, but not limited to:
 1. Will the proposed land use impede adjacent agricultural production?
 2. Will the proposed land use interfere with the movement of livestock or farm machinery?
 3. Will the proposed land use impact agricultural soils in the area?
 4. Will the proposed land use impact Agricultural Water User Facilities in the area?
 5. Will the proposed land use impact livestock in the area?
- B. Will the proposed land use create impacts to residential land use in the surrounding area, including, but not limited to:
 1. Will the proposed land use impede adjacent residential land use?
 2. Will the proposed land use create excessive noise?
 3. Will the proposed land use create dust?
 4. Will the proposed land use create excessive odors?
 5. Will the proposed land use create excessive light pollution?
 6. Will the proposed land use create heavy truck and equipment traffic on roads used by adjacent residential land owners?
- C. Will the proposed land use create impacts to any other land uses in the surrounding area, including but not limited to:
 1. Will the proposed land use impede commercial, industrial, manufacturing, schools, health facilities, or other land use in the area?

2. Will the proposed land use disrupt normal operations of other land uses in the area?
 3. Will the proposed land use create excessive noise?
 4. Will the proposed land use create dust?
 5. Will the proposed land use create excessive odors?
 6. Will the proposed land use create excessive light pollution?
 7. Will the proposed land use create heavy truck and equipment traffic on roads used by adjacent land uses?
- D. Will the proposed land use impact the Public Health and Safety of area residents and visitors, including but not limited to:
1. Will the proposed land use create dangerous situations for area residents?
 2. Will the proposed land use create injury for area residents or community at large?
 3. Will the proposed land use impact water availability in the area?
 4. Will the proposed land use create hazardous materials, by-products, or waste that may negatively impact surrounding residents and visitors? And if so, does a separate state or federal agency review for these types of potential health and wellness hazards?
- E. Will the proposed land use create impacts to the natural environment that are not otherwise considered through a local, state or federal agency, including, but not limited to:
1. Will the proposed land use spread noxious weeds?
 2. Will the proposed land use negatively impact water quantity?
 3. Will the proposed land use negatively impact water quality?
 4. Will the proposed land use negatively impact air quality?
 5. Will the proposed land use negatively impact soils?
 6. Will the proposed land use negatively impact native vegetation?
 7. Will the proposed land use create surface water drainage impacts?
- F. Will the proposed land use impact public infrastructure, including but not limited to; roads, bridges, culverts, including, but not limited to:
1. Will the proposed land use exceed the recommended Daily Traffic Trips (based upon current Park County Transportation Standards) on any county-owned and maintained road?
 2. Will the proposed land use result in heavy truck and equipment traffic that will require increased maintenance of any county-owned and maintained road, bridge or culvert?
 3. Will the proposed land use increase county-maintenance of any other county-maintained infrastructure?
- G. Will the proposed land use impact local (County) services or facilities local government is authorized to provide, such as water supply, sewage disposal, law enforcement, fire protection, emergency services, transportation systems, noxious weed control?
1. Will the proposed land use increase fire risk in the area?
 2. Will the proposed land use be located outside a Fire District?
 3. Will the proposed land use incorporate technologies, systems and features that minimize the risk of wildfire and structure fires?
 4. Will emergency service providers have adequate access for emergency purposes?
 5. Will the proposed land use generate additional school children? And if so, will the associated School District have the capacity to enroll additional school children?
 6. Does the proposed land use require other applicable permits from local, state and federal agencies? And if so, are those permits approved accordingly?
- H. Will the proposed land use impact wildlife and wildlife habitat, including, but not limited to:

1. Will the proposed land use eliminate critical wildlife habitat, as may be defined by Montana Fish, Wildlife and Parks?
2. Will the proposed land use impact critical wildlife corridors, as may be defined by Montana Fish, Wildlife and Parks?
3. Will the proposed land use attract wildlife in the area?
4. Will the proposed land use result in increased wildlife/human conflicts?

XII. ENFORCEMENT, PENALTIES

Whenever a violation of these regulations 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 Park County. Park County shall then properly record the complaint and investigate and take action thereon as provided by this District.

- A. If any land use is developed or implemented, which would otherwise require a Conditional Use Permit, and is found in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may institute any appropriate action or proceedings to:
 1. Prevent the unlawful development or implementation of a non-permitted land use; or
 2. Restrain, correct, or abate a violation.
- B. Upon receipt of information pertaining to a potential violation, Park County will investigate the claim and verify nonconformance with the District regulations. Park County will notify the landowner(s) of the perceived violation and order the land use be removed or require submittal of the proper permits. Park County may apply reasonable time constraints on removal of any violations, or submittal of a Conditional Use Permit Application. If the landowner does not comply, the matter will be submitted to the Park County Attorney's Office for continued enforcement proceeding.
- C. Landowner(s) may appeal any enforcement proceeding as outlined under Sections 76-2-226 and 76-2-227, MCA.