REVISED BOZEMAN PASS ZONING REGULATION

June 1, 2005 draft

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Section 1: GENERAL PROVISIONS

1.01 Title, Creation and Adoption

1.01.1 This Regulation shall be known as the Revised Bozeman Pass Zoning Regulation. It is adopted for the Revised Bozeman Pass Zoning District, which was created on **(INSERT DATE HERE)**, 2005.

1.01.2 This Regulation is adopted pursuant to §76-2-101 et sec., MCA, in accordance with the Gallatin County Growth Policy.

1.01.3 Copies of the Regulation and Zoning Map are on file for public inspection with the Gallatin County Clerk and Recorder's Office and the Gallatin County Planning Department (Planning Department).

ADOPTION

The County Commission adopted this Regulation on _____.

GALLATIN COUNTY COMMISSION

_____

William A. Murdock, Chair

_____

Joe Skinner, Member

_____

John Vincent, Member

ATTEST:

_____

Shelley Vance, Clerk and Recorder

1.02 Application of District Regulations

1.02.1 Minimum Requirements. The requirements established by this Regulation are minimum regulations and apply uniformly to each class or kind of structure throughout the District. Regulation provisions shall be held to the minimum that protects and promotes the public health, safety and general welfare of the District.

1.02.2 Zoning Regulation Conformance. All new activities are potentially subject to the provisions of this Regulation. Property owners are responsible for ensuring all activity within District boundaries conforms within the Regulation.

1.02.3 Nonconforming Uses. Existing non-conforming uses may be continued although not in conformity with such zoning regulations (§76-2-105, MCA).

1.02.4 Exception. Under certain circumstances, the Zoning Enforcement Agent may exempt public utility pipelines, wells, or structures necessary for provision of services required for public health and safety, from provisions of this Regulation.

1.02.5 Vesting. An application made within the District is subject to the regulations that are in effect at that time.

1.02.6 Contradictions. If the requirements of this Regulation conflict with the requirements of any other lawfully adopted rules, regulations or covenants, the most restrictive (or higher standard) shall govern.

1.02.7 Natural Resources. This Regulation does not regulate lands used for grazing, horticulture, agriculture, or the growing of timber in accordance with §76-2-109, MCA.

1.03 Establishment of Districts

1.03.1 Zones. The District is hereby divided into zones or "districts," as shown on the zoning map and as explained in the Regulation.

1.03.2 Interpretations. If questions arise concerning an appropriate classification for a particular use, the Zoning Enforcement Agent and/or the County Commission shall determine the appropriate classification. In interpreting use classification, the Agent or County Commission shall determine that the use:

1. Is compatible with permitted uses within the district.
2. Is similar to one or more uses permitted in the district.
3. Will not cause substantial injury to area property values.
4. That the intent of the Regulation will not be abrogated by such classification.

1.04 Intent and Purpose

1.04.1 This Regulation has been made in accordance with the Gallatin County Growth Policy (adopted April 15, 2003) for the purpose of furthering the health, safety, and general welfare of the people of the district pursuant to §76-2-104, MCA. Additionally, this Regulation is designed to maintain the rural residential and agricultural character of the neighborhoods within the District by planning and guiding future growth.

1.04.2 The rural residential and agricultural character of the Bozeman Pass area will be protected and maintained through the following objectives:

- Maintaining or enhancing the quantity and quality of ground and surface waters.
- Maintaining open space and scenic views.
- Sustaining wildlife habitat and migration.
- Preserving and enhancing fish habitats.
- Maintaining the night sky visibility and low noise levels of the area.
- Controlling noxious weeds

1.04.3 The character and freedoms associated with living in a rural area will be protected and maintained through the following objectives:

- Ensuring that land use maintains rural character, wildlife, open space, and agriculture.
- Respecting property rights while ensuring that land use remains compatible with existing uses.
- Protecting landowners from industrial and commercial development that is inconsistent with the character of the area.
- Protecting landowners from the impacts associated with oil and gas development and mining.
- Conserving property values.
- Ensuring that residential development is consistent with existing residential uses.
- Encouraging agricultural uses.

1.04.4 This plan and accompanying regulations are intended to aid Bozeman Pass property owners, residents, interested citizens, area business persons, agricultural enterprises, governmental agencies, county planning staff, planning and zoning commissioners, and county commissioners in reaching decisions regarding land use in the Bozeman Pass area. The scope and content are designed to focus on the above objectives and to minimize undue restrictions on the use of private property.

1.05 Invalidation and Severability

1.05.1 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 and intention of the regulations.

Section 2: ZONING DISTRICT PROVISIONS

2.01 Agricultural and Rural Residential District (AR40): 40 Acre Density

2.01.1 Intent. The intent of this district is to:

- Preserve and maintain agricultural lands, wildlife habitat and migration routes.
- Protect and maintain agricultural uses.
- Preserve and maintain the rural character and scenic, open space qualities.
- Allow for development that is compatible with agriculture.
- Mitigate the impacts of resource extraction activities.
- Respect property rights.

2.01.2 Uses Allowed by Right (uses allowed by right and no land use permits required). All uses in existence at the time of adoption of this Regulation will be grandfathered in. See Section 4.02.

1. Agriculture.
   - The cultivation of ground, including the preparation of soil, planting or seeding and the raising and harvesting of trees, timber, fruits, vegetables, flowers, grain and other crops.
   - The maintenance and use of pasture and range lands for agricultural purposes.
   - The raising, feeding, managing and breeding of livestock, poultry, fish, birds and other animals, that do not fall under the definition of animal feeding operations.
   - The construction and maintenance of barns, corrals and other agricultural buildings and structures accessory to the foregoing uses.
   - Other facilities for the purpose of preparing and selling products produced on the land, including any value added process, together with accessory accommodation for the convenience of patrons.
2. Cemetery and burial grounds; including use and maintenance of land.
3. Residential dwelling (1).
4. Signs specifically permitted in General Building and Development Standards, Section 3.

2.01.3 Accessory Uses (uses allowed by right and no land use permits required). All uses in existence at the time of adoption of this Regulation will be grandfathered in. See Section 4.02.

1. One accessory residential dwelling: for example caretaker residence or guesthouse (non-commercial).
2. Agricultural employee housing, including mobile homes, to house persons and their families whose income is derived on the same farm, ranch, or land unit on which such buildings are situated (development right not required).
3. Use of primary or accessory dwelling unit as family day care home.
4. Excavation of earth and the drilling of wells, exclusively for agricultural and domestic uses.
5. Garage, private residential.

6. Home occupations. Refer to Development Standards Section 3.01.5
7. Incidental uses customarily and necessarily related to and included in agriculture.
8. Incidental uses customarily and necessarily related to rural residential.
9. Private electrical generation facilities and lines, which have the purpose of generating and transmitting energy to be used primarily on site.

2.01.4 Minor Conditional Uses (uses allowed conditionally and land use permits required).

1. Licensed and/or commercial residential rentals (five bedrooms or less).
2. Residential dwellings for immediate family members ("immediate family" as defined by state statute).

2.01.5 Major Conditional Uses (uses allowed conditionally and land use permits required).

1. Commercial quarries less than five acres in size.
2. Commercial uses and structures that are in keeping with the goals of the regulation and the character of the district.
3. Community receiving and broadcasting antennas, cell towers, microwave relay stations.
4. Houses of worship.
5. Licensed and/or commercial residential rentals (six bedrooms or more), including accessory rental structures, guest ranches, vacation rentals, accessory bed and breakfast operations.
6. Schools, public and private.
7. Signs not specifically permitted.

2.01.6 Natural Resources Conditional Uses (uses allowed conditionally and land use permits required).

1. Coalbed methane exploration and development.
2. Commercial quarries greater than five acres in size.
3. Mining (surface and underground).
4. Oil and gas exploration and development

2.01.7 Development Density.

1. One single-family residence per 40 acres or per parcel of record at the time of adoption of this Regulation. There shall be no minimum lot area and width. Variations in lot size are permitted.
2. A parcel of record within 90 percent of 80 acres (72 to 80 acres) will be treated as 80 acres. At the time of adoption of this Regulation, a map showing parcels of 72 or more acres within the AR40 district will be attached to this Regulation and made a part hereof as Exhibit "A".
3. Refer to Development Standards.

2.01.8 Required Setbacks.

Except as stated in 3.01.6, zero lot line setbacks shall apply to all uses allowed by right and accessory uses.

2.01.9 Maximum Height.

Unlimited height restrictions shall apply to all uses allowed by right.

2.02 Agricultural and Rural Residential District (AR80): 80 Acre Density

2.02.1 Intent. The intent of this district is to:

- Preserve and maintain agricultural lands, wildlife habitat and migration routes.
- Protect and maintain the agricultural economic base.
- Preserve and maintain the rural character and scenic, open space qualities.
- Allow for development which is compatible with agriculture.
- Mitigate the impacts of resource extraction activities.
- Respect property rights.

2.02.2 Uses Allowed by Right (uses allowed by right and no land use permits required). All uses in existence at the time of adoption of this Regulation will be grandfathered in. See Section 4.02.

1. Agriculture.
   - The cultivation of ground, including the preparation of soil, planting or seeding and the raising and harvesting of trees, timber, fruits, vegetables, flowers, grain and other crops.
   - The maintenance and use of pasture and range lands for agricultural purposes.
   - The raising, feeding, managing and breeding of livestock, poultry, fish, birds and other animals, that do not fall under the definition of animal feeding operations.
   - The construction and maintenance of barns, corrals and other agricultural buildings and structures accessory to the foregoing uses.
   - Other facilities for the purpose of preparing and selling products produced on the land, including any value added process, together with accessory accommodation for the convenience of patrons.
2. Cemetery and burial grounds; including use and maintenance of land.
3. Residential dwelling (1).
4. Signs specifically permitted in General Building and Development Standards, Section 3.

2.02.3 Accessory Uses (uses allowed by right and no land use permits required). All uses in existence at the time of adoption of this Regulation will be grandfathered in. See Section 4.02.

1. One accessory residential dwelling: for example caretaker residence or guesthouse (non-commercial).
2. Agricultural employee housing, including mobile homes, to house persons and their families whose income is derived on the same farm, ranch, or land unit on which such buildings are situated (development right not required).
3. Use of primary or accessory dwelling unit as family day care home.
4. Excavation of earth and the drilling of wells, exclusively for agricultural and domestic uses.

5. Garage, private residential.
6. Home occupations. Refer to Development Standards Section 3.01.5.
7. Incidental uses customarily and necessarily related to and included in agriculture.
8. Incidental uses customarily and necessarily related to rural residential.
9. Private electrical generation facilities and lines, which have the purpose of generating and transmitting energy to be used primarily on site.

2.02.4 Minor Conditional Uses (uses allowed conditionally and land use permits required).

1. Licensed and/or commercial residential rentals (five bedrooms or less).
2. Residential dwellings for immediate family members ("immediate family" as defined by state statute).

2.02.5 Major Conditional Uses (uses allowed conditionally and land use permits required).

1. Commercial quarries less than five acres in size.
2. Commercial uses and structures that are in keeping with the goals of the regulation and the character of the district.
3. Community receiving and broadcasting antennas, cell towers, microwave relay stations.
4. Houses of worship.
5. Licensed and/or commercial residential rentals (six bedrooms or more), including accessory rental structures, guest ranches, vacation rentals, accessory bed and breakfast operations.
6. Schools, public and private.
7. Signs not specifically permitted.

2.02.6 Natural Resources Conditional Uses (uses allowed conditionally and land use permits required).

1. Coal bed methane exploration and development.
2. Commercial quarries greater than five acres in size.
3. Mining (surface and underground).
4. Oil and gas exploration and development.

2.02.7 Development Density.

1. One single family residence per 80 acres or per parcel of record at the time of adoption of this Regulation. There shall be no minimum lot area and width. Variations in lot size are permitted.
2. A parcel of record within 90 percent of 160 acres (144 to 160 acres) will be treated as 160 acres. At the time of adoption of this Regulation, a map showing parcels of 144 or more acres within the AR80 acre district will be attached to this Regulation and made a part hereof as Exhibit "A".
3. Refer to Development Standards.

2.02.8 Required Setbacks.

Except as stated in 3.01.6, zero lot line setbacks shall apply to all uses allowed by right.

2.02.9 Maximum Height.

Unlimited height restrictions shall apply to all uses allowed by right.

Public Lands (PL640): 640 Acre Density

2.03.1 Intent. Public Lands are not subject to zoning ordinances. The regulation would only apply in the event those public lands are transferred to private ownership. The intent of this district is to:

- Preserve and maintain agricultural lands, wildlife habitat and migration routes.
- Protect and maintain the agricultural economic base.
- Preserve and maintain the rural character and scenic, open space qualities.
- Allow for development that is compatible with agriculture.
- Mitigate the impacts of resource extraction activities.
- Respect property rights.

2.03.2 Uses Allowed by Right (allowed by right and no land use permits required). All uses in existence at the time of adoption of this Regulation will be grandfathered in. See Section 4.02.

1. Agriculture.
   - The cultivation of ground, including the preparation of soil, planting or seeding and the raising and harvesting of trees, timber, fruits, vegetables, flowers, grain and other crops.
   - The maintenance and use of pasture and range lands for agricultural purposes.
   - The raising, feeding, managing and breeding of livestock, poultry, fish, birds and other animals, that do not fall under the definition of animal feeding operations.
   - The construction and maintenance of barns, corrals and other agricultural buildings and structures accessory to the foregoing uses.
   - Other facilities for the purpose of preparing and selling products produced on the land, including any value added process, together with accessory accommodation for the convenience of patrons.
2. Cemetery and burial grounds; including use and maintenance of land.
3. Residential dwelling (1).
4. Signs specifically permitted in General Building and Development Standards, Section 3.

2.03.3 Accessory Uses (uses allowed by right and no land use permits required). All uses in existence at the time of adoption of this Regulation will be grandfathered in. See Section 4.02.

1. One accessory residential dwelling: for example caretaker residence or guesthouse (non-commercial).
2. Agricultural ranch employee housing, including mobile homes, to house persons and their families whose income is derived on the same farm, ranch, or land unit on which such buildings are situated (development right not required).
3. Use of primary or accessory dwelling unit as family day care home.
4. Excavation of earth and the drilling of wells, exclusively for agricultural and domestic uses.
5. Garage, private residential.
6. Home occupations. Refer to Development Standards Section 3.01.5.
7. Incidental uses customarily and necessarily related to and included in agriculture.

8. Incidental uses customarily and necessarily related to rural residential.
9. Private electrical generation facilities and lines, which have the purpose of generating and transmitting energy to be used primarily on site.

2.03.4 Minor Conditional Uses (uses allowed conditionally and land use permits required).

1. Licensed and/or commercial residential rentals (five bedrooms or less).
2. Residential dwellings for immediate family members ("immediate family" as defined by state statute).

2.03.5 Major Conditional Uses (uses allowed conditionally and land use permits required).

1. Commercial quarries less than five acres in size.
2. Commercial uses and structures that are in keeping with the goals of the regulation and the character of the district.
3. Community receiving and broadcasting antennas, cell towers, microwave relay stations.
4. Houses of worship.
5. Licensed and/or commercial residential rentals (six bedrooms or more), including accessory rental structures, guest ranches, vacation rentals, accessory bed and breakfast operations.
6. Schools, public and private.
7. Signs, not specifically permitted.

2.03.6 Natural Resources Conditional Uses (uses allowed conditionally and land use permits required).

1. Coalbed methane exploration and development.
2. Commercial quarries greater than five acres in size.
3. Mining (surface and underground).
4. Oil and gas exploration and development.

2.03.7 Development Density.

1. One single family residence per 640 acres or per parcel of record at the time of adoption of this Regulation. There shall be no minimum lot area and width. Variations in lot size are permitted.
2. A parcel of record within 90 percent of 640 acres (576 to 640 acres) will be treated as 640 acres.
3. Refer to Development Standards.

2.03.8 Required Setbacks.

Except as stated in 3.01.6, zero lot line setbacks shall apply to all uses allowed by right and accessory uses.

2.03.9 Maximum Height.

Unlimited height restrictions shall apply to all uses allowed by right.

Section 3. GENERAL BUILDING AND DEVELOPMENT STANDARDS

3.01 General Building and Development Standards

3.01.1 Intent. The purpose of this section is to establish general development standards. These standards are intended and designed to respect property rights, assure compatibility of uses, protect the environment; protect rural residential and agricultural character and to enhance the public health, safety and general welfare of district residents by planning for and guiding future growth. These standards supplement the specific district regulations set forth in the zoning regulation and apply to conditional uses.

3.01.2 Subdivision Development Standards

1. The number of resulting parcels permitted per existing parcel is determined by dividing the total parcel acreage by 40 in the AR40 district, 80 in the AR80 district, and 640 in the PL640 district. For example, a 150 acre parcel in the AR40 District could be divided into 4 resulting parcels (150 divided by 40 = 3.75, which rounds to 4.
2. Lot size and width may vary, provided that the resulting development complies with all other requirements of this Regulation and all other state and county regulations.
3. These Standards pertains to all divisions of land (major subdivision, minor subdivision, exemptions, etc.)
4. Subdivision plats, minor subdivision plats, certificates of survey and deeds describing tracts of land created after adoption of this Regulation shall contain one of the following statements:
    a) "This tract of land was created in accordance with Bozeman Pass Zoning Regulation and cannot be further divided."
    b) "This tract of land is a remainder parcel created in accordance with the Bozeman Pass Zoning Regulation and there are # remaining development rights are associated with this parcel."

3.01.3 Animal-Proof Refuse Containers. All refuse shall be stored in animal-proof containers or made unavailable to all domestic and wild animals.

3.01.4 Bed and Breakfast Homes. All bed and breakfast homes shall be subject to the following regulations:

1. The proprietor or operator shall reside in the bed and breakfast home.
2. Food service shall be limited to breakfast which may be served to overnight guests only, and shall be prepared from a central kitchen facility.
3. There shall be no alteration to the exterior of the structure which would detract from the residential character. Any alteration to the exterior of the structure which is for the purpose of increasing the number of guest rooms shall be reviewed as a conditional use.

4. One parking space per guest room shall be provided.
5. Additional standards in this regulation shall apply, including but not limited to stream setback and sign standards.

3.01.5 Home Occupations. Home occupations are defined as the use of a portion of the property, dwelling or accessory structure as an office, studio, or workshop for occupations at home. The activity must be clearly incidental to the agricultural or residential use of the property. In addition, the activity shall not cause a nuisance to surrounding landowners.

3.01.6 Perennial Stream Setbacks. All buildings and site improvements shall maintain a minimum setback from the ordinary high water line of all perennial streams in accordance with state and county subdivision regulations.

3.01.7 Signs. Signs, not exceeding 32 square feet in area, are permitted. Flashing or blinking lights shall be prohibited.

1. Illuminated signs for advertising goods or services provided onsite, and which are lit without direct light escaping, are allowed.

3.01.8 Wildfire Mitigation.

1. All structures shall use only Class A or B fire-rated roofing materials.
2. Spark arrestor screens shall be placed on fireplace and wood stove chimneys.
3. Smoke detectors shall be installed on each level of dwelling units.
4. Defensible space shall be created and maintained in accordance with the vegetation reduction and clearance guidelines of the *Fire Protection Guidelines for Wildland Residential Interface Development* (or other manual acceptable to the Zoning Enforcement Agent).
5. "Defensible space" shall be defined as a designated area around a home or other structure the size of which is dependent on the vegetation, proximity of tree crowns, slope and distance to adjacent buildings. Within this area all weeds, dry grass, slash, flammable debris and flammable fuel is removed. This managed buffer surrounding buildings and structures is designed to reduce the chances of a fire spreading to or from the buildings or structures.

3.01.9 Weeds. All property owners must meet the county standards for weed control.

3.01.10 Fences. All subdivisions are responsible for the cost and maintenance of new and/or old fences on the subdivision boundaries with agricultural land. The cost is for half of the fence between said properties with the subdivision assuming responsibility for the right hand half viewed from the subdivision side of the fence line.

Section 4: ADMINISTRATION PROVISIONS

4.01 Administration

4.01.1 Intent. The intent of these zoning regulations is not to prevent particular activities, but rather to regulate and promote orderly development.

4.01.2 Planning and Zoning Commission. The seven-member Bozeman Pass Planning and Zoning Commission consists of the three Gallatin County Commissioners, the County Clerk and Recorder, the County Treasurer, and two citizen members appointed by the County Commission. The Bozeman Pass Planning and Zoning Commission is granted the powers "as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes" of state statute and of this Regulation (§76-2-103, MCA).

4.01.3 Advisory Committee (Committee). A Bozeman Pass Advisory Committee may be created consisting of up to five members, appointed by the Planning and Zoning Commission. Members shall be freeholders in the Revised Bozeman Pass Zoning District. This shall be a non-remunerative committee. Committee members shall be appointed for two-year, staggered terms. The Advisory Committee may consider, formulate and transmit a recommendation on applications, petitions and alleged zoning violations within the District. The recommendation shall be advisory only and shall not be binding upon the Planning and Zoning Commission or the County Commission. All meetings of the Advisory Committee shall be open to the public in accordance with the Montana Open Meetings Law.

4.01.4 Zoning Enforcement Agent. The Zoning Enforcement Agent issues all land use permits and reviews all applications, including violations, conditional use permits, variances, rezoning requests and amendments to the Regulation. The Zoning Enforcement Agent and staff work for the County Commission in an advisory capacity.

4.01.5 Administrative Appeal Process. Those aggrieved by Zoning Enforcement Agent's decisions may submit written appeals to the County Commission. Appeals must be filed within 10 working days of the Zoning Enforcement Agent's written decision.

A public hearing on an appeal will be scheduled only if the item was initially subject to the public hearing process. The County Commission will accept testimony at the hearing from persons interested in the appeal, the appellant, and the Zoning Enforcement Agent. Notice of the hearing shall be published once in a newspaper of general circulation at least 15 days prior to the hearing.

4.01.6 Schedule of Fees. The County Commission sets fees for all permit applications, zone changes, conditional use permits, and variances. The Bozeman Pass Planning and Zoning Commission and/or County Commission will not take action on an item until fees are paid in full. Fees are non-refundable.

4.02 Non-Conforming Lots, Uses and Structures

4.02.1 Intent. Within the District there are lots, uses and structures that were lawful prior to the adoption of this Regulation but no longer conform to present requirements. In accordance with MCA 76-2-208, it is the intent of this Regulation to establish a "grandfather" clause, allowing such lots, uses and structures to remain. To avoid undue hardship, nothing in this Regulation shall be deemed to require a change in the construction or designated use of any structure on which actual construction was lawfully begun prior to the effective date of adoption or amendment to this Regulation.

4.02.2 Non-conforming lots. All lots within the District in existence at the time of adoption of this Regulation will be treated as conforming. Given the nature of density-based zoning, and no minimum or maximum lot size, there are no non-conforming lots within the District. The use of subdivision exemption to relocate a common boundary between neighbors that makes one parcel larger but also one parcel smaller is permitted so long as the adjusted property boundary does not conflict with the goals and objectives of the Regulation.

4.02.3 Non-conforming uses. Uses which were lawful prior to adoption and/or amendment of this Regulation but no longer conform to present requirements are allowed to remain provided:

- Such use is not moved in whole or in part to any portion of the lot or parcel other than its original location at adoption and/or amendment of this Regulation.
- Any expansion, enlargement, or extension of such use receives a Conditional Use Permit (CUP).

4.02.4 Non-conforming structures. All structures in existence prior to adoption and/or amendment of this Regulation will be treated as conforming and may be replaced, altered, repaired, improved, and expanded as necessary.

4.02.5 Abandonment. Any non-conforming use shall lose its grandfathered status and shall thereafter conform to these Regulations if said use is abandoned for a period of five years or more, or if it is altered to a conforming use.

4.02.6 Voluntary abandonment. Any person who has the right to continue a non-conforming use may voluntarily abandon such right or structure, in which case the right shall cease to exist. Any use thereafter shall be conforming and may not revert to a non-conforming use.

4.02.7 Zoning Enforcement Agent Determination. The Zoning Enforcement Agent determines the status of non-conforming land uses and structures under the following procedure:

1. The owner of record of subject use/structure shall make an application for a determination of status.
2. It is the applicant's burden to provide entitlement to approved non-conforming status by subject supporting information. Such information may include: septic or sewer hook-up permits, land use permits, business permits and dated photographs.
3. The Zoning Enforcement Agent shall determine on a case-by-case basis whether a land use or structure is an existing non-conforming use or structure.
4. Appeals of Zoning Enforcement Agent decisions may be submitted under the Administrative Appeal Process.

4.03 Land Use Permits

4.03.1 Intent. The intent of these zoning regulations is not to prevent particular activities, but rather to regulate and promote orderly development.

4.03.2 Process. Landowners shall submit LUP applications (with accompanying fee) to the Planning Department for new structures as defined by this Regulation (see list of uses requiring land use permits). The Planning Department inspects applications to determine if projects comply with provisions of this Regulation.

4.03.3 Septic Permits. Landowners shall provide proof of septic or sewer permits with those projects which contemplate new facilities or extension of existing facilities.

4.03.4 Appeals. Appeals of Zoning Enforcement Agent decisions may be submitted under the Administrative Appeal Process.

4.03.5 Expiration. Land Use Permits expire if building or work authorized by the permit has not commenced within 12 months from the original permit date. Landowners must obtain a new permit, at one-half the fee, to re-commence work.

4.04 Conditional Use Permits – Major, Minor, Natural Resources

4.04.1 Intent. Conditional Use Permits (CUPs) are required prior to operation of a use that is not a use allowed by right, but allowed conditionally under this Regulation. CUPs are separated into three groups: major CUPs, minor CUPs, and Natural Resources CUPs.

4.04.2 Requirements. Structures or land within the District may not be used for any purpose unless such use is specifically listed as a use allowed by right or conditional use in this Regulation. The Bozeman Pass Planning and Zoning Commission may grant a conditional use for a major or minor CUP when they find:

1. The use conforms to the objectives of the Gallatin County Growth Policy and the intent of this Regulation.
2. The use will not adversely affect nearby properties or their occupants.
3. The use meets density, and all other regulations of the district in which it is located, unless otherwise provided in this Regulation.
4. A public hearing, after notice has been given, has been held.

4.04.3 Conditional Approval. The Bozeman Pass Planning and Zoning Commission may make the granting of a conditional use permit subject to reasonable limitations or conditions as it may deem necessary to enhance the appearance of the property, to reduce any adverse effects on nearby property or residences, to preserve the character of the area or to make it more acceptable in other ways. The conditions may include but not be limited to the following:

a. Regulation of landscaping and its maintenance.
b. Regulation of height.
c. Regulation of lighting.
d. Regulation of odors, smoke, dust, airborne particles, vibration, glare, heat and noise.
e. Regulation of placement of uses on the property.
f. Regulation of signs.
g. Regulation of the length of time such use may be permitted.
h. Regulation of the nature and extent of the use.
i. Regulation of time of activities that have off-site impacts.
j. Regulation of vehicular ingress and egress.
k. Requirement for dedication or improvements of rights-of-way.
l. Requirements for restoration of property.
m. Special setbacks, yards, open spaces, buffers, fences and walls.
n. Appropriate fire mitigation.
o. Time schedule of proposed development.

4.04.4 Procedure. All CUP applications shall be submitted to the Planning Department on the required form with the accompanying fee. A hearing on the matter is scheduled before the Bozeman Pass Planning and Zoning Commission and they shall either approve or deny the application based on the facts. The Bozeman Pass Planning and Zoning Commission may impose reasonable conditions as it may deem necessary to mitigate project impacts. Use cannot commence until all conditions have been met.

4.04.5 Notice. Notice of the public hearing shall be published at least 15 days prior to the hearing in a newspaper of general circulation. Adjacent property owners shall be noticed by certified mail for a Major CUP. With Minor CUPs, the adjacent property owners shall be noticed by regular mail.

4.04.6 Issuance of Land Use Permits. No land use permit shall be issued other than in accordance with the conditions and terms of the conditional use permit. No land use permit shall be issued until time for appeal on a conditional use permit has elapsed, or if an appeal has been filed, the appeal has been decided.

4.04.7 Revocation or Modification. The Bozeman Pass Planning and Zoning Commission may revoke or modify a CUP under the following circumstances (under the procedure described above):

1. If circumstances have changed substantially since original approval.
2. Revocation or modification is necessary to protect the health, safety, or welfare of the area, or is necessary to preserve the integrity of existing use patterns in the area.

3. The person holding the permit has not complied with the required conditions.

4.04.8 Expiration/Extensions. The Bozeman Pass Planning and Zoning Commission may issue a Major or Natural Resource CUP for a definite term. Extensions can be obtained through written application made 30 days prior to expiration, with accompanying fee and notification sent to adjacent property owners. An extension shall be granted if no objection is received. A public hearing will be held if objection is received.

4.05 Natural Resources Conditional Use Permits

4.05.1 Natural Resources CUP Requirements. All exploration and development relating to oil and gas and coalbed methane production including test wells, production wells, compressor stations, etc., commercial quarries, surface and underground mining, shall require review under the conditional use permit process described in this Regulation. The County Commission may grant such permit only if it is found:

1. The use conforms to the objectives of the Gallatin County Growth Policy and the intent of this Regulation.
2. The use will not adversely affect nearby properties, residents, groundwater, streams and wetlands.
3. That non-renewable resource exploration and development occurs in a responsible manner.
4. The use contributes and guarantees payment of an appropriate share of the costs for public services and facilities.
5. That financial security has been provided to mitigate any such adverse effect.
6. The use meets density, coverage, yard, height, and all other regulations of the district in which it is located, unless otherwise provided in this Regulation.
7. The use meets all other applicable regulations.
8. A public hearing, after notice has been given, has been held.

4.05.2 Preliminary Application. Applicant shall submit a preliminary application to the Planning Department including all required components as follows:

1. An initial development plan, prepared by the developer. Said plan, which shall be the preparatory basis for the Environmental Impact Study, shall address all the issues detailed below.
2. Twelve copies of the preliminary application. All preliminary applications shall be accompanied by the full fee established under the Planning Department Fee Schedule.
3. Cover letter describing project and submittal material.
4. Copy of associated mineral leases.
5. Copy of order from the Montana Board of Oil and Gas Conservation, and associated stipulations.
6. 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.
7. Name and location of all water wells, springs, and surface water within a one-and-

a-half mile radius of proposed site.

8. 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 proposed well to north, south, east and west.
9. 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 Gallatin County Road and Bridge Superintendent; fire and disaster mitigation plan(s); etc.
10. An approved Noxious Weed Control and Revegetation plan through the Gallatin County Weed Control District.
11. Plans for reclamation of all disturbances associated with project(s).
12. Any additional information as deemed necessary by the Planning Department.

4.05.3 Final Application. Applicant shall submit a final application to the Planning Department including an Environmental Impact Statement, conducted by a third-party Montana State licensed professional engineer (PE) qualified to evaluate the project's impacts, at the developer's expense; and a Development Plan, prepared by the developer, as well as Performance Bonds and other securities and fees as indicated below:

1. Applicant shall provide the Development Plan based on Environmental Impact Study (EIS). The Development Plan shall:

    a. Address surface owner's consent.
    b. Document plans to protect property values.
    c. Document plans for fire protection and emergency response.
    d. Document adequate water quantity; demonstrate plans for protecting surface and ground water quality.
    e. Demonstrate plans for conservation of important fish, wildlife and plant habitat.
    f. Demonstrate plans for compliance with local, state and federal air quality regulations and/or standards.
    g. Demonstrate plans for landscaping and its maintenance, to limit soil erosion in compliance with local, state and federal soil management and conservation regulations and/or standards.
    h. Demonstrate plans to comply with weed control regulations.
    i. Include a schedule of phased-in development to diffuse impacts over time.
    j. Demonstrate plans for compliance with §85-2-205 and 82-11-175 MCA, and other state and federal laws regarding disposal of all ground water involved with coal bed methane wells.
    k. Demonstrate plans for reclamation for all disturbances associated with the project(s).

2. The EIS shall include:

a. Appraisal of current property values.
b. Analysis of effects of proposed development on fire and emergency response systems.
c. Thorough collection of fish, wildlife and plant inventories.
d. Collection of baseline data of existing surface and ground water quality and quantity.
e. Collection of baseline data of existing air quality.
f. Collection of baseline data of existing noise levels.
g. An analysis by a qualified person or entity of the Development Plan's specific measures to protect and conserve: property values, water quality and quantity, agricultural and conservation usage, plant and wildlife habitat, air quality and noise levels.
h. A schedule for effective third party monitoring, on at least a monthly basis, by a Montana state licensed and bonded environmental engineer, of all development, based on the submitted Development Plan, shall be determined by the Bozeman Pass Planning and Zoning Commission. The licensed and bonded environmental engineer third party monitor shall be agreed upon by the Bozeman Pass Planning and Zoning Commission and the applicant, in order to provide active enforcement of existing laws to protect private property and other rights of Montana citizens, and Montana's natural resources. Monitoring shall include a monthly report to the Bozeman Pass Planning and Zoning Commission. Such monitoring shall be at the sole expense of the applicant, and that cost by the applicant shall be guaranteed by specific performance bonds payable to the environmental engineer selected as the third party monitor. Failure to maintain payment to the monitor and adequate performance bonding for future payments, shall be cause for revocation of the conditional use permit. All records generated as a result of such monitoring shall be made regularly available as public records for audit, on a monthly basis, through the Gallatin County Planning Department.

4.05.4 Conditional Approval. Applications for conditional use permits may be approved, conditionally approved or denied by the Bozeman Pass Planning and Zoning Commission. If an application is denied, the denial shall constitute a finding that the applicant has not shown that the conditions required for approval do exist. The Bozeman Pass Planning and Zoning Commission shall make the granting of the conditional use permit subject to reasonable limitations or conditions as it may deem necessary to protect the health, safety, morals and welfare of the citizens of the District; and to mitigate or avoid adverse impacts on nearby property, residents, groundwater, streams and wetlands; and to ensure that non-renewable resource exploration and development occurs in a responsible manner and contributes and guarantees payment of an appropriate share of the costs for public services and facilities; and to make the proposed use more compatible and consistent with the intent of the Bozeman Pass Development Plan and Zoning Regulation and the Gallatin County Plan. Said conditions may include but not be limited to the following:

a. CUP application for mineral, oil and gas exploration or extraction shall consist of an application, containing the development plan, detailing the following conditions, and the Environmental Impact Study.

b. A binding contract between the developer and an appropriate insurer for performance bonds, as specified above, and other appropriate guarantees acceptable to the Bozeman Pass Planning and Zoning Commission, sufficient to ensure mitigation and complete reclamation of all significant adverse impacts caused by or induced by the construction of the proposed conditional use. Such performance bonds shall include provision for inflation.
c. Regulation of vehicular ingress and egress.
d. Regulation of hours of operation.
e. Regulation of discharge of groundwater and surface water.
f. A fee for discharged effluent, based upon one and one-half times the total estimated or actual costs of all environmental cleanup or mitigation performed by or for any public agency, in order to achieve compliance with this Regulation.
g. Regulation of odors, smoke, dust, airborne particles, vibration, glare and noise emissions from point and non-point sources.
h. Regulation for placement and height of structures required for the conditional use on the subject property.
i. Requirement for dedication, improvements and/or maintenance of rights-of-way.
j. Limitation of length of time or term such conditional use may be permitted.
k. A schedule for effective monitoring of all development.
l. Conditions for the approval may include changes to the Development Plan based upon information and data from the Environmental Impact Study and the public hearing(s) and the written comments from the public, so as to improve environmental and property protection.
m. The Bozeman Pass Planning and Zoning Commission shall impose conditions requiring the developer to use best available low-impact technologies, such as aquifer recharge, clustered development, directional drilling, mufflers for compressor stations, discharge water desalination, infiltration or treatment, etc., to minimize impacts on underground water reserves, rivers and streams, and surface resources.
n. The Bozeman Pass Planning and Zoning Commission shall impose conditions requiring the developer to guarantee complete reclamation of all disturbed areas. This guarantee shall be accomplished by requiring all mineral, oil and gas exploration or extraction developers to post separate site-specific performance bonds for each tract of property affected by the proposed CUP. Said performance bonds shall be payable to Gallatin County, and shall be equal to or greater than the current value of the property plus the potential cleanup cost of any resultant air, land or water pollution or degradation, as estimated by the required Development Plan and Environmental Impact Study. Failure to maintain adequate performance bonding shall be cause for revocation of the CUP.

4.05.5 The Bozeman Pass Planning and Zoning Commission shall, in addition to all other conditions, impose the following general conditions upon every CUP granted:

a. That the right to a use and occupancy permit shall be contingent upon the fulfillment of all general and special conditions imposed by this CUP procedure.
b. That all of the special conditions shall constitute restrictions running with the land use, shall apply and be adhered to by the owner of the land, successors or

assigns, shall be binding upon the owner of the land, his successors or assigns, shall be consented to in writing, and shall be recorded as such with the Gallatin County Clerk and Recorder's Office by the property owner prior to the issuance of any building permits, final site plan approval or commencement of the conditional use.

4.05.6 Expiration/Extension. The Bozeman Pass Planning and Zoning Commission may issue a Natural Resource CUP for a definite term. Extensions can be obtained through written application with accompanying fee made at least 30 days prior to expiration. A public hearing will be held and adjacent property owners will be notified by certified mail. Notice of the public hearing shall be published at least 15 days prior to the hearing in a newspaper of general circulation.

4.06 Variances

4.06.1 Intent. It is the intent of this section to provide a process under certain circumstances to deviate from the literal requirements of this Regulation. The County Commission may grant certain variances that are not contrary to public interest, where, owing to special conditions, literal enforcement of this Regulation results in an unnecessary hardship.

4.06.2 Criteria. In granting a variance, the County Commission shall consider the following criteria:

a. 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 no control since enactment of this Regulation.
b. 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 zone.
c. The variance would not be materially detrimental to property in the same zone or vicinity in which the property is located.
d. The variance requested is the minimum variance that would alleviate the hardship.

4.06.3 Procedure. All variance applications shall be submitted to the Planning Department on the required form with the accompanying fee. A hearing on the matter is scheduled before the County Commission, and the County Commission shall either approve or deny the application based on the facts. The County Commission may impose reasonable conditions as it may deem necessary to mitigate project impacts.

4.06.4 Notice. Notice of the public hearing shall be published at least 15 days prior to the hearing in a newspaper of general circulation. Adjacent property owners shall be noticed by certified mail.

4.07 Amendments

4.07.1 Intent. This Regulation and the development pattern may be amended whenever the public necessity and convenience and general welfare requires such amendment. Amendments shall follow the procedure prescribed by law and this Regulation.

4.07.2 Procedure. An amendment may be initiated by:

a. A request by the Advisory Committee to the Planning and Zoning Commissions.
b. The petition of one or more landowners in the District. The petition shall be filed with the Zoning Enforcement Agent on the required application, accompanied by the required fee.
c. Resolution of intention of the Planning and Zoning Commission.
d. Resolution of intention of the County Commission.

4.07.3 Advisory Committee Meeting. Proposed amendments may first be presented at a community meeting which shall have the same notice requirements as a conditional use permit. The Committee may prepare a report based on the discussion at the meeting, indicating whether or not it recommends adoption of the proposed amendment.

4.07.4 Planning and Zoning Commission Hearing. All proposed amendments shall be considered by the Planning and Zoning Commission at a public hearing. The Planning and Zoning Commission shall schedule a hearing on the proposed amendment. Notice of the hearing shall be given in a newspaper of general circulation in Gallatin County not less than 15 days prior to the date of the hearing.

The Planning and Zoning Commission shall conduct a hearing on the proposed amendment. At that hearing, the Planning and Zoning Commission shall consider the Committee report, take testimony, and determine whether the proposed amendment is consistent with the development pattern for the BPZD. If the Planning and Zoning Commission finds that the proposed amendment is consistent with the development pattern, it may adopt the amendment. If the Planning and Zoning Commission finds that the proposed amendment is not consistent with the development pattern, no action shall be taken.

4.07.5 Hearing. The Planning and Zoning Commission and the County Commission may consider all proposed amendments at a public hearing. Notice of the hearing shall be posted in a newspaper of general circulation and posted in a public place within the District at least 15 days prior to the hearing.

4.08 Complaints and Enforcement

4.08.1 Intent. It is the duty of the Bozeman Pass Planning and Zoning Commission, the County Commission, its officers, agents and employees to enforce the provisions of this Regulation.

4.08.2 Injunction. Upon order of the County Commission, the County Attorney shall bring an action in the name of the County of Gallatin in the District Court to enjoin violations of this Regulation.

4.08.3 Stop Order. Whenever any building work is being done contrary to the provisions of this Regulation, the Zoning Enforcement Agent shall order the work stopped by notice in writing served on any person engaged in doing or causing such work to be done, and any such person shall forthwith stop work until authorized by said agent to proceed with the work.

4.08.4 Compliance Regarding Violations. Any person may file a written complaint with the Zoning Enforcement Agent addressing a violation of this Regulation. The complaint shall state the causes and basis for the complaint. Upon receipt of the complaint, the Zoning Enforcement Agent shall record the complaint, investigate and take whatever action the Agent considers appropriate.

4.08.5 Remedies, Cumulative. The remedies provided for herein shall be cumulative and not exclusive.