

Ordinance #2008-01
Adopted: July 7 & 21, 2008
Effective: August 21, 2008

ORDINANCE NO.: 2008-01

**ORDINANCE ADOPTING
DILLON AIRPORT AFFECTED AREA REGULATIONS**

WHEREAS, the Airport Compatibility Act, Title 67, Chapter 7, Montana Code Annotated authorizes Airport Affected Area (AAA) Regulations; and

WHEREAS, the Beaverhead County Airport Board has prepared and the Beaverhead County Planning Board has submitted to the Beaverhead County Commission certain proposed Regulations for the purpose of protecting the transportation infrastructure provided to the community by the Dillon Airport in Beaverhead County, Montana; and

WHEREAS, the Beaverhead County Commission, before adopting said proposed Regulations, held a public hearing on June 2, 2008, and gave public notice of the intent to adopt said Regulations and of the public hearings by publication of the time and place of public hearings in The Dillon Tribune Examiner of not less than 15 days or more than 30 days prior to the date of hearing; and

WHEREAS, the said proposed Regulations are proper and appropriate, have the general support of the public and are appropriate to administer, regulate, and enforce the effects of noise, the height of structures and trees, and the land use in the vicinity of the Dillon Airport within Beaverhead County, Montana.

IT IS HEREBY RESOLVED that those certain Beaverhead County Dillon Airport Regulations submitted to the Beaverhead County Commission are hereby adopted.

THIS ORDINANCE shall be effective thirty (30) days from the final passage and approval.

PASSED BY the Board of County Commissioners for Beaverhead County, Montana, this 21st day of July 2008.




C. Thomas Rice
Chairman



Garth L. Haugland
Commissioner

Michael J. McGinley
Commissioner

ATTEST:



Debra L. Scott
Beaverhead County Clerk and Recorder



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**DILLON AIRPORT AFFECTED AREA REGULATIONS
ENACTED BY THE BEAVERHEAD COUNTY COMMISSIONERS**

Section I. General Provisions

A. Title

These regulations shall be known as the Dillon Airport Affected Area (AAA) Regulations.

B. Authority

Authorization for these regulations is in the Airport Compatibility Act found in Title 67, Chapter 7, Montana Code Annotated (2007).

C. Purpose and Intent

It is the purpose of these regulations to promote the public health, safety and general welfare of airport users and persons and property in the vicinity of the Dillon Airport by addressing the effects of noise, height of structures and trees, and land use in the vicinity of the Dillon Airport, in accordance with Section 67-7-203, MCA.¹ These regulations are intended to protect the transportation infrastructure provided to the community by the Airport from incompatible development and protect the Airport from personal or property injury claims due to noise and hours of operations.

Beaverhead County recognizes that agricultural lands surround the Dillon Airport. Agriculture is important to the economy of the County and the use of this land must be balanced with the use of and regulations for the Airport. It is recognized that certain aspects of agriculture may from time to time attract wildlife and birds, which may interfere with aviation. These intermittent occurrences are not prohibited by these regulations. What are not allowed are garbage dumps, landfills, or sewage lagoons, which attract birds on a regular and continuing basis.

D. Designation of Airport Affected Area

The County Planning Board held a hearing on May 22, 2008 and the Beaverhead County Commissioners held a hearing on June 2, 2008 before the Airport Affected Area (AAA) was designated, after notice was published according to Section 7-1-2121, MCA. A draft of these regulations was addressed at those hearings and public comment was taken and considered.

The AAA for the Dillon Airport is shown on attached **Appendix A**. The AAA encompasses the entire 14 CFR, Part 77 surfaces, which are shown on the current "Airport Airspace Drawing" of the FAA approved "Airport Layout Plan" (ALP) set. The Airport Airspace Drawing also identifies existing airport hazards and natural terrain

¹ See 67-7-203 (1)(a), MCA.

penetrations that intrude into the Part 77 surfaces.² The legal description of the AAA is found in **Appendix F**. The AAA Ordinance is on file with the Beaverhead County Clerk and Recorder.

E. Jurisdiction

1. The AAA for the Dillon Airport is located entirely within the jurisdictional area of the Beaverhead County Commissioners. Beaverhead County shall be exclusively responsible for the administration and enforcement of the provisions of these regulations for those areas affected.

F. Severability

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

Section II. Definitions

A. Generally

Definitions, which generally apply to Title 67 and to these regulations, are found in Section 67-1-101, MCA (2005). In addition, definitions specific to the Airport Compatibility Act are found in Section 67-7-103, MCA (2005). The Airport Compatibility Act allows definitions from 14 CFR, Part 77 to apply to these regulations as well. The following definitions apply to these regulations. If there is a conflict in interpretation between Title 67 or 14 CFR, Part 77 and these regulations, the more restrictive applies.

B. Specifically

1. **“Aeronautical Areas”** are those areas of the Airport property shown on maps for existing and future aviation needs such as runways, hangars, aprons, taxi lanes, etc.
2. **“Airport”** is the Dillon Airport.
3. **“Airport Affected Area (AAA)”** is the land and space above the ground surface of an airport in the proximity of the airport, the use of which may be affected by the airport’s existence, and includes zones which are delineated areas on the ground which lie beneath the horizontal surface, the conical surface, the primary surface(s), the approach surfaces and the transitional surface as described in 14 CFR, Part 77 and in these

² See 67-7-203 (2)(c), MCA.

regulations. The AAA for the Dillon Airport is described by an arc 14,200 feet from each thresholds of Runway 16-34 and tangent lines connecting those arcs which are 14,200 feet on each side of runway centerline.

4. The **“Airport Appeals Board”** for the Dillon Airport is to hear variance requests and appeals from the decisions of the Administrative Officer. This Board will consist of: the chairman of the County Planning Board, one landowner affected by the AAA Regulations, one resident from the City of Dillon and two at large members.
5. **“Airport Board”** is the Beaverhead County Airport Board.
6. **“Airport Elevation”** is the highest point on the Airport’s established runways measured in feet above mean sea level (MSL) and based on the North American Vertical Datum of 1988 (NAVD 88). The elevation of the Dillon Airport is 5244.5 feet.
7. **“Airport Layout Plan” (ALP)** is a graphic depiction of existing conditions and future proposed development. AN ALP typically consists of several drawings, each intended to depict specific information about the airport and an ALP report explaining the reasoning behind, and the important features of, the ALP.
8. **“Airport Manager”** is the Chairman of the Airport Board or his/her designee.
9. **“Areas”** consist of land within certain boundaries shown on **Appendices A, B, C & D** that designate where various land uses are permitted.
10. **“Electromagnetic Effect”** is any interference or impediment to the transmission or quality of navigation or communication signals to or from aircraft, meteorological equipment, navigation equipment, communications equipment, or air traffic control facilities caused by a power source, radio frequency transmitter, or an object or surface that emits, reflects or re-radiates an electromagnetic signal or electrical pulse.
11. **Airport Affected Area Administrative Officer (Administrative Officer)”** is that person designated by the governing body of the owner of the airport to serve as the governing body’s representative to issue permits and variances under these regulations and to administer the regulations.
12. **“FAA”** is the Federal Aviation Administration.
13. **“Governing Body”** is the Beaverhead County Commission.
14. **“Height”** is the vertical difference in feet between the highest point of a structure or tree and the ground elevation coinciding with its location shown on the Vicinity Sketch.

15. **"Non-aeronautical areas"** are those areas of the airport property, outside of the aeronautical areas, which might be suitable for uses such as office space for governmental entities.
16. **"Nonconforming Use"** is any preexisting structure, tree or other object of natural growth or use of land that is lawfully in existence when these regulations become effective, but does not conform to the height or use provisions of these regulations.
17. **"Permit Required Areas"** consists of portions of the AAA Regulations and are depicted on **Appendix D** and defined in **Appendix F**.
18. **"Runway"** is the defined and prepared surface of an airport, suitable for landing or taking off by aircraft, as well as planned extensions documented on the AAA Drawing. The type(s), dimensions and orientation of the runway(s) at the Dillon Airport are runways of 6,500-feet by 75-feet paved and oriented N1.40°W (True) and 3,600-feet by 60-feet paved and oriented N50.15°E (True).
19. **"Structure"** is an object thirty feet (30') or taller, constructed or installed by a person, including but not limited to buildings, towers (cell or otherwise), radio antennae, cranes, smoke stacks, earth formations, and overhead transmission lines.
20. **"Surfaces"** are 14 CFR, Part 77.25 civil airport imaginary surfaces for existing and planned development of the Airport as documented on **Appendix A**. These surfaces are located above and in relation to a runway or runways. Types of surfaces include Approach Surfaces, Conical Surface, Horizontal Surface, Primary Surfaces, and Transitional Surfaces.
21. **"Terrain penetration"** is any natural land surface that penetrates into any of the civil airport imaginary surfaces as defined in 14 CFR, Part 77.25.
22. **"Threshold"** is the beginning of the portion of a runway, which is available for landing.
23. **"Tree"** is any vegetation or other naturally growing object greater than thirty feet (30') above the ground.
24. **"Variance"** is an allowed deviation from the height or use requirements of these regulations.
25. **"Vicinity Sketch"** is an 8 ½" x 11", non-reduced copy of a portion of a 7.5 minute USGS Quadrangle Map showing the location of a proposed structure, tree or land use, and identifies the ground elevation at the proposed location. The Vicinity Sketch must include the name of the USGS map copied, the Township and Range of the area shown, and the horizontal and vertical data upon which the map is based (typically found in the lower right-hand corner).

26. **“Zones”** are delineated areas on the ground as shown on **Appendix B** within which certain height restrictions apply.

Section III. Administration

A. Appointment of Administrative Officer³

The Beaverhead County Planner or his/her designee who shall be known as the “AAA Administrative Officer” shall serve as the County’s representative to issue permits and variances under these regulations and to administer the regulations.

B. Fees for Permits and Variances

An administrative fee shall be assessed for processing permits and variances as follows:

1. Basic permit: \$ 0
2. Additional \$ 100 for a variance request

C. Permit Procedure⁴

The purpose of the permitting process is to allow the Administrative Officer to monitor the height of structures or trees and the uses in the AAA and to advise those members of the public who wish to change or add structures, trees or uses. There are legal restrictions on that activity, in order to protect the public health, safety and general welfare as well as protect the current flying operations at the airport and those expected in the future. A permit must be obtained before the changes or additions are made.

1. When a Permit is Required

- a. If the erection of a new structure exceeding thirty feet (30”) in height in the Permit Required Area of the AAA Regulations.
- b. If new trees are planted in the Permit Required Area of the AAA which are expected to grow taller than thirty feet (30’) in height.
- c. If existing structures in the Permit Required Area of the AAA are substantially altered, repaired or replaced, which increases their existing height to above thirty feet (30’).
- d. If existing trees in the Permit Required Area of the AAA are replaced with trees which are expected to grow taller than thirty feet (30’) in height.

³ See 67-7-301, MCA.

⁴ See 67-7-212, MCA.

e. If uses of land or structures are changed in the Permit Required Area of the AAA and are not specifically permitted elsewhere in these Regulations.

2. Procedure for Obtaining an AAA Use Permit/Structure Permit/Tree Permit within the Permit Required Area of the AAA (Refer to Appendix D)

a. Obtain an application for a permit from the Administrative Officer.

b. Submit to the Administrative Officer the application and a description of the existing use and proposed use of the land, tree, or structure, explaining why that proposed use is either a permitted use or requires a variance under these regulations. Submit a vicinity sketch with detail to determine the location of the proposed use within the Permit Required Area of the AAA, in relation to property or section lines. If the proposed use also involves changes to an existing structure, include that information on the application as well.

c. The requested permit must be discussed with the Airport Manager or designee prior to making a decision about whether or not to grant the permit.

d. After consulting with the Airport Manager or designee, the Administrative Officer with the concurrence of the Airport Manager or designee shall either grant or deny the requested permit in writing, explaining the decision. If there is no concurrence between the Administrative Officer or designee and the Airport Manager or designee the Manager shall bring the matter before the Airport Board for advice. The Administrative Officer will then decide whether to grant or deny the permit.

e. The decision by the Administrative officer may be appealed to the Airport Appeals Board, pursuant to Section 67-7-302, MCA (2005).

5. Criteria for Granting Permits

a. Permits will not be granted for structures or trees that will exceed the height limitations of zones set forth in these regulations or for uses which are not in accordance with these regulations, unless a variance has been granted pursuant to the procedure in Section III.D below.

b. Any permit may require the owner of the structure or tree in question to allow the County Commissioners, at the owner's expense, to install,

operate and maintain the lights and markers necessary to warn pilots of the presence of that structure or tree.⁵

e. Permits will not be granted for structures or trees, which result in obstructions to surfaces, or to allow a change in a nonconforming use despite its existence on the date the AAA was designated and these Regulations were adopted.⁶

D. Variances

1. **When necessary**--A person who seeks to erect or increase the height of a structure, or permit the growth of a tree in excess of the height limitations in these regulations, or use property in a manner, which is not a permitted use, must seek a variance from these regulations.

2. Circumstances for Granting a Variance

a. Two considerations⁷

i. Substantial practical difficulty or unnecessary hardship

If a literal application or enforcement of these regulations would result in substantial practical difficulty or unnecessary hardship, a variance must be granted, subject to the public interest evaluation below.

ii. Public interest

A variance is not contrary to the public interest when it is determined, after review by the County and after consultation with the FAA, that there is no immediate hazard to air navigation or to persons and property in the vicinity of the airport and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to structures.

b. Conditions for a variance

Conditions may be imposed for granting the variance, including, but not limited to, a requirement the owner of a structure or tree pay for the installation, operation and maintenance of lights and markers necessary to

⁵ See 67-7-212 (3), MCA.

⁶ See 67-7-212 (2), MCA.

⁷ See 67-7-303 (3), MCA. Note that these are conjunctive--both have to be satisfied.

warn pilots of the presence of an AAA obstruction. The County may install the lights or markers.⁸

3. Notice to Applicant

Granting of a variance puts the person who builds a structure pursuant to that variance or buys property for which a variance has been granted on notice that the Airport existed before the variance was granted and the noise, fumes, vibrations, light, or any other effects from normal and anticipated normal Airport operations may occur.

4. AAA Obstruction Variance

a. Procedure to request an AAA Obstruction Variance

i. Obtain an application for a variance from the Administrative Officer and a FAA Form 7460-1

ii. Submit to the Administrative Officer, the fee, the completed application, a drawing with enough detail to determine the overall height of the structure or tree above ground level and a vicinity sketch which shows the location of the structure or tree within the AAA, in relation to property or section lines. In addition explain in detail why literal application or enforcement of these regulations would result in substantial practical difficulty or unnecessary hardship. The application must address, to the best of the applicant's ability, why granting the variance will not create a immediate hazard to persons or property in the vicinity of the airport as well as assurance that the normal and anticipated normal airport operations will not be likely to cause damage to any proposed structure(s). The application must also include any or all federal, state, and local permits and/or approvals that may be required. The Form 7460-1 must be filled out, a copy provided to the Administrative Officer, and submitted to the FAA.

iii. The requested variance must be discussed with the Airport Manager or designee prior to making a decision about whether or not to grant the variance.

iv. After consulting with the Airport Manager or designee, the Administrative Officer with the concurrence of the Airport Manager or designee shall either grant or deny the requested variance in writing, explaining the decision. If there is no concurrence between the Administrative Officer or designee and the Airport Manager or designee the Manager shall bring the matter before the Airport Board

⁸ See 67-7-303 (5), MCA.

for advice. The Administrative Officer will make the decision on whether to grant or to deny the variance.

v. The decision by the Administrative Officer may be appealed to the Airport Appeals Board, pursuant to Section 67-7-303, MCA (2005).

b. Criteria for granting an AAA Obstruction Variance

i. The requested variance will not be scheduled for discussion by the Airport Appeals Board until the FAA has made a determination, pursuant to Form 7460-1, whether or not there is a hazard to air navigation.

ii. A variance must be granted when the applicant demonstrates a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship, when the variance would not be contrary to the public interest⁹ and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to the proposed structure(s).¹⁰ Whether or not the FAA determines there is a hazard to air navigation, FAA recommended mitigation must be a condition of granting the variance.

iii. The application must also include any or all federal, state, and local permits and/or approvals that may be required.

5. AAA Use Variance

a. Procedure to request an AAA Use Variance

i. Obtain an application for a variance from the Administrative Officer.

ii. Submit to the Administrative Officer, the fee, the completed application, a drawing with enough detail to determine the overall height of the structure or tree above ground level and a vicinity sketch which shows the location of the structure or tree within the AAA, in relation to property or section lines. In addition explain in detail why literal application or enforcement of these regulations would result in substantial practical difficulty or unnecessary hardship. The application must address, to the best of the applicant's ability, why granting the variance will not create a immediate hazard to

⁹ See 67-7-303 (3), MCA.

¹⁰ See 67-7-303 (4), MCA. Only the FAA has the ability to determine whether an obstruction is a hazard to air navigation, based on an evaluation described in FAA AC 70/7460-2k.

persons or property in the vicinity of the airport as well as assurance that the normal and anticipated normal airport operations will not be likely to cause damage to any proposed structure(s). The application must also include any or all federal, state, and local permits and/or approvals that may be required. The Form 7460-1 must be filled out, a copy provided to the Enforcement Officer, and submitted to the FAA.

iii. The requested variance must be discussed with the Airport Manager or designee prior to making a decision about whether or not to grant the variance.

iv. After consulting with the Airport Manager or designee, the Administrative Officer with the concurrence of the Airport Manager or designee shall either grant or deny the requested variance in writing, explaining the decision. If there is no concurrence between the Administrative Officer or designee and the Airport Manager or designee the Manager shall bring the matter before the Airport Board for advice.

v. The decision by the Administrative officer may be appealed to the Airport Appeals Board, pursuant to Section 67-7-302, MCA (2005).

b. Criteria for granting an AAA Use Variance

i. The requested variance will not be scheduled for discussion by the Airport Appeals Board until the FAA has made a determination, pursuant to Form 7460-1, whether or not there is a hazard to air navigation.

ii. A variance must be granted when the applicant demonstrates a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship, when the variance would not be contrary to the public interest¹¹ and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to the proposed structure(s).¹² Whether or not the FAA determines there is a hazard to air navigation, FAA recommended mitigation must be a condition of granting the variance.

iii. The application must also include any or all federal, state, and local permits and/or approvals that may be required.

¹¹ See 67-7-303 (3), MCA.

¹² See 67-7-303 (4), MCA.

E. Appeals¹³

1. An appeal from a decision by the Administrative Officer must be submitted, in writing, to the Airport Appeals Board, within thirty (30) days of the written decision by the Administrative Officer. Appeals may be filed by the applicant, by any aggrieved person or taxpayer or by the governing body of a political subdivision and must state, with specificity, the basis of the appeal. An unsuccessful appellant may appeal further to a court of record.
2. This appeal process does not apply to a determination by the FAA that a requested obstruction would create a hazard to air navigation.

F. Enforcement¹⁴

The Administrative Officer is the agent designated by the County Commission to enforce these regulations.¹⁵ Written notice of a violation must be given by the Administrative Officer to the violator, specifying how these regulations have been violated, how the violation can be remedied and setting a reasonable deadline for the correction of the violation, prior to the imposition of a penalty. The penalty provisions of these regulations must also be included in the notice.

G. Penalty¹⁶

If a person who violates the provisions of these regulations does not correct a violation, after notification pursuant to Section F above, that person is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each day that the violation is not remedied after the County Commission has determined there is a violation for which a fine should be assessed against the violator, has given its own written notice of the violation to the violator, has held a hearing on the violation and has provided a written determination to the violator that there is a violation.

In addition, the County Attorney may file misdemeanor criminal charges for a violation of these regulations. Pursuant to Section 45-2-104, MCA, a person is absolutely liable for a violation of these regulations. Upon conviction a fine of \$500 must be imposed.

¹³ See 67-7-302, MCA.

¹⁴ See 67-7-301, MCA.

¹⁵ See 67-7-301, MCA.

¹⁶ See 67-7-304, MCA.

H. Injunction¹⁷

The County Commission may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of Title 67, Chapter 7 or of these regulations.

I. Immunity

1. Generally

After the designation of an AAA, a person or entity may not recover damages from a local government, an airport authority, an airport operator, or an airport owner for any injury caused by noise, fumes, vibrations, light, or any other effects from normal and anticipated normal airport operations.¹⁸

A person or entity may not recover damages from a local government, an airport authority, an airport operator, any landowner, including landowners of agricultural property in the Dillon AAA for any injury caused by historic and usual wildlife activity, including feeding and bedding of wildlife on agricultural land in the AAA, and daily or seasonal migrations across agricultural lands in the AAA, which directly or indirectly affect the Airport or Airport users.

2. After granting a variance

A person owning or using a structure built pursuant to a variance may not collect damages from a governing body or local government or from an airport authority, airport operator, or airport owner for interference with the enjoyment of that structure caused by noise, fumes, vibrations, light, or any other effects from normal and anticipated normal airport operations.¹⁹

Section IV. Airport Affected Area (AAA)

A. Introduction.

Utilizing its police power, the Beaverhead County Commission designated an AAA for the Dillon Airport in accordance with Section 67-7-201, MCA (2005). The AAA includes the land surrounding the runways and the space or surfaces above that land.

Height restrictions for zones and land use restrictions in specified areas found in these regulations are meant to be reasonable and are designed to promote the health, safety and general welfare of airport users and persons and property in the vicinity of the airport, taking into consideration the existing agricultural uses, the Beaverhead County Right To Farm Ordinance, the character of the flying operations conducted or expected to

¹⁷ See 67-7-305, MCA.

¹⁸ See 67-7-201 (6), MCA.

¹⁹ See 67-7-303 (6), MCA.

be conducted at the Airport, the nature of the terrain, future development of the Airport, and the FAA recommendations for aeronautical surfaces necessary for safe flying operations.²⁰ In addition, these regulations protect the Airport and its operations from uses, which may infringe on airport operations and result in liability to the Airport.

B. Zones

1. Explanation of Zones²¹

Zones are established by these regulations to reasonably regulate the height of structures and trees around the airport. The term “zones” as used in these regulations and as shown on **Appendix B** refers to those areas on the ground and above the ground in which the height of structures and trees is regulated to protect the public health, safety and general welfare. The zones for the Dillon Airport are shown on **Appendix B** of the AAA Regulations.

Descriptions of the zones are as follows:

a. Primary Zone (Shown in Purple on Appendix B.)

i. The Nonprecision Instrument (NPI) primary zone is 500 feet wide, centered on the runway, extending 200 feet from each end of each paved runway.²² The primary surface is immediately above the primary zone.

ii. The Utility Nonprecision Instrument (UNPI) primary zone is 500 feet wide, centered on the runway, plus 200 feet from each end of each (paved) runway²³. The primary surface is immediately above the primary zone.

b. Approach Zones (Shown in Blue on Appendix B.)

i. An NPI approach zone exists at each end of Runway 16-34, beginning 200 feet beyond the end of each runway, centered on the extended runway centerline, with an initial width of 500 feet, widening thereafter uniformly to a width of 3,500 feet at a distance of 10,000 feet beyond the end of the primary surface. The approach surface slopes 34 feet outward for each foot upward, beginning at the end of and at the same elevation as the primary surface and extends for a horizontal distance of 10,000 feet.

²⁰ See 67-7-203 (1)(a)(b)(c)(d) and (e), MCA.

²¹ See 67-7-203 (2)(d), MCA.

²² See 14 CFR, Part 77.25 (c)(3)(ii). 85

²³ See 14 CFR, Part 77.25 (c)(2)

ii. A UNPI approach zone exists at each end of Runway 3-21, beginning at 200 feet from the end of each runway, centered on the extended runway centerline, with an initial width of 500 feet, widening thereafter uniformly to a width of 2,000 feet at a distance of 5,000 feet beyond the end of the primary zone. The approach surface slopes 20 feet outward for each foot upward, beginning at the end of and at the same elevation as the primary surface and extends upward for a horizontal distance of 5,000 feet.

c. **Transitional Zones (Shown in Green on Appendix B)**

The NPI transitional zones for each runway are immediately below the transitional surfaces. The transitional surfaces are perpendicular to the primary surface. They begin at the outer periphery of the approach surface and the primary surface on both sides and extend upward at a slope of 7 feet horizontally for each foot vertically from the sides of these two surfaces until they intersect the horizontal surface.

d. **Horizontal Zone (Shown in Yellow on Appendix B.)** It also exists under and is more restrictive than the blue approach surfaces having a dashed perimeter.

The horizontal zone lies beneath the horizontal surface, which is a plane 150 feet above the established airport elevation (5244.5 NAVD88), the perimeter of which coincides with the perimeter of the horizontal zone shown on **Appendix B** of these AAA Regulations and as established by 14 CFR, Part 77.25 (a). The horizontal zone does not include the transitional zones. It also does not include the approach zones where their surfaces are more restrictive.

e. **Conical Zone (Shown in a Orange color on Appendix B.)**

The conical zone commences at the periphery of the horizontal zone and lies below the conical surface. A conical surface slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal surface, for a horizontal distance of 4,000 feet. The conical surface begins at 150 feet above the airport elevation.

2. **Height Restrictions in Zones**²⁴

Restricting the height of structures or trees in certain zones protects the health, safety and welfare of the users of the airport as well as persons and

²⁴ See 67-7-203 (2)(d), MCA. The proposer of a structure is required to notify the Administrator of the FAA if any construction or alteration will result in a structure more than 200 feet in height above the ground level at its site, or that would penetrate the FAA imaginary surfaces, by Form 7460-1. These limitations vary depending upon how the airport fits into the specifications in 14 CFR, Part 77.13(a).

property in the vicinity of the airport.²⁵ Nothing in these regulations should be construed to prohibit the construction of any structure or the growth or maintenance of any tree to a height (a) equal to or below the airport elevation; or (b) up to thirty (30) feet above the surface of the land except in the approach or transitional zones or Permit Required Areas. In order to comply with federal requirements and those found in Section 67-7-203 (1), MCA, Beaverhead County hereby adopts the following height restrictions for the following zones:

a. Approach Zones (Shown in Blue on Appendix B)

Trees or structures in these zones shall not penetrate the surfaces associated with these zones unless a variance has been obtained pursuant to these regulations.

b. Transitional Zones (Shown in Green on Appendix B)

Unless a structure or tree is a nonconforming use, or is allowed as a variance obtained through these regulations, it shall not penetrate the surfaces above these zones.

c. Horizontal Zone (Shown in Yellow on Appendix B.) It also exists under the blue approach surfaces having a dashed perimeter.)

Unless a structure or tree is a nonconforming use, or allowed as a variance obtained through these regulations, it shall not penetrate the surface of a plane 150 feet above the airport elevation within this zone as shown on **Appendices A & B**.

d. Conical Zone (Shown in a Orange color on Appendix B.)

Unless a structure or tree is a nonconforming use, or allowed as a variance obtained through these regulations, it shall not penetrate the surface above this zone described in Section I and shown on Appendices A & B.

C. Areas

Areas are designated in the AAA to address the concern the FAA and the Airport have about compatible uses or land around the Airport.

1. Explanation of Areas within the AAA

These regulations describe both zones and areas, which overlap. If there is a conflict between allowable heights and allowable uses, the more stringent interpretation applies.

²⁵ See 67-7-203 (1)(a), MCA.

a. Permit Required Areas (Shown on Appendix D)

In an attempt to limit the areas requiring permit applications, the FAA Part 77 surfaces were compared to the existing terrain elevations obtained from USGS quadrangle mapping. Where the difference between the two narrowed to within 50 feet, the area was out-lined as a Permit Required Area. **Appendix D** illustrates these Permit-Required Areas where any tree or structure proposed needs to be evaluated against the surface corresponding to the zone that it is in.

b. Airport Property Area (See Appendix C)

This area encompasses that land owned by Beaverhead County and designated for airport use. The Airport is required to comply with FAA regulations and grant assurances within its own boundaries to remain eligible for federal funding assistance, including maximizing the use of non-aeronautical areas in order to provide revenue to the Airport.²⁶

c. Airport Critical Area (See Appendix B and C)

This area encompasses the Runway Object Free Area (ROFA), the Taxiway Object Free Area (TOFA), the Runway Visibility Zone (RVZ), and the Runway Protection Zones (RPZ) as defined in the Airport's current Layout Plan. It also includes the VOR Facility Critical Area.

d. Runway Protection Area. (See Appendix C.)

This area is the land delineated on the ground below the runway protection zones as defined by FAA Advisory Circular 150/5300-13, "Airport Design." The Runway Protection Area for the runway(s) at the Dillon Airport is 500 feet wide at a point 200 feet beyond the end of the runway. They uniformly expand in width to 700 feet.

e. Limited Development Area(s)

These are areas surrounding the airport property but within the AAA as shown on **Appendix B**.

2. Land Use in Areas²⁷

The term "area" or "areas" as used in these regulations and shown on the Appendices A, B, C, may differ from the zones set forth in Section IV.B. Regulation of land uses in these areas around the airport serves to protect the health and safety of the users of the airport. Well-established

²⁶ All structures proposed on airport property shall be in full compliance with the ALP for the airport or shall be coordinated with the FAA.

²⁷ See 67-7-203 (2)(f), MCA.

accident data indicate land uses, which concentrate people, should be avoided. Land use regulations protect persons and property in the vicinity of the airport from airport-related effects such as high-probability accident areas, noise, fumes, vibrations, light or any other effects from normal and anticipated normal airport operations.²⁸

Permitted uses are those uses, which are allowed, and obtaining a permit for these uses pursuant to these regulations serves as notification to the Administrative Officer of those uses. All other uses are prohibited, including sources of electromagnetic effects that may interfere with electronic navigational aids, and lights other than navigational aids that glare upward or shine on or in the direction of the airport and bird attractants such as solid waste disposal sites and lagoons.²⁹ Under extraordinary circumstances some uses, which are not permitted may be allowed, provided a variance is obtained pursuant to these regulations.

When the following areas overlap, the more restrictive uses apply.

a. Airport Property Area

The airport property at the Dillon Airport is designated on **Appendix C** as such. To the extent it has been acquired with Federal grant funds it is subject to any use restrictions required by the grant assurances. Residential use on airport property will not be allowed beyond that required for security and safety purposes.

i. Permitted Uses (Allowed without going through the permit process)

(aa). Aircraft runways, taxiways, ramps and parking areas and fuel storage facilities.

(bb). Aircraft operational facilities including, but not limited to, instrument landing systems, visual navigational aids and related equipment, communication facilities, weather service offices and equipment.

(cc). Hangars and buildings which may be used for the storage or maintenance of aircraft, for airport snow removal, sweeping and other maintenance equipment and other aviation-related or ancillary activities.

²⁸ See 67-7-201 (6), MCA.

²⁹ See 67-7-203 (2)(f)(iii)(iv)(v), MCA.

(dd). Terminal buildings that may house offices of airline companies and other businesses and concessionaires, tourism information centers, and museums.

(ee). Offices and facilities for airport management, air charter, air taxi, crop spraying, aircraft sales or rentals and air cargo processing facilities in non-aeronautical areas.

(ff). Agriculture (other than forestry, livestock farms or other use which might create a wildlife attractant on or near the Airport),.

(gg). Flight schools, flying clubs and other schools or training facilities relating to aviation or air-related transportation.

(hh). Offices and facilities for the operation and maintenance or air rescue, emergency and firefighting services.

(ii). Aircraft maintenance, manufacturing and testing facilities.

(jj). Offices and facilities of federal, state and local government entities.

b. Airport Critical Area

Within the airport property, the Airport Critical Area shall be free of objects, except for objects that need to be located in the area for air navigation or aircraft ground maneuvering purposes. For portions of the Airport Critical Area outside the airport property, an unobstructed line of sight from any point 5 feet above one runway centerline to any point 5 feet above the other runway within the area must be maintained.

i. Permitted Uses (Allowed without going through the permit process)

(aa). Agriculture consisting of grazing and growing of crops other than trees.

(bb). Below-ground utilities.

c. Runway Protection Area

i. Permitted Uses (Allowed without going through the permit process)

(aa). Agriculture consisting of grazing and growing of crops other than trees.

(bb). Below-ground utilities.

d. VOR Critical Area

VOR signals, which aid pilots in navigation and landing, are susceptible to distortion caused by reflections. Structures should be at least 2,000 feet (300 m) from the antenna. Metal structures beyond 1,000 feet (300 m) should not penetrate a 1.2-degree angle measured from the antenna base. Nonmetal structures beyond 1,000 feet (300 m) should not penetrate a 2.5-degree angle measured from the antenna base. Metal fences should be at least 500 feet (150 m) from the antenna and overhead power and telephone lines at least 1,200 feet (360 m) from the antenna. While trees should be at least 1,000 feet (300 m) from the antenna, single tree may be tolerated if it is at least 500 feet (150 m) from the antenna. Beyond 1,000 feet trees should not penetrate a 2.0-degree angle measured from the antenna.

i. Permitted Uses (Allowed without going through the permit process)

(aa) Agriculture consisting of grazing and growing of crops other than trees.

(bb) Below-ground utilities

e. Limited Development Areas (As depicted on Appendix B) See Page 18 of these Regulations.

The following is an exclusive list of uses in the limited development area and are allowed to occur without permitting unless prohibited in other areas of these regulations:

i. Permitted Uses (Allowed without going through the permit process)

(aa). Agriculture-related buildings within the height restrictions for an overlapping zone, provided those buildings do not house a concentration of people.

(bb). Mining, quarrying, or other extraction activity, including the processing or refining of ore or other raw material materials provided that activity does not result in ponding of water, which will attract birds or involve equipment, which exceeds the height limitations for an overlapping zone.

(cc). Golf course with limited water hazards.

(dd). Park, playground, other public recreation site or facility, or community service facility owned and operated by a governmental agency or non-profit community organization provided its use does not result in a concentration of people during times of peak airport use.

(ee). Veterinary clinic, animal pound or kennel provided

steps are taken to guarantee the facility will not be a bird attractant.

(ff). Private or public grounds and buildings for games, sports, riding arenas, race tracks and similar activities provided their use does not result in a concentration of people during times of peak airport use.

(gg). Water supply and treatment facility provided the facility is not a bird attractant.

(hh). Manufacturing and warehousing.

(ii). Travelers' accommodation facilities [depending upon the boundaries of the area].

(jj). Retail and wholesale trade facilities.

(kk). Roadways, automobile parking areas and railroads that comply with height restrictions of an overlapping zone.

(ll). Residential purposes that don't result in a concentration of people

Section V. Nonconforming Uses³⁰

It is not the purpose or intent of these regulations to require removal or alteration of any existing structure or tree or to require the cessation or alteration of a use that is lawfully in existence when these regulations become effective. However, it is assumed nonconforming uses will not continue forever.³¹ The following provisions are designed to reasonably address nonconforming uses or structures or trees.

³⁰ See 67-7-209, MCA.

³¹ See 67-7-203 (2)(g), MCA.

A. Documentation of uses and structures or trees

The Administrative Officer shall document, to the best of the Officer's ability and within a reasonable time after adoption of these regulations, those existing uses of land and the existence of structures or trees found in the AAA, with an estimate of the height of structures or trees.³²

1. Nonconforming uses of land

Any lawful use of land in existence when these regulations become effective may continue, but reconstruction of a structure, which contains a nonconforming use after destruction, or substantial damage, which affects that use, may be prohibited. Any addition to or remodel of structure containing a nonconforming use requires a variance under these regulations.

2. Nonconforming structures or trees

Existing structures or trees may continue to exist but their expansion or additional growth is prohibited unless a variance is obtained under the provisions of these regulations.

B. Substantial damage to a nonconforming use

"Substantial damage" occurs when 80% or more of a structure or tree is deteriorated or decayed or when that structure or tree has been torn down or destroyed.³³ The Administrative Officer has the authority to determine substantial damage. A substantially damaged structure or tree, which is nonconforming, may not be reconstructed or replaced without first obtaining variance under the provisions of these regulations and then obtaining a permit.

C. Maintaining nonconforming trees

After identification of trees in place at the time these regulations become effective, the County may trim those trees, at its expense, to maintain their heights at the time of identification.³⁴

D. Marking nonconforming trees or structures

If the County elects to install, operate and maintain, at its own expense, lights and

³² See 67-7-203 (2)(h), MCA.

³³ See 67-7-209 (1), MCA.

³⁴ See 67-7-209 (2), MCA.

markers necessary to warn pilots of a nonconforming use. The owners of those structures or trees shall allow this activity.³⁵

E. Residential land uses

If land in an area in which residential use is not permitted by these regulations has been developed for that use or platted for that use, the residential use may continue, but existing owners must be notified by the Administrative Officer that the lots are within an adopted AAA within a reasonable time after its designation.³⁶ It is the responsibility of those owners to notify subsequent purchasers of the property that the property is in an AAA and may be affected by these regulations.

Section VI. Amendment of Regulations

These regulations may be amended by following the same procedure for adoption as set forth in Section 67-7-201 (5), MCA. If appropriate, other boards or commissions may be involved.³⁷

Section VII. Additional Provisions

A. Acquisition of property rights

A political subdivision within which a property or nonconforming use is located, or a political subdivision owning an airport or served by an airport may protect that airport by utilizing statutory rights set forth in Section 67-7-210, MCA, eminent domain and other sections found in Title 67.

B. Relationship of AAA regulations to zoning ordinances

If a governing body has adopted a zoning ordinance or resolution, or other ordinance and there is a conflict between these regulations and the zoning ordinance or resolution, the more stringent limitation or requirement prevails.³⁸

C. Right to Farm Ordinance

To the extent the Right to Farm Ordinance, **Appendix E**, applies to any situation set forth in these regulations, the more restrictive terms apply.

³⁵ See 67-7-209 (3), MCA.

³⁶ See 67-7-209 (4), MCA.

³⁷ See 67-7-208, MCA.

³⁸ See 67-7-211, MCA.

