



## COUNTY OF YELLOWSTONE ZONING COMMISSION

**AGENDA-Friday, February 12, 2016**

**(Continued from February 8, 2016)**

**11:00 a.m.**

**Billings Library Community Meeting Room  
510 North Broadway, 1st Floor, Billings, Montana**

### NOTICE TO THE PUBLIC

#### Public Comment:

There will be a Public Comment Section as noted on the agenda. This is the time members of the public may comment on any item not appearing on the agenda. Under State law, matters presented under this section cannot be discussed or acted upon by the Zoning Commission during this time. For items appearing on the agenda, the public will be invited to make comments at the appropriate time. It is very important to speak clearly, and state your name and address for the record. Please limit your comments to three (3) minutes or less.

**Call the meeting to order.**

**Introduction of the Yellowstone County Zoning Commission Members and Planning Department Staff.**

**Public Comment**

**Disclosure of any Conflict of Interest-Members of the Commission and Staff**

**Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff  
a. The Exparté Communication Binder is available at the Sign-In and Agenda Station.**

**Regular Business:**

- A. Opening of public hearings.
- B. Reading of rules for the procedure by which the public hearings will be conducted.
- C. Reading of notices of the public hearings on the following items:

**Public Hearings:**

- a. **Item #1 (continued from February 8, 2016) - County Zone Change #669 – West of Billings Logan Airport – 2300 Block of Highway 3 North** – A zone change request from Agriculture-Open Space (A-1) to Public (P) on the north 600 feet of Tracts 13 and 14 of C/S 2037 (~18.49 acres), and Controlled Industrial (CI) on 20 acres directly south of the proposed Public zone on Tracts 13 & 14, C/S 2037, a 58.66 acre parcel of land. The 20 acres immediately north of Highway 3 will remain in the A-1 zoning district. A pre-application meeting was conducted on November 20, 2015 at the Tolliver Law Firm, 1004 Division Street. Tax IDs: D04575L, D04575M. Presented by: Nicole Cromwell, Zoning Coordinator

## **Other Business/Announcements**

## **Adjournment**

Following the public hearing, the County Zoning Commission will make a recommendation to the Yellowstone County Commissioners. **The Board of County Commissioners public hearing for Zone Change #671 only will be held on Tuesday, February 23, 2016, at 9:45 a.m. in Room 403A, 4<sup>th</sup> Floor of the Yellowstone County Courthouse. The Board of County Commissioners' public hearing for Zone Changes #670 and #669 will be held on Tuesday, March 1, 2016, at 9:45 am, in Room 403A, 4<sup>th</sup> Floor of the Yellowstone County Courthouse.** The Board of County Commissioners will hear all persons wishing to speak relative to the proposed zone changes.

Information on the preceding item may be obtained at the Yellowstone County Planning Department, 2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor or phone 247-8676. Anyone wishing to be heard on this matter may appear at this hearing. Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Tammy Deines, Planning Clerk, at 247-8610 or e-mail at [deinest@ci.billings.mt.us](mailto:deinest@ci.billings.mt.us)



## County Zoning Commission

**Meeting Date:** 02/12/2016

**SUBJECT:** Zone Change 669 - West of Billings Logan Airport - Highway 3

**THROUGH:** Candi Millar, Planning & Community Services Department Director

**PRESENTED BY:** Nicole Cromwell

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## Information

### REQUEST

**Item #1 (continued from February 8, 2016) - County Zone Change #669 – West of Billings Logan Airport – 2300 Block of Highway 3 North** – A zone change request from Agriculture-Open Space (A-1) to Public (P) on the north 600 feet of Tracts 13 and 14 of C/S 2037 (~18.49 acres), and Controlled Industrial (CI) on 20 acres directly south of the proposed Public zone on Tracts 13 & 14, C/S 2037, a 58.66 acre parcel of land. The 20 acres immediately north of Highway 3 will remain in the A-1 zoning district. A pre-application meeting was conducted on November 20, 2015 at the Tolliver Law Firm, 1004 Division Street. Tax IDs: D04575L, D04575M. Presented by: Nicole Cromwell, Zoning Coordinator

### RECOMMENDATION

The Planning Division recommends denial based on the proposed findings of the 11 criteria for Zone Change 669.

### APPLICATION DATA

OWNER: Bruce Crippen; Frederick, Cameron & Lynn Longan; Richard & Ellen Rozehnal; Almon Blain (contract buyer)

AGENT: Barb Potzman and Ken Tolliver

LEGAL DESCRIPTION: Tracts 13 & 14, C/S 2037

ADDRESS: None yet assigned - 2300 Block of Highway 3

CURRENT ZONING: A-1

EXISTING LAND USE: Grazing

PROPOSED USE: Heliport and ancillary businesses with 20 acres of A-1 to remain adjacent to Highway 3

SIZE OF PARCEL: 58.66 acres

### CONCURRENT APPLICATIONS

None.

### APPLICABLE ZONING HISTORY

The subject property is in the original zoning designated by the County in 1973 - Agriculture-Open Space (A-1). There have been no applications to change the zoning on the subject property. West of the subject property on Tract 2 of C/S 1889, an application to change zoning from A-1 to Highway Commercial (HC) was denied by the County Commissioners in 1985. Other zone changes in the area were from A-1 to Agriculture Suburban (AS) or Residential 15,000 (R-150) and these have been approved. The Public zone is a zone described as "*intended to reserve land exclusively for public or semi-public uses in order to preserve and provide adequate land for a variety of community facilities which serve the public health, safety and general welfare.*" The CI is a zone described as intended to "*accommodate a variety of business, warehouse and light industrial uses related to wholesale plus other*

*business and light industries not compatible with other commercial zones, but which need not be restricted in industrial or general commercial zones, and to provide locations directly accessible to arterial and other transportation systems where they can conveniently serve the business and industrial centers of the city and county."*

## **SURROUNDING LAND USE & ZONING**

NORTH:	Zoning: A-1 Land Use: Grazing land and vacant
SOUTH:	Zoning: R-70 and R-96 (city) Land Use: Single family dwellings
EAST:	Zoning: Public (city) Land Use: Billings Logan Airport property
WEST:	Zoning: A-1 Land Use: Agricultural land

## **BACKGROUND**

This is an application to change zoning on 2 parcels of land directly west of the Billings Logan Airport to allow the contract buyer to construct a heliport and to allow development of ancillary or related businesses directly adjacent to the proposed heliport. The proposed zoning would be split between Public for the north 600 feet (about 18 acres) and Controlled Industrial (CI) for the 20 acres directly south of the proposed Public zone. The remaining 20 acres just north of Highway 3 would remain in the A-1 zone for the foreseeable future. The applicant has modified the request from the original submittal that included 40 acres of proposed CI zoning. The applicant and agents do not yet have a future land use plan that includes the south 20 acres that would remain in A-1 zoning. The applicant and agents currently plan to develop the proposed Public zoned area for a heliport. The adjacent 20 acres of CI zoning may be marketed to complementary businesses and service providers but no firm land use plan has been developed for this area. The property is not within the short term limits of annexation area for the City of Billings so all uses on the property will need to provide domestic water supply and waste water disposal. However, this area is within the Long Range Urban Planning Area of the City's Annexation Policy and future improvements to services in this area are expected to enable development in the City at some time in the future.

The Public zone is the only zoning district that currently allows the development of a heliport except for the Medical Corridor (without fueling or maintenance) and certain Planned Development zones. Prior to 1997, the city and the county maintained separate zoning codes. The county code prior to 1997 allowed heliports by special review approval in 4 zoning districts (HC, CI, HI and Public) and allowed airports only in the Public zone. The city zoning code, prior to code unification in 1997, had been changed to only allow airports and heliports in the Public zoning district or heliports without fueling and maintenance facilities in the Medical Corridor. When the codes were unified, the city and county agreed to the move forward with the city's adopted code for many of the commercial and industrial zones. Special review is no longer possible for heliports. The change in the zoning code through the unification of the regulations was not intended to preclude the development of private aviation facilities but it now requires these facilities to be located in a Public zoning district.

The proposed Public zone is adjacent to Public zoning for the Billings Logan Airport property directly to the east. The proposed use and development for Billings Flying Service has been reviewed by the airport staff and they have not forwarded any concerns with the proposal. There are 13 private heliports in Montana with 20 additional heliports associated with health care facilities or state facilities. Many of these private facilities are near tourist areas or serve ranches. Development of the heliport will need to be approved by the FAA and other aviation authorities due to its proximity to the public airport. The property is within the adopted Airport Influence Zone for the Billings airport. The height and use of any new structures on the property will be restricted through the adopted regulations (Chapter 5 of the Billings, MT City Code (BMCC)). The adopted influence zone is shown on the attached Zoning Map. The Airport Influence area regulations apply regardless of the underlying zoning district.

The proposed 20 acres of CI zoning is not similar to the surrounding zoning. The surrounding zoning is residential (city) and agricultural and residential (county). The CI zone is a zone *"to accommodate a variety of business, warehouse and light industrial uses related to wholesale plus other business and light industries not compatible with other commercial zones, but which need not be restricted in industrial or general commercial zones, and to*

*provide locations directly accessible to arterial and other transportation systems where they can conveniently serve the business and industrial centers of the city and county.*" On parcels outside the city limits, the CI zone supports businesses ranging from petroleum supply, personal storage warehousing as well as business service providers such as sign shops, machine repair shops and wholesale suppliers. The CI zone also allows some intense commercial development such large retailers and building supply businesses. While some of these uses may be compatible or benign in their effect on adjacent uses, many would not be compatible or desirable along a gateway area to the city or near residential neighborhoods.

The applicant has modified the original request to exclude the south 20 acres of the parcel from the proposed CI zoning so any development for CI uses in the County would be at least 600 feet north of Highway 3 and 700 to 800 feet north of the closest residential building south of Highway 3. However, uses allowed in the CI zone may have more of a noise impact than the heliport depending on the type of use. Manufacturing uses may generate more noise and traffic than retail or service businesses. Uses allowed in the CI zone are also more likely to generate noise and traffic outside of normal business hours and have more impact on the health and general welfare of the residential neighborhoods south of Highway 3 and the residences along the north side of Highway 3 to the west of the subject property.

The Planning Division recently completed a Highway 3 Corridor study to identify safety improvements for motorized and nonmotorized traffic in the area. South of Highway 3, the City and County own and manage park land atop the rims. Safe access to these parklands is a concern. In addition, control and management of storm water runoff from paved and unpaved areas is also a concern. The study concluded there are several needed safety improvements along this section of Highway 3, including traffic roundabouts at Zimmerman Trail and Rod & Gun Club Road intersections, and center turn lanes or raised medians to better control left turn movements. The study indicated Highway 3 has enough road capacity at least through 2035 for increasing levels of traffic including residential or commercial traffic. The 2015 traffic count for this section of Highway 3 averages about 9,600 vehicles per day. This is not a high volume for a principal arterial street but steady 3 to 4 percent increases in traffic volume have been noted in the past 5 years.

The proposed zoning will have a measurable effect on traffic generation. The property currently has 2 access points. The primary access is a shared access along the east property line of Tract 14. There is a subsequent access easement granted along the south and westerly property lines to benefit Tracts 9, 10 and 12 to the north and west. There is a gated access from Highway 3 onto to Tract 14 that appears to be little used. A new or improved state-approved access will be needed to provide safe access to the proposed development for Billings Flying Service. The current use of the property – occasional grazing of livestock – generates little or no traffic on a daily basis. The types of traffic generated from Public and CI zoning are different than current traffic patterns in the area. MDT may require some traffic analysis and improvements dependent on the type and volume of traffic generated from specific developments on the property. If the property is annexed and developed, the City Traffic Engineer may require a traffic impact analysis to determine the appropriate mitigation or street development to accommodate the new uses.

The proposed Public zoning is within the character of the adjacent airport property. The proposed area for the CI zoning may be compatible with some of the adjacent Public zoning uses (related to aircraft operations) but would have negative effects on the adjacent agricultural and residential uses. Due to the current lack of public services to the site, uses will be limited in both proposed zoning districts unless the property annexes in the future. Allowed uses within the CI zone range from small warehouses and mini storage to manufacturing. It is likely any development on the CI zoned area without public services will be limited to repair shops, contractor storage, offices and personal storage warehouses. This would be similar to recent developments on the east side of Sugar Avenue or on Cerise Road in Lockwood. Uses allowed in the CI zone may have more of a noise impact than the heliport depending on the type of use. Manufacturing uses may generate more traffic and noise than retail or service businesses. Uses allowed in the CI zone are also more likely to generate noise and traffic outside of normal business hours and have more impact on the health and general welfare of the residential neighborhoods south of Highway 3 and the residences along the north side of Highway 3 to the west of the subject property. The subject property is currently limited by the Airport Overlay zoning which discourages residential zoning and uses, and limits the height of buildings and trees so as not to interfere with aircraft departing or arriving at the Billings Airport. The proposed heliport is compatible with the existing airport.

The Planning Division has reviewed the application and the 11 criteria for all County zone changes. The proposal for the Public zoning has merit under the criteria given its location on the north portion of the property and its shared property line with the existing Public zoning for the city airport. The proposal also seeks 20 acres of Controlled Industrial (CI) zoning for the area directly south of the Public zone so compatible and support uses for the heliport may be developed. The proposed CI zoning is not compatible with the adjacent zoning in the city and county and is not a predictable land use given the adopted Growth Policy. The requested zoning must be reviewed in its entirety including both the Public zoning and the CI zoning, and staff finds that the CI zoning is not supported by the 11 criteria. The 20 acres directly north of Highway 3 will remain in the A-1 zoning district at this time under the updated proposal.

The property is not within the short-term limits of annexation area on the City of Billings' Limits of Annexation Map. It is within the Long Range Urban Planning Area of the City's Limits of Annexation Map. While the property could not be annexed immediately under the City's Annexation Policy, the owner could request the City review including the property in the Red Area of the map in the future, so that annexation might be possible. One of the current challenges to urban development in this area in the City is limitations on current water and sewer infrastructure and access to other City services.

Developments in similar CI zones in Yellowstone County include machine shops, personal warehouse storage, contractor storage yards and small manufacturing plants. Some of these developments might be appropriate in this area but many would not be compatible with adjacent neighbors or uses. Uses allowed in the CI zone may have more of a noise impact than the heliport depending on the type of use. Uses allowed in the CI zone are also more likely to generate noise and traffic outside of normal business hours and have more impact on the health and general welfare of the residential neighborhoods in the area. The south 20 acres of the property in close proximity to the residential uses south of the rims will remain as an A-1 zoning district under the revised applicant proposal.

## **RECOMMENDATION**

The Planning Division recommends denial based on the proposed findings of the 11 review criteria for Zone Change 669.

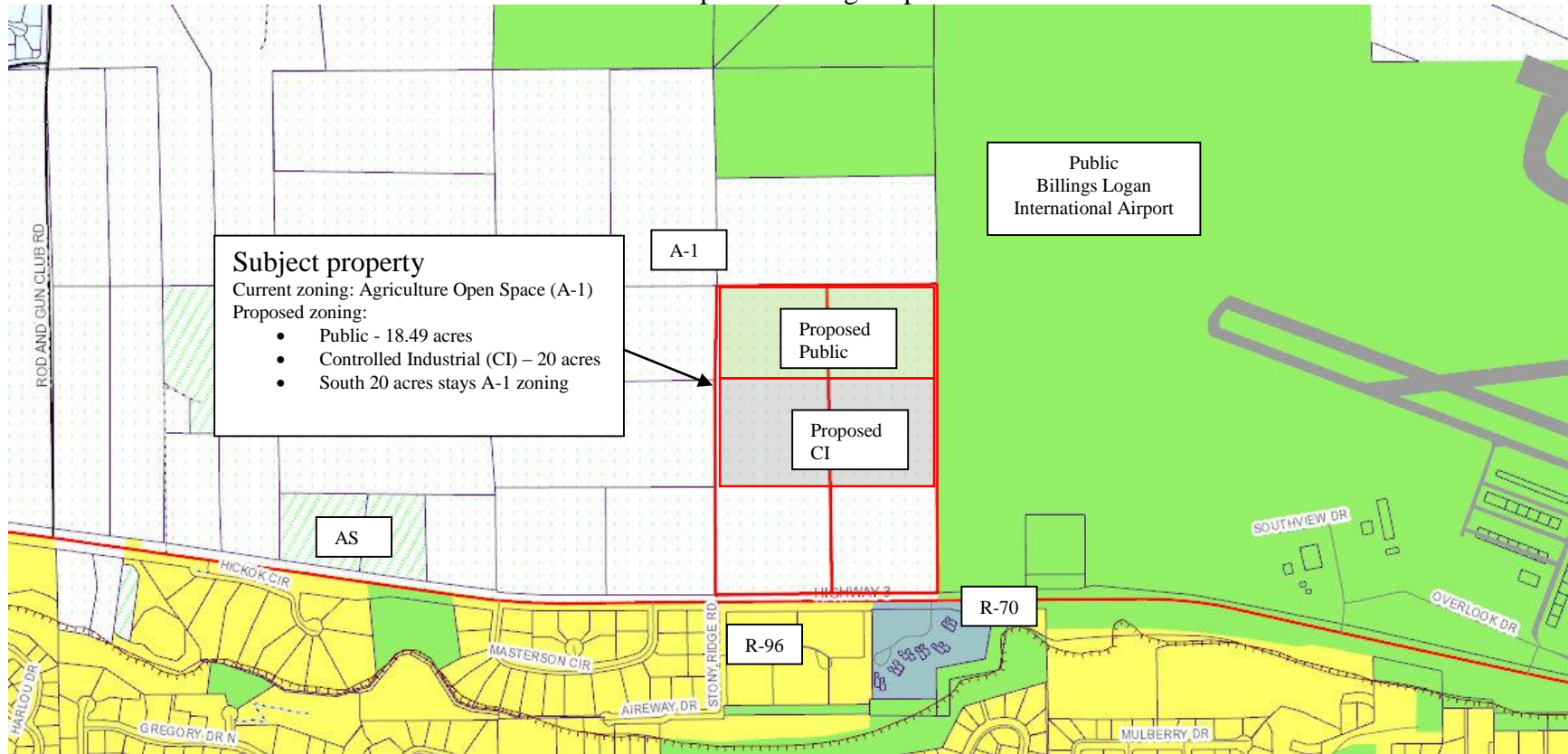
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## **Attachments**

Zoning Map  
Findings of the Review Criteria  
Site photos  
Applicant Letter and pre application materials  
Similar CI zones in County  
Public Comment Dossett  
Public Comment Beley  
Public Comment Sather  
Public Comment Filz pt 1  
Public Comment Filz pt 2  
Public Comment Filz pt 3  
Public Comment Filz pt 4  
Public Comment Edwards  
Tolliver pt 1  
Tolliver pt 2

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# Zone Change #669 Proposed Zoning Map



## REVIEW CRITERIA

### Zone Change 669 – 2300 Block Highway 3 – Billings Flying Service

The Yellowstone County Zoning Commission, prior to any recommendation, shall consider the following:

1. *Is the new zoning designed in accordance with the Yellowstone County and City of Billings 2008 Growth Policy?*

The proposed zoning does comply with the following goals of the Yellowstone County and City of Billings 2008 Growth Policy and area plans:

- Predictable land use decisions that are consistent with neighborhood character and preferred land use patterns identified in the growth policy. (Land Use Element, page 6).  
*Zoning this property to Public (18.5 acres) and CI (20 acres) zoning would be consistent with the neighborhood character and land use patterns in the area. This area of the County west of the airport is primarily grazing and ranch land with some low density residential uses. The airport influence zone will preclude any taller structures that would otherwise be allowed in the proposed zoning districts. The Airport Influence and Noise Overlay zone also discourages incompatible uses such as residential homes and other living spaces. The proposed Public zone is a predictable zone given the adjacent Billings Airport zoning. The Public zone is the only zone is the only district where heliports are allowed. The proposed CI zone directly south of the proposed Public zone is intended to accommodate ancillary businesses that would support the Billings Flying Service heliport. The remaining 20 acres adjacent to Highway 3 will stay A-1 zoning. South of the subject property are residential subdivisions within the city limits. The proposed Public zoning on the north 600 feet of the subject parcels is consistent with the adjacent airport Public zoning district. The proposed CI zoning for 20 acres and not along the frontage of Highway 3 is consistent with the adjacent uses. CI zoning allows more intense uses but those uses will be limited by the lack of public services and the Airport Overlay zone. There is little potential for conflict between existing uses and future uses.*
- Goal: New developments that are sensitive to and compatible with the character of adjacent development. (Land Use Element Goal, page 6).  
*This property is adjacent to airport property and state Highway 3. The development of a heliport is compatible with the adjacent airport to the east and not out of character in this area. Residential zones south of the rims are also included within the Airport Influence zone and already experience some noise impacts from airport operations. The proposed Public zone for the heliport development is more than ¼ mile north of the closest residential home south of Highway 3. The proposed CI zone for 20 acres just south of the Public zone may have some negative effect on the adjacent grazing land. The proposed CI zoning will not be along the Highway 3 frontage. Buildings in this zoning will be height limited due to the Airport Influence zone but will be visible from the highway. Any development in this CI zone will require landscaping installed at the time of*

*development. The Airport Influence zone combined with the lack of public services will limit the types of development in this proposed CI zone.*

- Goal: Coordinated economic development efforts (Economic Development Element, page 7)

*The proposed use of the property in the Public zone is to locate a private heliport for the Billings Flying Service. Billings Flying Service is currently located at 6309 Jellison Road, south of the Yellowstone River and west of the Billings Regional Landfill. 6309 Jellison Road is in an Agriculture-Open Space (A-1) zone. The existing uses at this location are legal nonconforming uses. The existing site cannot expand due to the zoning restrictions on nonconforming uses. The applicant could locate on a leased space at the Billings Airport. A leased space on airport property is a generally a preferred option for this type of business but this may not fit with the applicant's long-term business plan. The proximity to the existing airport and limited development potential of this property for uses other than the proposed uses allows expansion of this economic sector in a coordinated manner.*

2. *Is the new zoning designed to secure from fire and other danger?*

The subject property is currently served by the Billings Urban Fire Service Area and pays a small assessment based on the structure (a livestock shelter) currently on the property. Any new structures would trigger additional fees to the fire service district but would not guarantee the availability of specialized fire suppression equipment for aircraft or aviation fuel accidents or fires. The Billings Airport Aircraft Rescue and Firefighting division is a specialized suppression and response unit that is not part of the BUFSA district services. The closest fire station is Fire Station 1 in North Park about 3.5 miles south and east of this location. The Fire Department or BUFSA may require special construction or site protection measures depending on the specific uses in any development. The existing and proposed zoning requires building separations, setbacks and height limits that should provide security from fire or other public safety emergencies except for aircraft rescue and firefighting activities. The fire department may call on the Airport Aircraft Rescue and Firefighting services for these specialized services.

3. *Will the new zoning facilitate the provision of transportation, water, sewerage, schools, parks and other public requirements?*

*Transportation:* The proposed zoning will have a measurable effect on traffic generation. The property currently has 2 access points. The primary access is a shared access along the east property line of Tract 14. There is a subsequent access easement granted along the south and westerly property lines to benefit Tracts 9, 10 and 12 to the north and west. There is a gated access from Highway 3 onto to Tract 14 that appears to be little used. A new or improved state-approved access will be needed to provide safe access to the proposed development for Billings Flying Service. The current use of the property – occasional grazing of livestock – generates little or no traffic on a daily basis.

The City and County recently completed a Highway 3 Corridor transportation study in partnership with the Montana Department of Transportation (MDT). The study has several recommendations for improving traffic safety, pedestrian access and storm water

management. The study included traffic volume projections out to 2035. It appears Highway 3, with a few minor improvements, may handle any additional traffic. The study recommended upgrades to the intersections with Rod & Gun Club Road and to Zimmerman Trail. The types of traffic generated from Public and CI zoning are different than current traffic patterns in the area. MDT may require some traffic analysis depending on the type and volume of traffic generated from specific developments on the property. If the property is annexed and developed, the City Traffic Engineer may require a traffic impact analysis to determine the appropriate mitigation or street development to accommodate the new uses.

*Water and Sewerage:* The property will not be served by public water and sewer systems unless it is annexed to the City. The property is not yet within the limits of annexation for the City for annexation in the next five years.

*Schools and Parks:* The proposed zoning should not impact the student population. The proposed zoning does not allow residential uses by right.

*Fire and Police:* The subject property is serviced by BUFSA and the Yellowstone County Sheriff's Department. Fire protection will be evaluated at the time of any development of the site. If the property is annexed to the city, public safety services will be provided by the City Police Department and the Fire Department. As noted in criteria #2, specialized fire suppression services may be necessary.

4. *Will the new zoning promote health and general welfare?*

Noise generation from a heliport is not predicted by the applicant to have any substantial or sustained impact on the adjacent residential uses south of Highway 3. The Airport Influence and Noise Overlay zone includes an area around the existing runways to the east that estimates noise levels based on aircraft take-offs and landings. The subject property is not within these noise overlay zones but is within the influence area for limitations on building height. The applicant proposes to place the Public zone on the north 18.5 acres where noise generation will have the least amount of impact on nearby residential neighbors. Noise from airport or heliport operations does have an impact on the general health and welfare of nearby residents. It is not known what decibel level the helicopters will generate off-site or on-site without a specific noise level study. The applicant has presented some generalized statements on how frequently helicopters will take off or land at the facility and the type of helicopters to be used. Other uses allowed in the CI zone may have more of a noise impact than the heliport depending on the type of use. Manufacturing uses may generate more noise than retail or service businesses. Uses allowed in the CI zone are also more likely to generate noise outside of normal business hours and have more impact on the health and general welfare of the residential neighborhoods south of Highway 3. The closest residential home to the proposed CI zone is over 700 feet so noise from any of these uses would not be likely to impact these residences.

5. *Will the new zoning provide adequate light and air?*  
The proposed zoning would require minimum setbacks, maximum building heights and maximum lot coverage. The Airport Influence and Noise Overlay zone will also limit some uses and building heights. These requirements should allow adequate light and air to reach the subject property and adjacent properties.
6. *Will the new zoning effect motorized and non-motorized transportation?*  
The proposed zoning itself will not generate more traffic on any of the adjacent streets or highways. Pedestrian traffic in the area is limited due to the lack of sidewalks and trails. The Highway 3 Corridor Study identified the need for a multi-use trail on the north side of Highway 3 at this location and tunnel connections to the south side of Highway 3 to access the public park area along the rims. Residential development is generally located south of the property and the main motorized access to the rim top parks are along the south side of Highway 3.
7. *Will the new zoning be compatible with urban growth in the vicinity?*  
The proposed zoning may be compatible with the adjacent zoning to the south and west and is compatible with the zoning to the east. Property west of the subject parcels is zoned A-1 and used for occasional grazing and very low density residential purposes. Property to the south is zoned for higher density residential neighborhoods within the city limits. The zone change is limited to the north 38.5 acres of the total 58.66 acres of the subject property. There is no current plan for urban growth to the north and west. This area is within the Long Range Urban Planning Area of the City's Limits of Annexation Map but outside the short term limits of annexation area for immediate annexation. The property to the north may be acquired by the airport for runway improvements and the property to the east is already owned by the airport for security purposes and general aviation businesses.
8. *Does the new zoning consider the character of the district and the suitability of the property for particular uses?*  
The proposed Public zoning is within the character of the adjacent airport property and the proposed 20 acres of CI zoning is in character with the adjacent Public zoning. The allowed uses within the CI zone range from small warehouses and mini storage to manufacturing. It is likely the development on the property without public services for the proposed 20 acres of CI zoning will become repair shops, contractor storage, and service businesses for Billings Flying Service, small offices and personal storage warehouses. This would be similar to recent developments on the east side of Sugar Avenue or on Cerise Road in Lockwood. The proposed zoning may be suitable for the proposed uses and compatible with the adjacent airport development.
9. *Will the new zoning conserve the value of buildings?*  
The new zoning is not expected to alter the value of the existing agricultural buildings in the area. It is not known if its proximity to residential property in the area may affect the value of residential buildings.

10. Will the new zoning encourage the most appropriate use of land in Yellowstone County?  
The proposed zoning does encourage the most appropriate use of land in this area of the County. The property is directly west of the Billings Airport and east of dryland grazing property. The south 20 acres of the property will remain A-1 zoning.

11. Will the new zoning be as compatible as possible with adjacent zoning in the City of Billings?  
The 2 proposed zoning districts – Public and CI are zoning districts that are also present in the City of Billings. The Public zoning is adjacent to Public zoning in the City and the proposed CI is not adjacent to the city limits. CI zoning could allow more intense uses than currently allowed in adjacent A-1 zoning districts but should be compatible with existing and future uses on these lands.

**Zone Change #669**  
**Site Photographs**



Subject property – Highway 3



View west and north along Highway 3

**Zone Change #669, continued**  
**Site Photographs**



View south and east across Highway 3



View west across Highway 3

**Zone Change #669, continued**  
**Site Photographs**



6309 Jellison Road – existing location of Billings Flying Service



Aerial view of subject property

**Zone Change #669**  
Applicant Letter & Pre-application neighborhood meeting minutes

**APPLICATION FORM**

**COUNTY ZONE CHANGE** County Zone Change # 669 - Project # PZ-15-00217

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings-Yellowstone County Unified Zoning Regulations.

Present Zoning: Agricultural - Open Space (A-1)

Proposed Zoning: Controlled Industrial (CI): Public (P) as to Helipad North 600 feet

Tax ID # D04575L & D04575M Remaining acres COUNTY COMMISSIONER DISTRICT # 2

Legal Description of Property: Tracts 13 & 14 C of S 2037 Yellowstone County

Address or General Location (If unknown, contact County Public Works): West of Airport & North of Highway 3

Size of Parcel (Area & Dimensions): 58.66 acres; 1912' N/S & 1343' E/W

Present Land-Use: Grazing

Proposed Land-Use: Aircraft office; shop; parts; heliport - likely located N/W of corner of tract

Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No X

If yes, please attach to application

\*\*\* Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): See Attached Sheet  
(Recorded Owner)

(Address)

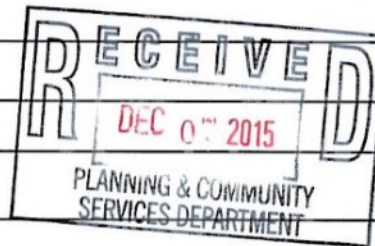
(Phone Number) (email)

Agent(s): Barb Potzman  
(Name)

41 Stone Henge Road Columbus, MT 59019  
(Address)

(406) 698-5914 barb@potzman.com

(Phone Number) (email)



I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature: See Attached Signature Page Date: \_\_\_\_\_

(Recorded Owner)

## County Zone Change Application (Continued)

### **1. In what ways is your proposal consistent with the goals and policies of the adopted Growth Policy?**

The proposed zone change compliments and contributes to Yellowstone County and the City of Billings' growth policy. In 2008, Yellowstone County, in partnership with the City of Billings, issued its Yellowstone County and City of Billings 2008 growth Policy Update. The policy update analyzed and characterized how Yellowstone County's communities had changed and what tools were needed to improve the area's communities. After the work was done, the completed report identified numerous issues, goals, and objectives. This proposed zone change addresses several of the report's stated issues and will assist Yellowstone County and the City of Billings in meeting its goals and objectives.

The primary impetus for this zone change is, if rezoned, the contract buyer, Almon Blain, would like to construct a helipad and expand the services and facilities of his company Billings Flying Service. Billings Flying Service's needs have outgrown its current facility.

Regarding economic development, the Yellowstone County and City of Billings 2008 Growth Policy calls for a cohesive focus in economic development. Specifically, the plan aspires for: "Coordinated economic development efforts that target business recruitment, retention, and expansion."

Currently, the property is underused. Rezoning will allow for effective economic use. Billings Flying Service maintains and refurbishes helicopters for re-sale, industrial work, and fire suppression. This work requires the continuing services of numerous highly qualified and well compensated employees. Billings Flying Service's personnel needs include aircraft pilots and mechanics.

Most importantly, Billings Flying Service showcases the economic potential of Yellowstone County and the City of Billings' commercial pursuits. Billings Flying Service's aircraft are currently at work around the globe. Operations extend domestically and to countries such as Indonesia, Israel, and the United Kingdom. The continued growth and expansion of Billings Flying Service and the requested rezoning conforms perfectly with Yellowstone County and City of Billings 2008 Growth Policy's goals.

**2. Explain your need for the intended zone change and why the property cannot be used under the existing zoning. Explain how the new zoning will fit in with the existing zoning and land uses of the immediate area.**

Concerning proper land use, the Yellowstone County and City of Billings 2008 growth Policy Update sets two relevant goals:

- a. Predictable land use decisions that are consistent with neighborhood character and preferred land use patterns identified in neighborhood plans; and
- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.

Future development of the property is barred by current zoning. The property is currently zoned as Agricultural-Open Space (A-1). This classification is designated to "protect and preserve agricultural lands for the performance of a wide range of agricultural functions. The intent is to limit the scattered intrusion of uses not compatible with an agricultural environment; to encourage agricultural pursuits and protect environmental concerns." Due to its location adjacent to the Billings Logan International Airport and increased development atop the Billings Rimrocks the property serves little agricultural utility. Currently, the property is used for limited grazing. In short, the property is being held in storage awaiting productive use.

As confirmed by airport authorities, the planned development complements and is compatible with airport operations. Due to noise and vertical limitations, an airport's presence

diminishes the effective use and value of surrounding property. Yellowstone County and the City of Billings have the rare opportunity to put airport area property to full and effective use. Billings Flying Service benefits from proximity to the airport. Building near the airport provides better access to Billings Flying Services fixed wing aircraft which are used to fly parts and mechanics to helicopters in the field. Billings Flying Service can be a good airport neighbor in the way only an air service can be. Further, planned development is consistent with the activities conducted as the Montana Department of Transportation's nearby maintenance facility.

Nearby residential neighborhoods may be impacted by the requested zone change. In anticipation of this application, testing has been done to assess the potential impact. Results have been positive. Residential neighborhoods lie south of Highway 3. Billings Flying Service conducted sound tests along Highway 3. The company measured the sound of Chinooks, their largest aircraft, on approach and departure. The highest decibel readings were 55 decibels. Approach and departures take approximately 60 seconds. It is anticipated during the summer months there would be approximately six arrivals and departures per month. Operations wind down by winter. In comparison, highway noise reached 100 decibels. The planned rezoning and development protects area neighborhoods while promoting efficient land use.

Future development in the area is inevitable. Current plans for rezoning and development fit consistently with the existing zoning and land uses of the immediate area.

### **Conclusion**

Considering Yellowstone County and the City of Billings' economic and land use interests, this proposed zoning change is perfectly timed and conceived. Accordingly, the property should be rezoned from Agricultural Open (A-1) to dual Controlled Industrial (CI) and Public (P) designations.

### Zone Change Application Meeting Synopsis

The Pre-Application Neighborhood Meeting was held at Tolliver Law Firm, 1004 Division St., Billings, Montana, on Friday November 20, 2015 at 4:00 p.m. Approximately forty community members attended.

Ken Tolliver and Almon Blain presented. Both discussed at length the current operations of Billings Flying Service and the proposed plan for rezoning. Discussion was aided by a handout detailing Billings Flying Service's operation, as well as a map and picture of the proposed zoning site. Al Blain also noted he had conducted sound testing from Highway 3, and based on his tests highway noise was louder than the noise emanating from Billings Flying Service's helicopters flying, landing, and departing in the area of the anticipated helipad.

Throughout the meeting, a number of attendees raised concerns about the proposed rezoning. Some of the concerns raised are listed as follows:

- Many are residents expressed concern over increased noise. Some residents discussed current noise levels caused by air travel over their homes;
- A representative for one property owner raised concerns about dust;
- Nearby property owners were concerned about the potential impact rezoning could have on their property values;
- Concerns were raised about increased traffic on Highway 3;
- Attendees were curious and concerned about whether and how the airport would maintain tower control over Billings Flying Service's helicopters;
- Some attendees asked why the proposed helipad had to be placed on the property;
- Concerns were raised about the aesthetic impact of the proposed and possible future development; and

- Area residents were concerned about the impact of development, in addition to the helipad, on the site.

Almon Blain and Ken Tolliver responded to the concerns raised by attendees.

Area residents indicated they generally preferred that the property remain zoned for agriculture or possibly used for residential development. Ken Tolliver responded that residences could not be built so close to the airport. In addition, area residents discussed the possibility of a setback or conservation easement along Highway 3. Kevin Ploehn, Director of Aviation at Billings Logan International Airport, attended the meeting on the behalf of the airport and answered questions when posed by community members.

Several attendees indicated that they believed some kind of the development on the site was inevitable. As opposed to an out of state company, many individuals stated they liked the fact that a local company with a long history in the area was interested in developing the site. One individual stated he thought the proposed development was logical and it made sense to have business development on the proposed site.

A copy of the pre-application neighborhood meeting's audio recording is included in this application.



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Billings Flying Service Zone Change Application

BFS will be applying for a zone change for the land shown on the attached map.

Land: Tracts 13 and 14 C/S 2037; about 58 acres; 1311 feet highway 3 frontage; 1921 feet deep running north from highway.

Planned use: Billings Flying Service office, shop, warehouse, and heliport facilities.

Nature of Business: BFS maintains and refurbishes helicopters for re-sale, industrial and fire suppression work. Ordinarily, the helicopters do not operate within the county. Most of the industrial work is mountain power line work. Most of the fire suppression work is also mountain work and out of state. So, when the helicopters are in Billings they spend most days in storage or in the shop for inspections. After inspection, each helicopter will take off and land for test flight.

During the winter few flight operations occur. The machines are gone through and then stored until the next seasons operations.

More flight operations occur in the spring, and then our equipment is often out of state until fall.

Why here:

BFS needs to build a new facility to replace its existing facility located on the family farm south of Billings. Our existing facility is in a rural neighborhood on the farm where both owners grew up. Over the years the neighborhood has developed with homes. We have good relationships with our neighbors at the existing facility. Our reason for building near the airport is to provide better access to our fixed wing aircraft that are airport based that fly parts and mechanics to the helicopters in the field where they are working during the summer months.

This site allows approaches and departures to occur over runway areas and under tower control.

Our impact on you:

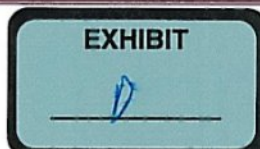
The primary impact will be helicopter noise during departure and approach. Our largest helicopters are Chinooks. We have measured their sound upon departure and approach at distances close to their distance from highway 3 during planned operations. The decibel readings were 55 decibels. A departure takes about 60 seconds, as does an approach. The highway noise next to the highway is about 100 decibels, reducing at greater distance from the highway.

You can expect about 6 operations per month on average over the year.

We have been good neighbors in our current location and intend to be good neighbors in our new location.

---

Billings Flying Service Inc.  
6309 Jellison Road  
Billings, MT 59101



Phone: (406) 252-6937  
Fax: (406) 259-4166  
billingsflyingsew@usadig.com



---

Questions from you:

County rules require a neighborhood meeting where you can ask questions. Or, you can call Al Blain at 698-4419 to visit about this project.

---

Billings Flying Service Inc.  
6309 Jellison Road  
Billings, MT 59101

Phone: (406) 252-6937  
Fax: (406) 259-4166  
[billingsflyingserv@usadig.com](mailto:billingsflyingserv@usadig.com)

# ZONE CHANGE MEETING

## ATTENDANCE SIGN - IN SHEET

Date: November 20, 2015

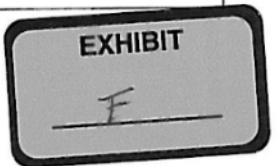
Project:

Meeting Location:

Tolliver Law Firm, PC  
1004 Division Street  
Billings, MT 59101

Time: 4:00 p.m.

Project No.:



Name (Please Print)	Property Address	Phone Number	E-Mail Address
W. Iva Kondalbak	4513 Rowles	406 676-7462	wkondalbak@billygo.com
YVES M. EGAN	2690 SOUTH RIDGE	406 855-0008	yves@billygo.com
Kyle Gaborian	3142 Zimmerman Place	406-357-1833	kgaborian@bresnan.net
Leatrice Mosser	237 Quiet Water Ave.	406-534-1447	lmosser@m-w.net
RICHARD DOWLIN	218 LAUREL CIND CIRCLE	406-835-6788	RDOWLIN@BNSF.COM
Dave Kinnard	106 Sky Ranch Dr.	245-2844	kinnard@brennan.net
EDWARD RYAN MATH	3005 SUMMERHILL	855-449	ryan@brennan.net
Gene Dando Jr. Esq.	303 N. Strawberry	406 657-2489	gene@brennan.net
Ken Sathar	2501 Montana Ave #202	406-294-1700	ken@satharandhogan.com
Jim Staff	2244 Shady Ridge Rd	406-245-2606	jstaff@mcman.net
Anna Staff	104 Sky Ranch	855-4976	anna@mcman.net
PRYMA MCKENNA	"	241 7250	MI@PRYMAN.COM
RYAN MCKENNA	3441 Western Circle	406-670-7750	rsmckenna@aol.com
Lenny & Kristi Budic	Northwest of air port	406-690-6028	lwbudic@brennan.net
Tim & Kerry Vincent	3450 MASTERSON DR	406 697-1726	vincent585@brennan.net
STEVE SKIDBY STANFORD	3342 King Kelly Rd	406 656-4838	skidby@brennan.net
Steve & Barb Skidby	2835 Hwy 3	406 252-9364	skidby@brennan.net
Michael Tiers	2930 Hwy 3	406 252-0417	jtiers@brennan.net
David Burg	320 Green Tower	406-259-5804	
Shane Hogan	3120 Moon Terrace Dr	406-259-5804	

## ZONE CHANGE MEETING ATTENDANCE SIGN - IN SHEET

Date: November 20, 2015

Project:

Meeting Location:

Tolliver Law Firm, PC  
1004 Division Street  
Billings, MT 59101

Time: 4:00 p.m.

Project No.:

Name <i>(Please Print)</i>	Property Address	Phone Number	E-Mail Address
O'Rourke, Carla			
O'Rourke, James			
Pekovich, Becky			
Pekovich, Greg			
Peterson, Julie			
Peterson, Garde			
Peterson, Sharon			
Robert H Sukin Trust			
Rutz, Jennifer	3440 Madison Dr	406-781-5712	jenniferutz101@gmail.com
Rutz, Lucas	3440 Madison Cir	406-781-7027	lutz@overlandwest.com
Skyline Partnership			
Anthony Ridge Development			
Vincent, James			
Vincent, Kerry			
Johnson, Steve	108 Sky Road	406-252-6085	stjohnson@overlandwest.com
Kim O'Brien	2112 Fairview Dr	406-672-9554	monTANA02@aol.com
MARC OSBORN	4150 Night Hawk Rd	406-698-3787	troutman@me.com
Tacy Troutman	2207 Trails End Rd. SW		

## ZONE CHANGE MEETING ATTENDANCE SIGN - IN SHEET

Date: November 20, 2015

Project:

Time: 4:00 p.m.

Project No.:

Meeting Location:  
Tolliver Law Firm, PC  
1004 Division Street  
Billings, MT 59101

Name <i>(Please Print)</i>	Property Address	Phone Number	E-Mail Address
Beley, Beckie	3382 Stoney Ridge Rd	406-248-4467	beckie51@aol.com
Beley, James	"	"	jammerjim114@gmail.com
Boyd, Joe			
Boyd, Sharon			
Crippen, Bruce			
Dossert, Brenda	3420 Madison Circle	406-534-1255	courange2e@veru.com
Dossert, Robert	"	"	courange@veru.com
Gudger, Anne			
Gudger, Scot			
Helus, James	3362 Stoney Ridge Rd	406-245-6320	thelus@charter.net
Helus, Theresa	"	"	
Jack D Sulkin Revocable Trust			
Kinnard, David			
Kinnard, Elaine			
Lahren, Alice			
Longan, Cameron			
Longan, Lynn			
Longan, Frederick			
McKamy, Donna			
McKamy, RW			
Gwenn C Meyers Trust			
Moyer, Leslie			
Moyer, William			





**Potential Similar Developments in County CI zones  
Zone Change 669**

Google Maps 654 King Ave E



CI zone – King Avenue East

Google Maps 791 Cerise Rd



CI zone – Cerise Rd – Lockwood

Google Maps 819 Cerise Rd



CI zone – Cerise Rd – Lockwood

Google Maps 945 Cole St



ELI zone – Cole St – Lockwood



CI zone – Sugar Avenue

January 6, 2016

Planning Division  
Planning & Community Services Department  
2825 3rd Avenue North, 4th Floor  
Billings, Montana 59101

RE: County Zone Change #669  
Project Number: 15-217

Ladies and Gentlemen,

My wife Brenda and I live at 3420 Masterson Circle, which is within 300 feet of this proposed zoning change. This letter is being written to inform you that we are not in favor of zoning change referenced above.

We invested in our home here on the Rims over 10 years ago and have enjoyed living here very much. We enjoy being out in our yard and it gives us immense pleasure keeping it up. Also, we entertain family, neighbors and friends in our back yard during the summer. This proposed zoning change would certainly impact those activities.

We are very concerned regarding this proposed zoning change and the impacts it will create regarding property values, noise levels, potential pollutions and traffic congestion in the immediate area. Historically, this has been a very peaceful and quite neighborhood. We are about ready to retire and have relied on the value of our property to assist in our retirement plan.

This area of the Rims provide so much for the City of Billings with its beauty as well as its bike paths and walking trails. An industrial re-zoning adjacent to our neighborhood would have a major impact on these activities and the area in general.

Further, I'd call your attention to the letter attached to the Zoning Change Application, under Item 2, explaining the need for the zoning change, that states in part "Concerning proper land use, the Yellowstone County and City of Billings 2008 growth Policy Update sets two relevant goals: a. Predictable land use decision that are consistent with neighborhood character and preferred land use patterns identified in neighborhood plans; and, b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County town sites.". It seems to us, as owners of adjacent property, that neither of these goals will be met by allowing the proposed zoning change.

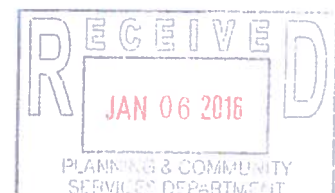
My wife and I appreciate you taking the time to consider our letter; and, request that you ask yourself, if this area was your home and your life style was being jeopardized and the value of your home would most likely be devalued by this proposed zoning change, what would your reaction be?

Sincerely,



Robert (Bob) Dossett  
3420 Masterson Circle  
Billings, Montana 59106  
Phone: 406-534-1255

cc: Yellowstone County Board of County Commissioners  
P.O. Box 3500  
Billings, Montana 59107



January 7, 2016

Nicole Cromwell  
Zoning Coordinator  
City-County Planning Division  
2825 3<sup>rd</sup> Ave. North, 4<sup>th</sup> Floor  
Billings MT 59101



Regarding: County Zone Change #669, Project Number 15-217

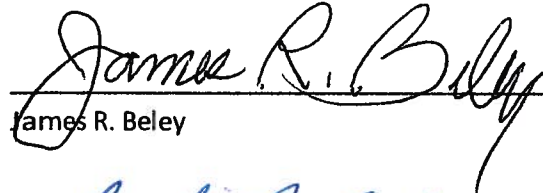
Dear Ms. Cromwell:

We wish to state our opposition to the above request for a zone change. The property in question is directly across Highway 3 from our residence. Our objection is based on the following:

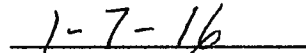
1. The stated purpose of a helipad for Billings Flying Service is to maintain and refurbish helicopters for re-sale, industrial work, and fire suppression. This purpose does not fit the criteria for the PUBLIC zoning designation. The proposed business does not provide a service to the public as all activities are strictly for the private use of the business of Billings Flying Service.
2. The applicant gives absolutely no indication of their plans for the remainder of the property and therefore there is no reason for changing the remainder of the property from Agriculture-Open Space (A-1) to Controlled Industrial.
3. Controlled Industrial would provide too heavy of use for the area along Highway 3. There is no railroad access and trucking access to major interstate highways is limited. Water and sewer is limited or nonexistent. There is no other Controlled Industrial zones in this region of the county.
4. The requested zoning change does not meet the following criteria as established by the Planning Division:
  - Criteria 7.** A Helipad can hardly be considered compatible with the present urban growth in the area which is residential subdivisions.
  - Criteria 8.** A Helipad at any stretch of the imagination does not consider to the character of the residential neighborhoods adjacent to the property.
  - Criteria 9.** The Helipad and any industrial zone change will absolutely decrease the value of existing properties adjacent to the property.
  - Criteria 10.** The Helipad and commercial use would not be the best use of this land. The county has an opportunity to carefully plan for the entire corridor along the North side of Highway 3 and promote something that would truly be beneficial to Yellowstone County. This could include a walking trail, picnic areas, natural wildlife area to complement the existing wildlife habitat currently attracted to the open range land and ephemeral pond with surrounding trees and nearby rimrock formations.
  - Criteria 11.** Neither zone change is compatible with the adjacent zoning of residential properties.

We would prefer the county not establish such a major precedent on such a small piece of property but rather take the opportunity to establish a comprehensive zoning plan along the North side of Highway 3 that would be something less intensive and provide more of a buffer or gradual transition from the adjacent residential properties to any future commercial endeavors.

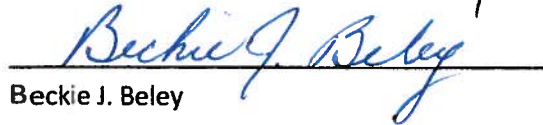
Sincerely,

  
\_\_\_\_\_


James R. Beley

  
\_\_\_\_\_

Date

  
\_\_\_\_\_

Beckie J. Beley

  
\_\_\_\_\_

Date

3382 Stoney Ridge Rd.  
Billings MT 59106

# Sather & Holm, PLLC

*Attorneys at Law*

2301 Montana Ave., Ste. 202  
P.O. Box 1115  
Billings, MT 59103  
Phone: 406-294-1700  
Fax: 406-794-0673  
[ben@satherandholm.com](mailto:ben@satherandholm.com)

January 7, 2016

**SENT BY EMAIL AND U.S. MAIL**

Nicole Cromwell  
Zoning Coordinator  
Planning Division  
CITY OF BILLINGS  
2825 Third Avenue North  
Billings, MT 59101  
[cromwelln@ci.billings.mt.us](mailto:cromwelln@ci.billings.mt.us)

Re: *Proposed Zone Change  
Billings Flying Service/Almon Blain*

My Clients: *Robert Sukin (Robert H. Sukin Trust)  
Jack Sukin (Jack D. Sukin Revocable Trust)*

Dear Ms. Cromwell:

As you know, this firm represent two of the adjacent landowners, Robert Sukin (Robert H. Sukin Trust) and Jack Sukin (Jack D. Sukin Revocable Trust) regarding the Billings Flying Service application for zoning change. My clients will be collectively referred to as the Sukins throughout this submission. This letter is provided as a supplement to our original Objection, dated November 20, 2015. Also, we note that the proponent of the change, Billings Flying Service, has indicated it plans to modify its proposal so that additional submissions from any opponents may be necessary in anticipation of the February 8 zoning commission hearing.

The Sukins object to the proposed zone change as written. The proposed zone change and the anticipated use of the property are not compatible with the surrounding neighborhood and do not meet the eleven criteria for a zone change. The zone change and the intended use would negatively impact surrounding property values and would significantly erode the quality of life in those neighborhoods. With that said, the Sukins are aware of the valuable nature of the properties located along Highway 3 and possible commercial development which would be beneficial to both the individual property owners and the City of Billings/Yellowstone County. The Sukins are not, per se, opposed to development. The proposed zone change here, however, is not only an improper zone request; but this type of development will stunt possible future development by the remaining landowners located adjacent to the Blain property.

The Sukins rely on their November 20 submission with respect to the potential problems arising from traffic, noise, stormwater runoff problems, along with a description of the issues

stemming from controlled industrial zoning. Also, the Sukins have been in contact with other neighbors, including the Stony Ridge Development, LLC, residents (through counsel Tim Filz of Christensen Fulton & Filz). Mr. Filz has prepared a well-reasoned analysis of the problems facing the County in whether or not to approve this application. Further, the Stony Ridge neighbors have provided a presentation from Sanderson Stewart, a local engineering firm, which sets forth alternative uses for the property at issue which does not intend to stifle economic growth; but rather encourage economic growth in this area the right way. The Sukins are supportive of the position set forth in the Stony Ridge submission (of course, the Sukins reserve the right to amend this submission depending on the contents of the modified zoning application).

The purpose of this supplemental submission is to point out the potential litigation risks Yellowstone County faces should these zoning changes be approved. All of the Controlled Industrial zone lands in Yellowstone County are located along the Interstate. To allow a small Controlled Industrial zone tract south and east of Agricultural-Open Space and north of residential zoned areas (all of which are significantly more restrictive in terms of allowed uses) amounts to illegal spot zoning. The test of whether unconstitutional spot zoning has occurred requires a three-part analysis.

Whether impermissible spot zoning has occurred presents a fact-specific inquiry that will vary from one case to the next. *Little*, 193 Mont. 334, 346, 631 P.2d 1282, 1289. The presence of three conditions generally will indicate, however, that a given situation constitutes spot zoning, regardless of variations in factual scenarios. *Id.*

The first prong of the three-part *Little* test examines whether the requested use would differ significantly from the prevailing land uses in the area. *Id.* The second prong explores whether the area requested for the rezone would be “rather small” in terms of the number of landowners benefitted by the requested zone change. *Id.* Finally, the third prong analyzes whether the requested zone change would be in the nature of “special legislation” designed to benefit one or a few landowners at the expense of the surrounding landowners or the public. *Id.* A court must analyze the second and third prongs of the *Little* test in concert. *Boland v. City of Great Falls*, 275 Mont. 128, 134, 910 P.2d 890, 894 (1996). The number of landowners benefitted by the zone change speaks directly to the issue of whether the requested change constitutes special legislation in favor of one or a small number of landowners. *Id.*

*Plains Grains Ltd. P'ship v. Bd. of Cty. Comm'rs of Cascade Cty.*, 2010 MT 155, ¶¶ 58-59, 357 Mont. 61, 238 P.3d 332.

As discussed in our original submission, the allowed uses under Controlled Industrial are considerably more expansive than the adjacent Public zoning to the east and north, the residential development immediately to the south and a mile down the road in the Rehberg Ranch Estate development, as well as the agricultural zoning to the west. The area sought to be rezoned is approximately 40 acres, which is relatively small in comparison to the lands surrounding it. The

use of the helipad is considerably different than the private uses of the adjoining properties (mostly residential and agricultural). Regarding element two of the spot zoning test, this zoning change would only benefit Billings Flying Service. There appears to be no benefit to any other adjoining landowner. When considering the vast amount of neighbors to this property, this element especially sticks out considering only Billings Flying Service will benefit. This extends to element three of the spot zoning test, which requires us to focus on whether only one landowner will benefit over a zoning change to the detriment of nearly all other landowners. Again, we submit that is the case here.

This result could easily be construed as spot zoning, a result which has not been allowed by the Montana Supreme Court and will expose Yellowstone County to additional litigation and liability exposure.

We strongly oppose the proposed zone change and the intended use of the property next to the airport, as originally proposed by Billings Flying Service. This will not lessen congestion on Highway 3 and it will not promote the health and general welfare of the residents of the City of Billings and the surrounding properties. Additionally, the proposed use will create additional risk. Years ago, we had a helicopter crash in the baseball field on North 27<sup>th</sup> Street. The proposed zone change is inconsistent with the character of the district. As I mentioned, industrial zoning and the applicants intended uses are inconsistent with the surrounding properties and should not be permitted on a major entrance into the City of Billings. The zone change and the proposed uses will have a detrimental impact on the value of the surrounding properties and residential neighborhoods. The bottom line is that the controlled industrial zoning and the proposed use of this property is not the most appropriate use of the land.

My clients are proponents of economic growth. We believe the record in this case will show examples of how the properties along Highway 3 can be grown to encourage and develop economic growth, but not at the cost currently proposed by Billings Flying Service.

Finally, I will close with a comment regarding the sheer size and girth of a Chinook Helicopter. Attached is a photo of a Chinook helicopter transporting two smaller vehicles in the air. These machines are massive. Although there has been some dispute over the noise these machines emit, documentation available online shows noise levels over 100 dB(A). We will reserve final comment pending the revisions to the proposed application and will supplement this submission if necessary.

Sincerely,



Ben T. Sather

Enclosures

BTS/cj

cc: Jack Sukin  
Bob Sukin  
Bill Davies, Esq.



# CHRISTENSEN FULTON & FILZ, PLLC

2825 3<sup>rd</sup> Avenue North, Suite 100, P.O. Box 339, Billings, Montana 59103-0339

Tel 406-248-3100

Fax 406-248-7908

[filz@cflawfirm.net](mailto:filz@cflawfirm.net)

John R. Christensen

Timothy A. Filz\*

Angus B. Fulton\*

Patience A. Llewellyn\*

David T. Sulzbacher\*\*

Joseph L. Breitenbach\*\*\*

\*LL.M. Taxation

\*\*Also admitted in North Dakota

\*\*\*Also admitted in Minnesota & Wisconsin

January 7, 2016

Nicole Cromwell  
Zoning Coordinator  
City County Planning Department  
2825 3<sup>rd</sup> Ave. North, 4<sup>th</sup> Floor  
Billings, MT 59103

RE: County Zone Change #669  
Project Number 15-217  
Billings Flying Service  
Our File No.: 75830.001

Dear Ms. Cromwell:

As you are aware, this firm has been retained by Stony Ridge Development, LLC ("Stony Ridge"), which owns property in the Stony Ridge Subdivision. The subdivision is located immediately south and across Highway 3 from the property which is sought to be rezoned and is within 300 feet of the property.<sup>1</sup> Stony Ridge is owned by James and Christine Scott who reside in Stony Ridge Subdivision.

As a matter of principle, Stony Ridge is not inclined to protest commercial development in Yellowstone County. The Scotts are fully supportive of both private property rights and economic development and understand that the exercise of such rights and the benefits of economic development often come at a price in terms of impact on those who live in surrounding areas. However, the proposed zone changes are believed to be sufficiently inappropriate that Stony Ridge feels compelled to raise its concerns and objections to the zone change request, all as more fully set forth below.

---

<sup>1</sup> Note, the County records show Skyline Partnership owning Lots 1 through 3, Block 1, Stony Ridge Subdivision. By Warranty Deed dated November 14, 1994, and recorded at Document #1764825, Records of the Clerk and Recorder of Yellowstone County, Lot 1, Block 1, Skyline Heights Subdivision was transferred by Skyline Partnership to Stony Ridge Development, LLC. Lot 1, Block 1, of Skyline Heights was subdivided by plat dated December 14, 1994, and recorded under Document #1767389, Records of the Clerk and Recorder of Yellowstone County. Lot 5 was subsequently transferred to James and Christine Scott. Therefore, all but Lot 5, Block 1, Stony Ridge Subdivision, is owned by Stony Ridge Development, LLC, and Skyline Partnership does not own any of the lots in the subdivision. The Department of Revenue has been contacted to change the tax records. This does not change anything substantively, but we felt it appropriate to point out the discrepancy in order to establish why only Stony Ridge is raising objections.

## I. INTRODUCTION.

There are two zone changes being sought. A zone change from Agricultural - Open Space (A-1) to Public zoning is requested for the north 600 feet of the subject parcels and the change to Controlled Industrial (CI) is sought for the south approximately 1,300 feet of the parcels. Our position is the failure of either request to satisfy applicable requirements for approval warrant denial of the application.

Although the zone change application does not contain a lot of details, it is understood that the intended purpose for the north 600 feet of the subject property, assuming approval of the zone change, is to locate a heliport for the Billings Flying Service, to stage its fleet of CH-47D Chinook helicopters. Based on published reports in the Billings Gazette, these helicopters are to be used solely in connection with its commercial helicopter service versus any passenger service and although they may be used to fight fires, as stated by Mr. Blain in a September 5, 2015, Billings Gazette article, "if you need something heavy put in a weird place, we're your folks..." In the same article Mr. Blain reported the Chinook helicopters have "the largest lift-capacity [of any] helicopter in the world." We do not believe this intended use qualifies as a public or semi-public use which is critical to the Public zoning classification.

The application does not set forth any particular intended development in the portion of the parcels for which CI zoning is requested. Presumably the zoning is sought to allow as expansive use as possible for future subdivision and development either by Billings Flying Service or, more likely, by a developer following sale of the parcels. No doubt, this expansive zoning makes economic sense to Billings Flying Service. The more it can sell the southern parcels for, the less it ends up costing for the north parcels which it intends to use. But what makes economic sense for Billings Flying Service is not the determining factor in a zone change application; rather the focus is on the appropriateness of the zone classification(s) being sought in light of the 11 criteria articulated for zone change review and in particular, the impact of the zone change on the Yellowstone County Growth Policy factors.

For the reasons set forth below, it is submitted both zone changes fail to satisfy the requirements for approval.

## II. PUBLIC ZONE AND HELIPORT ISSUES.

The Public zone change request is discussed first. It is readily apparent that the sole purpose for the Public zoning request is to allow the heliport to be located at the site. We are keenly aware that a zone change application should focus primarily on the allowed uses in the requested zoning, rather than on the specific intended use; otherwise, any zone change application with an identified use would turn into the equivalent of a special review. However, even a casual review of the allowed uses in Controlled Industrial (the classification being sought for south 1,300 feet) and the allowed uses in the Public zoning classification, few allowed uses in Public zoning which are not allowed in Controlled Industrial – the key one being "Transportation by Air."

Because the readily apparent sole basis for the Public zoning versus Controlled Industrial zoning, it is asserted that focus on the heliport versus other allowed uses is appropriate in this instance.

As a threshold matter, it is asserted that use of the Public zoning to locate a heliport which will be used by a for-profit company for commercial uses versus passenger traffic made available to the public is fundamentally inconsistent with the core intent of the Public zone.

In Section 27-301 of the Yellowstone County Zoning Regulations (“the Zoning Regulations”), the Zoning Regulations set forth a general statement of intent that Billings and the 4 ½ mile buffer located in county be “divided into ... districts in which the erection, construction, alteration, reconstruction, repair or use of buildings, structures and land shall be regulated and restricted.” The regulations then establish 25 zoning districts and provide a definition of the core requirements for each district. The core requirements for Public zoning are as follows:

**PUBLIC:** The Public zone is intended to reserve land **exclusively for public or semi-public uses** in order to preserve and provide adequate land for a variety of community facilities which **serve the public health, safety and general welfare**. (emphasis added).

The terms “public or semi-public” and “airport” are not defined terms. The terms are, therefore, to be construed by their common meaning in light of the context. § 1-2-106, MCA.

Webster’s Third New International Dictionary defines the key terms as follows:

**PUBLIC:** of, relating to, or affecting the people as an organized community.

**SEMI PUBLIC:** 1: having some of the features of a public institution; specif: maintained as a public service by a private nonprofit organization 2: open to some persons (as the families and guests of members) outside the regular constituency but not to the general public.

**AIRPORT:** a tract of land or water that is adapted and maintained for the landing and takeoff of aircraft and at which facilities for their shelter, supply, and repair are provided: a terminal point for air passengers and cargo.

Using the plain meaning of the terms “public” and “semi public,” in order to qualify for Public zoning, the intended use must be intended to be for the exclusive benefit of the Billings or Yellowstone County community, or have some features of a public institution, and open to a group of individuals, and that the use provide a benefit to the public health, safety and general welfare of the Billings or Yellowstone County community.

Turning to the word “airport,” while the term may be susceptible of a variety of meanings, including any landing or takeoff strip, the more commonly used context is to

define it as a terminal point for air passengers and cargo. The Billings ordinances define the term “airport” in an even more limited fashion as “the ‘Billings Logan International Airport.’” Billings City Ordinances, § 5-101.

It is submitted that, based on the plain meaning of the zoning regulations, in order to qualify for Public zoning, an airport would have to be one which benefits the public or at least a significant segment of the public in order to qualify as semi-public, and in either case, be intended to benefit our community’s health, safety and general welfare. The intended use by Billings Flying Service falls well outside these requirements. It is a private (versus public or semi-public) facility, intended to benefit only the owners of Billings Flying Service rather than the community as a whole and the customers appear to consist largely, and perhaps, exclusively, of businesses or entities located outside our community and likely, the state of Montana.<sup>2</sup>

Billings Flying Service employs the logical fallacy technically known as “affirming the consequent” (which is more commonly known as putting the cart before the horse). It assumes that because airports are allowed in the Public zone, all airports qualify as a Public use and in doing so Billings Flying Service dispenses with the requirement that the intended use fit the threshold requirement of Public zoning – that is, that the airport be used exclusively for public or semi-public use in order to serve the health, safety and general welfare of the public.<sup>3</sup>

It is submitted that a heliport intended to stage larger Chinook helicopters designed on a for-profit basis, for commercial use, as opposed to public passenger services, cannot be said to be one which exclusively benefits the public health, safety and general welfare. In short, while a public airport can be sited on land zoned Public, a private use airport is not a proper basis for seeking Public zoning.

It is significant to note that what Billings Flying Service really intends to install is a heliport. The term “heliport” is a defined term in the Zoning Regulations as follows:

**HELIPORT:** Any facility whose **primary purpose** is for the landing or taking off of helicopters. This would include any accessory uses or structures related to the principal use as a heliport, such as maintenance and overhaul, fueling, service, storage, tie-down areas and hangars. (emphasis added)<sup>4</sup>

Zoning Regulations, § 27-301. The only zone in which heliports are specifically allowed is in the Medical Corridor Permit Zoning. Zoning Regulations, § 27-911. Even there,

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<sup>2</sup> Materials provided by Billings Flying Service at the neighbor meeting ironically touted the fact that helicopters ordinarily would “not operate in the county..” as a benefit.

<sup>3</sup> Although Billings Flying Service may have an FAA service for passenger service (see the Billings Flying Service Website at <http://billingsflyingservice.com>), it is our understanding the intent is to use the site to stage the large Chinook helicopters which are not designed for transporting passengers.

<sup>4</sup> By defining the term “heliport” as one which has as its primary function, the landing or taking off of helicopters, the language does not prevent an airport, which would include air traffic of all kinds, from being used by helicopters to land or takeoff as one of the many, but not the “primary” use.

bulk storage of fuel is not allowed. Although a nonprofit hospital heliport would clearly constitute “public or semi-public” use, it is clear there could be a for-profit medical center in the zone and as such, the only expressly sanctioned location for a heliport in a for-profit context is in the Medical Corridor. Under the Applicant’s theory of Public zoning, all one would have to do is seek Public zoning anywhere in the City or County in order to install a private use heliport. This reading would gut the clear intention of the Zoning Regulations to limit facilities which are to operate primarily as heliports to the Medical Corridor.<sup>5</sup>

It is also significant to note that prior to adoption of the Unified Zoning Code in 1997, the City Zoning Code allowed heliports in five zoning districts, Central Business District, Highway Commercial, Controlled Industrial, Heavy Industrial and Public; but in all instances, special review was required. Airports or heliports were not referenced as an allowed use in the County Code prior to the adoption of the Unified Zoning Code. Billings Flying Service is effectively arguing that by merely labeling the property as Public under the Zoning Regulations, it should be able to install a private, for-profit, heliport without the requirement of special review or any other form of safeguard. It is submitted that the protection to the public afforded by what was previously provided by the special review process is at least indirectly provided under the Public zoning Category only if the requirement that property zoned Public be used exclusively for public or semi-public purposes is applied literally and not in the cavalier fashion advanced by Billings Flying Service.

It is anticipated that Billings Flying Service will argue that the uses allowed in the Public zone are more expansive than argued by Stony Ridge. And it is true that Public zoning does allow a number of types of use. However, a review of the allowed uses in the Public zoning which are set out in the Zoning Regulations, § 27-306, evidences both the limited nature of the allowed uses and the nexus between the allowed uses and a public or semi-public benefit (save and except the third category discussed below), and which allowed uses fall into the following general categories:

(i) uses which are nonprofit in nature and/or which serve the public in general (for example, public swimming pools and public golf courses which are included in Division G, Category 79);

(ii) uses which involve essential services which, although operated by a for-profit enterprise, benefit a broad section of the community (for example, uses listed in Division E, Category 48 relating to communication operations and 49 relating to electric, gas and sanitary services); and

(iii) limited commercial uses which are likely be low impact and which would allow Public zoned land to be productive (for example, agricultural production listed in Division A, Category 01).

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<sup>5</sup> Using the approach advanced by the applicant, the private parkland owned by Hoop Dreams, LLC (see Tax Code 34951), which is part of a real estate development located in the Western Subdivision at the corner of King Avenue and South 44<sup>th</sup> Street West, could install a heliport.

It is important to note that providing services to the public in general is not enough; rather the use must be either operated by the public or a non-profit or fall in the essential services category. For example, only public animal shelters are allowed under Division 1, Category 07, but dog grooming services which are available in a number of the commercial/industrial zoning districts and which would provide services to the public, are not allowed uses in the Public zone. Legal services which would be available to the public in general, are allowed in all commercial zones, save and except the Public zone. Division I, Category 81. Health services are allowed in all commercial zones, including the Public zone, but if retail sales involve more than an accessory use, not in the Public zone. Division I, Category 80.

Another concern regarding the Public zone request relates to the potential for loud and potentially even a dangerous level of the noise involved with the Chinook helicopters landing and taking flight to the extent that they fly directly over residential developments. Billings Flying Service has attempted to minimize the noise issue relating to the intended use. For example, it asserts, without support of a professional noise study and instead relying on their own tests, that the noise level will be less than highway noise and that the maximum levels recorded were 50 decibels (dBa). The time allowed to respond to the zone change application did not allow Stony Ridge to retain an acoustical expert. In the article *Managing Helicopter Noise*, a copy of which is attached as Exhibit 1, it suggests that for medium helicopters (a step or two below the behemoth Chinooks), flights should be at least 2,000 feet above ground level to reach the acceptable dBa level of 65. Attached as Exhibit 2 is a chart which indicates 50 dBa would be the equivalent of a dishwasher noise in the next room. Billings Flying Service states in its application that highway noise levels reached 100 dBas in their measurements. Attached as Exhibit 3 are pages from the FHWA Traffic Noise Model User's Guide which indicate a heavy truck generates 82.5 dBa at 50 feet travelling at 50 miles per hour. A February 20, 2014, Billings Gazette article involving Chinook helicopters being operated by Billings Flying Service out of its existing location, quoted neighbor Falon Nicholls, who stated "[t]hey flew right over our house, and it was vibrating... It was as loud as the biggest thunderstorm I have ever heard." It is submitted that Billings Flying Service figures are, at a minimum, misleading and absent a noise study which resolves the legitimate concern of flights directly overhead residential neighborhoods, a zone change should be denied on noise levels concerns alone.

Finally, it is submitted that Public zoning of the north 600 feet of the subject parcels is inappropriate in terms of the overall policy as articulated by the Yellowstone County Growth Policy and the 12 criteria to be used when reviewing zone change applications. These factors are discussed in more detail in Section V. below.

### III. CONTROLLED INDUSTRIAL ZONING.

Turning next to the Controlled Industrial zone request, it is submitted this zoning is inappropriate for the subject parcels. The purpose of the Controlled Industrial zone is defined as follows:

**CONTROLLED INDUSTRIAL:** The Controlled Industrial zone is intended to accommodate a variety of business, warehouse and light industrial uses related to wholesale plus other business and light industries not compatible with other commercial zones, but which need not be restricted in industrial or general commercial zones, and to provide locations directly accessible to arterial and other transportation systems where they can conveniently serve the business and industrial centers of the city and county.

Zoning Regulations, § 27-301.

Attached as Exhibit 4 is a Yellowstone County zoning map which establishes that all of the Controlled Industrial zone lands in Yellowstone County are located along the Interstate. To inject a small Controlled Industrial zone tract south and east of Agricultural-Open Space and north of residential zoned areas (all of which are significantly more restrictive in terms of allowed uses) could well amount to illegal spot zoning. The test of whether unconstitutional spot zoning has occurred requires a three-part analysis.

We consider three factors when determining whether a zoning amendment constitutes spot zoning. *Little*, 193 Mont. at 346, 631 P.2d at 1289. We first evaluate whether the requested use differs significantly from the prevailing use in the area. *Little*, 193 Mont. at 346, 631 P.2d at 1289. We next determine whether the area proposed for rezoning is small, although not solely in physical size. *Little*, 193 Mont. at 346, 631 P.2d at 1289. Finally, we evaluate whether the requested change resembles special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or general public. *Little*, 193 Mont. at 346, 631 P.2d at 1289.

*N. 93 Neighbors, Inc. v. Bd. of Cty. Comm'rs of Flathead Cty.*, 332 Mont 327, ¶ 65, 137 P3d 557 (2006).

In the instant case, the allowed uses under Controlled Industrial are considerably more expansive than the adjacent Public zoning to the east and north, the residential development immediately to the south and a mile down the road in the Rehberg Ranch Estate development, as well as the agricultural zoning to west. Comparing CI to even Highway Commercial (HC) zoning illustrates the expansiveness of the CI zoning. In Division D, Manufacturing, most categories are either allowed or allowed subject to special review in the CI zone and not in the HC zone or only subject to special review as opposed to allowed without review in the CI zone. A good example is a poultry slaughtering facility which is allowed subject to special review in CI but not allowed in HC. In the wholesale trade categories, the same holds true, many uses are allowed in CI and not in HC or allowed only subject to special review.

The area sought to be rezoned is approximately 40 acres, which is relatively small in comparison to the lands surrounding it.

Although the record is not developed, it would appear that Billings Flying Service is interested only in the north parcel sought to be zoned Public but is seeking the Controlled Industrial zoning for the south parcel in order to capitalize on the expansive allowed uses and to use the sale proceeds on the south parcel to subsidize the cost of the north parcel. As such, absent a determination that the entire strip of land bordering Highway 3 west of the airport extending to the Rehberg Ranch Estate should be developed as Controlled Industrial, granting Controlled Industrial zoning to the south parcel solely to provide an economically viable project for Billings Flying Service would amount to a special benefit to the applicant at the expense of the surrounding property owners.

#### IV. AN ALTERNATIVE APPROACH.

As noted in the introductory remarks, Stony Ridge does support private property rights and commercial development. In discussing this matter with various developers and realtors, the undersigned was often met with the question, "what use would you recommend?" It is true the parcels are arguably underutilized (although it is hard to call the mainstay of the Yellowstone County economy as "underutilization"), and given the proximity to the airport, development does raise issues. But to answer this question, Stony Ridge retained Sanderson Stewart, a leading engineering firm in this area, to prepare an analysis of an alternative approach which uses most prominently the Highway Commercial and Residential Professional zones with appropriate buffering to accommodate the interests of neighboring land owners. The approach developed by Sanderson Stewart would ideally be developed as a Planned Unit Development pursuant to Article 27-1300 of the Zoning Regulations, but could be done by the flexible zoning afforded by the Highway Commercial zoning. Included in the proposal is a mix of residential and residential professional development as well.<sup>6</sup> Attached as Exhibit 5 is a copy of their report and a representative from Sanderson Stewart will be available to briefly discuss this alternative approach at the Zoning Commission hearing. The report presents two alternatives, one which assumes a heliport is not constructed and one which assumes a heliport is constructed. The primary point of this presentation is to establish there are viable development options which do not involved the wide-open CI zoning requested and, more importantly, options which are more consistent with the Yellowstone County Growth Policy and the 12 criteria discussed below.

#### V. ANALYSIS OF GROWTH POLICY AND 12 CRITERIA.

The Zoning Commission is required to analyze a zone change based on the 12 criteria set forth in Zoning Regulations, § 27-1509. In addition it is necessary to consider the impact of the zone change request in terms of the 2008 Growth Policy. These factors, to the extent applicable, are discussed below, with a contrast, where

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<sup>6</sup> The Zone Change Application suggests the airport noise and vertical limitations render the property of limited development potential. The airport influence map indicates a dBa of 60 in most of the property and 65 dBa in a small portion. Neither is incompatible with the proposed development. See Billings Code of Ordinances, §5-409, Table A. With regard to height limitations, the Airport Areas of Influence/Height and Hazard Limitation Zone map indicates the property is not significantly impacted by height restrictions.

appropriate, with the proposed zone change and the proposal presented by Sanderson Stewart:

12-Criteria Analysis.

Criteria 1. Are the zone changes consistent with the comprehensive plan? This issue is addressed in terms of the compliance with the nine factors set forth in the 2008 Growth Policy as follows:

- a. Land Use Element. The alternative plan evidences a predictable land use plan which is consistent with, as opposed to in direct conflict with the existing land uses, especially the residential uses to the south of the parcel and further west in the Rehberg Ranch Estates development. To suggest that allowing private, for-profit heliport and the only controlled industrial zone land outside the Interstate corridor represents "predictable land use" ignores the obvious.
- b. Economic Development Element. The alternative plan does provide for economic development but in a manner which compliments rather than conflicting with existing uses. Note, one of the articulated goals under this element is the goal of presenting attractive entryways into our community. What better way to accomplish this than having an attractive development as air travelers leave the airport and head west along Highway 3 as opposed to unsightly industrial development.
- c. Aesthetic Element. There can be little doubt the alternative plan presents a more aesthetically pleasing result than would exist if the development were accomplished with uses allowed under Controlled Industrial zoning but not under Highway Commercial zoning.
- d. Natural Resources Element. It is submitted this element is not impacted either way.
- e. Open Space and Recreational Element. The alternative plan incorporates (I assume walking paths or the like), which tie nicely into this articulated goal; whereas, a Controlled Industrial development would likely have little use for these components.
- f. Transportation Element. It is submitted this element is not impacted either way.
- g. Public Facilities and Services Element. This element is primarily a procedural one and the zoning Category itself is not relevant.
- h. Cultural and Historic Resources Element. It is submitted this element is not impacted either way.

- i. Community Health Element. It is submitted this element is not impacted either way.

Criteria 2. through 9. These criteria factors are deemed not impacted by the proposed zoning in any meaningful way.

Criteria 10. Consideration of the peculiar suitability of the property. This property is located adjacent to the airport and just north and east of substantial residential developments. As an entryway into the City of Billings the proposed use for CI development as opposed to the types of development anticipated in the Sanderson Stewart illustrations establishes the proposed zone change is lacking in this category.

Criteria 11. The impact on the value of buildings. The adverse impact of either the noise from the heliport or the types of uses which could be developed under the CI zoning will both have a deleterious impact on the value of the residential developments to the south and if the CI zoning were extended further west, on the Rehberg Ranch Estates development as well.

Criteria 12. Whether the zoning encourages the most appropriate use of land throughout the county. On this factor, the proposed zone changes fail. The heliport is an attempt inappropriately to extend the Public zoning to a purely private use and to extend the CI zoning to an isolated area far from existing CI zoning.

## VI. CONCLUSION.

Public zoning is inappropriate for the reasons set forth – the intended use is not public or semi-public and the project has not been adequately vetted in terms of noise issues. Controlled Industrial zoning is inappropriate because it would allow industrial development close to residential development and does not represent the type of predictable development mandated by the Yellowstone County Growth Policy. Finally, there are better alternatives which will allow the property to be more productively used and developed while at the same time minimizing impacts on existing uses.

Sincerely,



Tim Filz

Enclosures  
TAF/jp

Cc: Stony Ridge Development, LLC (w/ encl)



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According to "Noise Management in Mixed-Use Urban Environments," presented by the New Zealand Planning Institute, "Noise is an unwanted sound. The effects of noise vary, starting at the lowest end with being an annoyance. The next level occurs when the noise is loud enough to make normal speech difficult to hear. Above that, even louder noise can make concentration difficult and

interfere with important mental tasks such as learning, reviewing documents, doing math or where focus on the meaning of words is critical."

"Noise has even more serious effects when it leads to stress-related mental health decline," it continued, "and of course, if the noise occurs during sleep periods, then fatigue and disrupted sleep patterns can cause irritability, changes in behavior, and reduced ability to work or perform tasks."

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There are numerous characteristics of helicopter sound that cause it to be objectionable to many within earshot. To begin with, noises with a beat or pulsating qualities tend to be more annoying. The main-rotor and anti-torque systems in turbine helicopters tend to dominate the acoustical signature.

The distinctive aerodynamic rotor blade slap noise generated by helicopter rotors is difficult to disguise. Blade slap (technically "Blade Vortex Interaction," or simply BVI) noise occurs during descent for landing and results from interaction of a main-rotor blade with previously shed tip vortices. These interactions generate a complex unsteady pressure field that propagates below the rotor as high impulsive noise. High-Speed Impulsive (HSI) noise is caused by transonic flow shock formation on the advancing main-rotor blade, primarily near the blade's tip. This noise tends to propagate forward of the helicopter.

Meanwhile, tail-rotor noise is annoying to humans because its higher frequency (as compared to that of the main rotor's noise) occurs directly in the hearing spectrum to which human ears are the most sensitive.

The loudness of a helicopter's noise signature is an obvious factor. The Effective Perceived Noise Level (EPNL) generated by helicopters is measured in units of EPNdBs (Effective Perceived Noise Decibels), a methodology that closely weights the frequencies that a normal human ear can hear, and tends to disregard the frequencies that the typical human cannot perceive. Using the test methods outlined in FAR Part 36 Appendix H, the EPNdB of the Bell 412HP at flyover, for example, is measured at 93.4, according to the manufacturer, which is equivalent to a Boeing 777-200 at takeoff.

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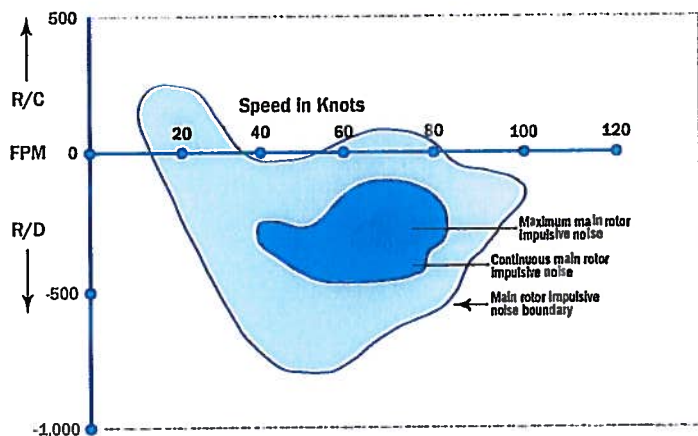


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According to the American Planning Society, “Sound frequency must also be taken into consideration. A sound spectrum analysis of helicopter noise shows that most of the energies are confined to the low frequencies which, although more acceptable than high-frequency sounds, are more apt to produce speech interference.” Speech interference is just one of many important considerations that must be proactively managed in noise management.

Keith Hayward, head of research at the Royal Aeronautical Society, was called upon by London authorities to provide expert testimony on the issue of helicopter noise. According to Hayward, non-acoustic characteristics such as the frequency of noise and purpose of flight operations tend to be more important than the actual sound in determining the public’s acceptance of helicopter activity.

Frequent rotary flight operations over a noise-sensitive location are almost guaranteed to annoy citizens and often result in legislative and regulatory restriction. For nearly a decade, Long Island, New York, residents have inundated public officials with complaints about helicopter noise. In response, in 2011, Sen. Charles Schumer (D-N.Y.) sponsored legislation that would have heavily restricted helicopter operations over the heavily populated island. The legislation was blocked by the Republican-controlled House, but Schumer subsequently teamed with Rep. Tim Bishop, a fellow Democrat from Long Island, to get the Department of Transportation to mandate an overwater route for helicopters transiting the island. The “North Shore Route” required helicopters to fly 1 mi. off the island’s north shore for the purpose of noise abatement.



Credit: Eastern Regional Helicopter Council, Google Maps

Of course, moving traffic from one place simply shifts it and thereby assaults the calm elsewhere. In 2013, the Eastern Region Helicopter Council received and processed 1,848 complaints from 94 distinct households, with the majority of those from residents on Long Island’s North Fork. (A graphic of the concentration of noise complaints is available at <http://www.planenoise.com/case-studies.php>.) Hundreds of irritated residents from Southold, Shelter Island and Southampton packed public meetings in August 2014 to protest the increased helicopter approaches and departures at neighboring East Hampton Airport, where it is estimated that 65% of summertime helicopter traffic lands.

Helicopter activities located close to residential areas generate more noise issues than those frequenting commercial or industrial zones. According to the Royal Aeronautical Society's Hayward, "Prevailing ambient noise levels affect perceptions, and a quieter setting will accentuate airborne noise, especially if radiated from above. This is particularly important when locating heliports and defining the flight paths for arriving and departing helicopters."

Residents of Torrance, California, have complained loudly about the increase in flight operations there over the years and object particularly to low-flying helicopters. As it happens, Robinson Helicopter Co. employs 1,300 people in its factory and headquarters, located at Zamperini Field, a busy, public-use general aviation airport located just 3 mi. from Torrance's central business district.

In response to those and other complaints from the region, the FAA issued its "Report on the Los Angeles Helicopter Noise Initiative" in May 2013, which suggested, among other things, raising helicopter traffic altitudes and moving flight paths around Torrance to lessen their noise impact on those below. The agency is working with the city to test community-recommended arrival and departure routes located over the Pacific Coast Highway and Crenshaw Boulevard to mask helicopter noise with that of the road traffic.

A similar tactic has been proposed in the "Windy City" by Chicago Helicopter Express CEO Trevor Heffernan. The helicopter tour operation wants to utilize flight routes over expressways and train tracks when conducting tours.

Heffernan is also proposing a 2,000-ft. AGL flight path to further lessen the noise impact. The FAA's "Report to Congress: Nonmilitary Helicopter Urban Noise Study," published in 2004, cites numerous studies in which noise reduction benefits could be achieved with higher altitude flight. This is a policy mandated by pilots utilizing the London Heliport where the pattern altitude is 1,000 ft. MSL and flown over the river.

According to data published in the HAI's *Fly Neighborly Guide*, a doubling of height or distance reduces noise by 6 to 7 dBA. In order for a light/small helicopter to meet the generally accepted criteria of 65 dBA over a noise-sensitive area, it should fly at altitudes no less than 1,000 ft. AGL, and for medium helicopters, the recommended height is 2,000 ft. AGL. If those noise targets seem ambitious, consider that a quiet bedroom has a noise level just under 40 dBA, and a busy office is around 60 dBA. Voice communications start to become difficult around 65 dBA.

above 500

Even though flying higher results in substantial noise reduction, doing so can have safety implications. For instance, requiring helicopters to fly at higher altitudes in the Los Angeles Basin could create traffic conflicts with the fixed-wing aircraft operating in that already congested airspace. (Incidentally, according to the FAA's report on Los Angeles helicopter noise, there are 138 heliports in the LA Basin.)

Night helicopter operations are a particular problem in the urban environment. The absence of daytime road traffic to mask helicopter noise can make the latter all the more noticeable and bothersome. Furthermore, temperature inversions turn an abnormally high portion of the sound energy back toward the ground and the most severe inversions usually occur at night and in the early morning hours, times when helicopter noise has the most adverse effect upon people.

"Have Your Say On Helicopter Noise" is a website frequented by Londoners bothered by rotary-wing operations there. Of the 240 posts found recently at the site, the large majority of the complaints centered on helicopters circling for prolonged periods of time at around 2 a.m. "I find it very distressing getting up every night for this reason," one resident, who lives near the London Heliport, wrote. "I also sleep with earplugs, but the noise is too loud."

Limiting the number of helicopter operations at night can significantly reduce noise complaints. Unfortunately it's hard for the public to distinguish civil from police, medevac or military helicopters, particularly at night, and thus commercial operators might be blamed for noise not of their making.

That ambiguity raises the matter of perceived usage, and its impact on public attitudes toward helicopters. According to the FAA's study of nonmilitary helicopter noise in cities, helicopters used in public service operations, such as law enforcement, medical transport and firefighting are regarded more benignly than those carrying sightseers or executives. The former were regarded as "time critical and provide a 'noise excusable' public service," the study found. Conversely, local communities aren't as forgiving when the helicopters creating the noise are carrying Wall Streeters to weekends at the beach or reporters gathering news video.

Daily coverage of traffic reports, accidents, fires and police pursuits are standard fare for helicopters engaged in electronic news gathering (ENG). But for all the public benefit they provide, they, too, can become part of the noise problem.

When a 10-mi. section of Los Angeles's infamous Interstate 405 was closed over one weekend in July 2011 as part of a highway improvement project, local media predicted a "carnageddon" would result. It didn't, but the news helicopters covering the non-event were so numerous and their flights so incessant that those below exposed to the din demanded action from the authorities.

Accordingly, Sen. Diane Feinstein (D-Calif.) teamed with Rep. Adam Schiff (D-Calif.) to enact an amendment mandating the industry find solutions to the helicopter noise problem "or else" Congress would force the FAA to impose severe restrictions.

In response, the FAA delivered its 2013 report on helicopter operations in the Los Angeles area. Among its recommendations was that news helicopter operators embrace voluntary measures to include limiting hovering times, increasing distance between hovering aircraft, raising operating altitudes and pooling their video coverage. The Professional Helicopter Pilots Association (PHPA) urged the Southern California Radio and Television News Association to consider pooling resources as well. Doing so has reduced noise complaints from the public.

Moreover, the use of improved cameras that can obtain good images from farther away has also helped to lessen the sound congestion near major news events. These successful methods are now included among the best practices on the PHPA's website (<http://www.phpa.org>) to reduce sound complaints.

There are other potential mitigation strategies. Main-rotor impulsive noise increases during maneuvering, thus pilots should avoid abrupt maneuvering and/or rapid initiation of descent, particularly around high usage areas such as heliports. This is a policy in place for pilots operating into the London Heliport. There the pattern altitude is 1,000 ft. MSL and flown over the Thames River. All turns should be made as far as practical over the water above 500 ft. An excellent discussion of the additional noise caused during maneuvering is contained in the HAI's *Fly Neighborly Guide*.

Hayward's noise management recommendations to London officials included requiring approach-to-landing over water or over high ambient noise areas, which would include freeways. Meanwhile, the New Zealand Planning Institute's website points out that noise provisions can normally be more lenient within commercial and industrial zones, and recommends these for consideration in helicopter routings.

While routing helicopters over major transportation corridors can avoid impacting residential areas, the practice has the additional benefit of providing pilots with navigational cues. After all, in densely built-up urban environments, major roadways may be the most readily identifiable surface features for orienting pilots in VFR conditions. Within the L.A. Basin, allowing helicopters to fly the freeways at lower altitudes also allows them to safely pass under the numerous approach and departure paths that exist throughout Southern California's complex airspace.

There are caveats to this methodology, of course. For example, the iconic Hollywood Bowl is just 850 ft. west of the Hollywood Freeway (U.S. 101) and is host to hundreds of musical events each year. A helicopter's beats are unwelcome when attendees there are trying to enjoy a concert. NOTAMs have not been effective in keeping pilots clear of the

area during performances. Requests by Hollywood Bowl management to shift helicopter flight routes closer to Interstate 5 met with objections from residential areas under the revised routes. The FAA's Los Angeles study suggested the establishment of a no-fly zone during performance season.

Obviously, optimal helicopter route planning to avoid noise-sensitive areas requires comprehensive evaluation of each specific region of concern, including those tasked with air traffic management.

Distance and the placement of barriers between the helicopter's flight operations and neighbors can be another effective means of controlling unreasonable noise. In its "Noise Management in Mixed-Use Urban Environments," the New Zealand Planning Institute recommends close consideration of the helipad's location, orientation and design; the specification of helicopters that comply with lower noise levels; planning arrival and departure routes as far away as possible from noise sensitive neighborhoods; and employing barriers such as solid walls, fences, insulation, double-glazed windows or even hills, depressions or berms to control or reduce noise. Unfortunately, when close to helipads some noise barriers can create a collision potential. The effects of reflected sound need to be considered within the design and orientation of barriers as well as the location of the helipad itself.

Since public objection can result in severe limitations on helicopter operations, helicopter operators are wise to proactively manage the noise their aircraft generate. While there is no single remedy that can be implemented on a large-scale basis in urban areas to mitigate helicopter noise, development of noise abatement procedures in cooperation with local authorities and neighborhoods, along with adoption of "*Fly Neighborly*" guidelines, are modern necessities for the rotary-wing community. Time will tell if the voluntary actions taken by Los Angeles helicopter operators comprise an adequate compromise for all involved. Regardless, those kinds of collective actions are necessary to keep the urban helicopter viable. **B&CA**

DOWNLOAD the HAI's *Fly Neighborly Guide* tap here in the digital edition, or go to [AviationWeek.com/Flyguide](http://AviationWeek.com/Flyguide)



## Discuss this Article 2

[rex@helitexp.com](mailto:rex@helitexp.com)

on Feb 24, 2015

Another significant safety consideration when contemplating flying higher altitudes and the impact this may have on approach and departure paths is settling with power for approaches and maximum power demands for departures. To conduct an approach from an initial altitude of 2,000' AGL, a steep approach, defined as 15 degrees, would require a horizontal component of approximately 7,700'.

To conduct an approach from 2,000' AGL within the FAA's prescribed 4,000' horizontal distance for a heliport the approach path would require an angle of around 30 degrees. If by chance there was pressure to stay at altitude even longer in an attempt to reduce the noise signature even more and conduct the approach within a 2,000' horizontal distance the angle would then increase to 45 degrees. Coupled with a poorly sited heliport which does not take into account local wind patterns or only has a single approach departure path where a tail wind is a predominate possibility; settling with power would be a real concern.

Initiating a climb to an altitude of 2,000' over a distance of 4,000' or less may also not be achievable in certain makes and models of helicopters under specific load configurations and environmental conditions, not to mention the potential for generating higher noise levels under these higher power demand situations.

As stated, being proactive through proper heliport site selection and flight path replanning in collaboration with certified aviation professionals is a major factor in the



# LOUDNESS COMPARISON CHART (dBA)

Common Outdoor Activities	Noise Level (dBA)	Common Indoor Activities
Jet Fly-over at 1000 ft	110	Rock Band
Gas Lawn Mower at 3 ft	100	
	90	Food Blender at 3 ft
Diesel Truck at 50 ft at 50 mph	80	Garbage Disposal at 3 ft
Noisy Urban Area, Daytime		Vacuum Cleaner at 10 ft
Gas Lawn Mower at 100 ft	70	Normal Speech at 3 ft
Commercial Area		
Heavy Traffic at 300 ft	60	Large Business Office
Quiet Urban, Daytime	50	Dishwasher Next Room
Quiet Urban, Nighttime		Theater, Large Conference Room (Background)
Quiet Suburban, Nighttime	40	Library
	30	Bedroom at Night, Concert Hall (Background)
Quiet Rural, Nighttime	20	Broadcast/Recording Studio
	10	
Lowest Threshold of Human Hearing	0	Lowest Threshold of Human Hearing

An increase of 3 dBA is barely perceptible to the human ear.



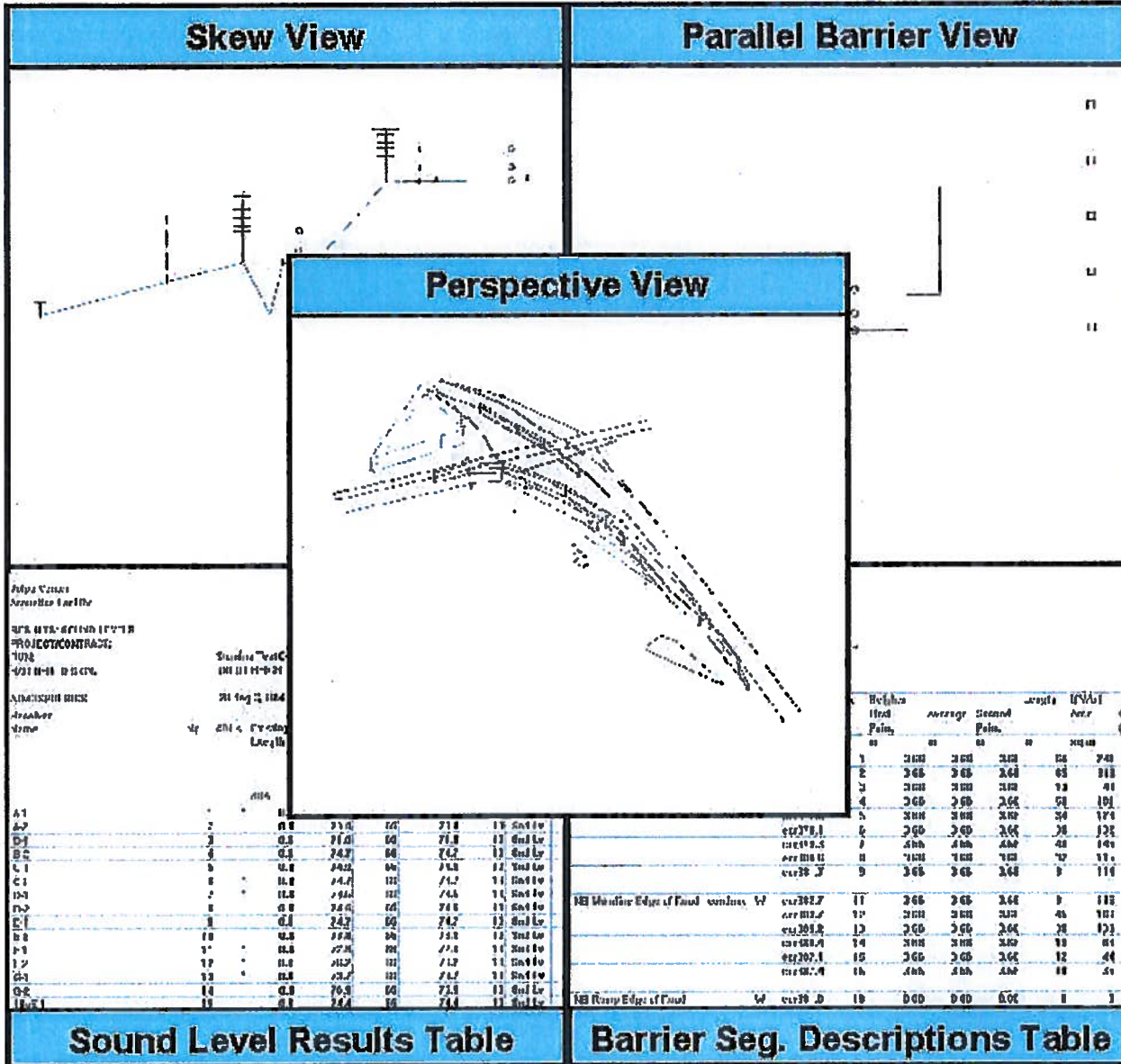


U.S. Department of Transportation  
Federal Highway Administration

# FHWA TRAFFIC NOISE MODEL<sup>®</sup> USER'S GUIDE

FHWA-PD-96-009  
DOT-VNTSC-FHWA-98-1

Final Report  
January 1998



Prepared for  
U.S. Department of Transportation  
Federal Highway Administration  
Office of Environment and Planning  
Washington, DC 20590

Prepared by  
U.S. Department of Transportation  
Research and Special Programs Administration  
John A. Volpe National Transportation Systems Center  
Acoustics Facility  
Cambridge, MA 02142-1093



## APPENDIX F

### REMEL DATA BASE

The FHWA Traffic Noise Model (TNM) computes a noise level through a series of adjustments to a reference sound level. The reference sound level is found in the REMEL data base.

The REMEL Data Base was developed by the U.S. Department of Transportation, Research and Special Programs Administration, John A. Volpe National Transportation Systems Center, Acoustics Facility (Volpe Center), in support of the FHWA, Office of Environment and Planning and Office of Engineering and Highway Operations Research and Development, and a 25-State National Pooled-Fund Study, titled: "Highway Noise Model Data Base Development."

The REMEL data base is an entirely new data base of vehicle noise emission levels that resulted from 1994/1995 measurements of over 6000 vehicle pass-bys events. These events include constant-flow REMEL data, interrupted-flow REMEL data, and subsource-height data measured in 9 states across the country.

Specifically, constant-flow measurements were performed by the Volpe Center, with the assistance of the Maryland State Highway Administration (MSHA), at 40 sites in California, Connecticut, Florida, Kentucky, Maryland, Massachusetts, New Jersey, Michigan, and Tennessee. Measurements were made at 7.5-, 15-, and 30-m offset positions from the centerline of the near travel lane. Data for constant vehicle speeds between 10 and 70 mph were obtained, as well as data for idling vehicles. The constant-flow data help correct many of the limitations of STAMINA 2.0/OPTIMA, such as limited speed ranges, vehicle types, and the inability to account for vehicles on grade.

Interrupted-flow measurements were performed by the Volpe Center, with the assistance of MSHA, Vanderbilt University, the University of Central Florida, and Ohio University, at 5 sites in Florida, Kentucky, and Tennessee. Measurements were made at a 15-m offset position from the centerline of the near travel lane. Data were collected as vehicles accelerated to, and decelerated from constant speeds at various points along the roadway, typically 15, 30, 60, 120, 240, 300, and 400 m from the stop line, i.e., toll booth, stop sign, or similar vehicle idling position. The interrupted-flow data facilitate the modeling of traffic at various traffic-control devices, such as toll booths, traffic lights, and highway ramps, by allowing the development of a relationship between interrupted-flow data and the corresponding constant-flow data.

Lastly, one-third octave-band subsource-height measurements were performed by Florida Atlantic University under the direction of FHWA, Florida DOT, and the Volpe Center. Measurements were performed for the same conditions represented by the constant- and interrupted-flow measurements. The subsource-height data allowed for a percent-energy apportioning of the constant-flow noise levels to fractional noise representative of typical vehicle noise subsources, i.e., engine/exhaust noise and tire/pavement noise.

The REMEL data and related subsource-height data were used to develop the regression equations of sound level versus speed versus frequency versus subsource-height required for TNM. The general

$B + \Delta E_b$  is the height of the tire/pavement-noise portion of the regression curve;  
 $C + \Delta E_c$  is the height of the engine/exhaust-noise portion of the regression curve;  
 $D1$  through  $J2$  are for the sixth-order polynomial fit through the one-third octave-band spectral data as a function of speed; and  
 $K1$  and  $K2$  calibrate the A-levels resulting from the sixth-order polynomial fit, such that they are essentially equal to the A-levels from the A-level REMEL equations expressed independent of frequency, i.e.,  $L_E(s)$  instead of  $L_E(s,f)$ .

Finally, to apportion REMELs to fractional noise levels representative of the "tire/pavement" and "engine/exhaust" subsources, one-third octave-band subsource-height adjustments were applied to all regression equations.

The general subsource-height-ratio equation, expressed as a function of frequency, is defined as follows:

$$\text{Subsource-height-ratio } (f) = L + [1-L-M][1 + e^{(N \log f + P)}]^{-Q}$$

where:  $L$  is the subsource-height ratio at low frequencies;  
 $1-M$  is the subsource-height ratio at high frequencies; and  
 $N$ ,  $P$ , and  $Q$  control the exponential transition which occurs at the mid-frequencies.

In total, the regression equations developed for TNM are as follows:

- 10 subsource, one-third octave-band, average-pavement (data from both DGAC and PCC pavements combined) regressions for constant-flow vehicles on level grade;
- 24 subsource, one-third octave-band, specific-pavement (representing data from three pavement types: DGAC, PCC, and open-graded asphaltic concrete (OGAC)) regressions for constant-flow vehicles on level grade;
- 2 subsource, one-third octave-band, grade/interrupted-flow adjustment regressions (heavy trucks); and
- 8 subsource, one-third octave-band, adjustment regressions for interrupted-flow vehicles (autos, medium trucks, buses, and motorcycles).

These regressions exist in TNM as a matrix of coefficients expressed as a function of vehicle type, vehicle speed, one-third octave-band frequency, pavement type, roadway grade condition, traffic-flow condition, and vehicle subsource height. The coefficients have been integrated into the Data Base of TNM and are used for computing sound levels in the vicinity of a roadway, and for designing noise barriers. It is important to note that this relatively complex matrix is transparent to the TNM user.

The measurements, analysis and results are documented in more detail in the Volpe Center Final Report, "Development of the Reference Energy Mean Emission Level Data Base for the FHWA Traffic Noise Model (FHWA TNM<sup>®</sup>), Version 1.0."<sup>2</sup> Supplemental documentation includes References 4 and 5.

form of the regression equations differs from that used by STAMINA 2.0/OPTIMA in that it contains not only a "tire/pavement noise" component that increases with vehicle speed (similar to STAMINA 2.0/OPTIMA), but also an "engine/exhaust noise" component that is independent of vehicle speed. Baseline regression equations were developed for automobiles (A), medium trucks (MT), heavy trucks (HT), buses (B), and motorcycles (MC). The resultant curves are presented in Figure 76. Baseline conditions refer to dense-graded asphaltic concrete (DGAC) and Portland cement concrete (PCC) pavements combined (referred to as "Average" pavement in this User's Guide), level-graded roadways, and constant-flow traffic.

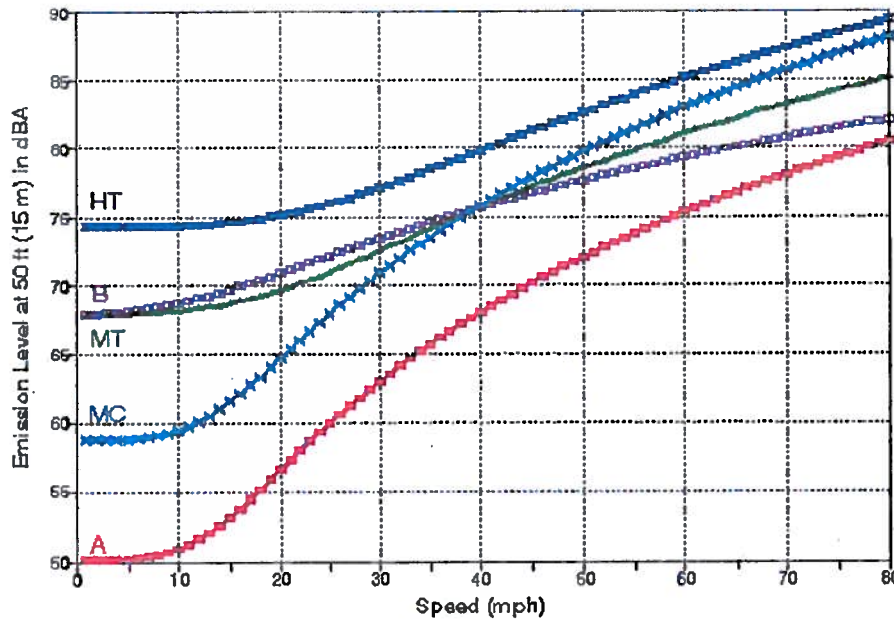


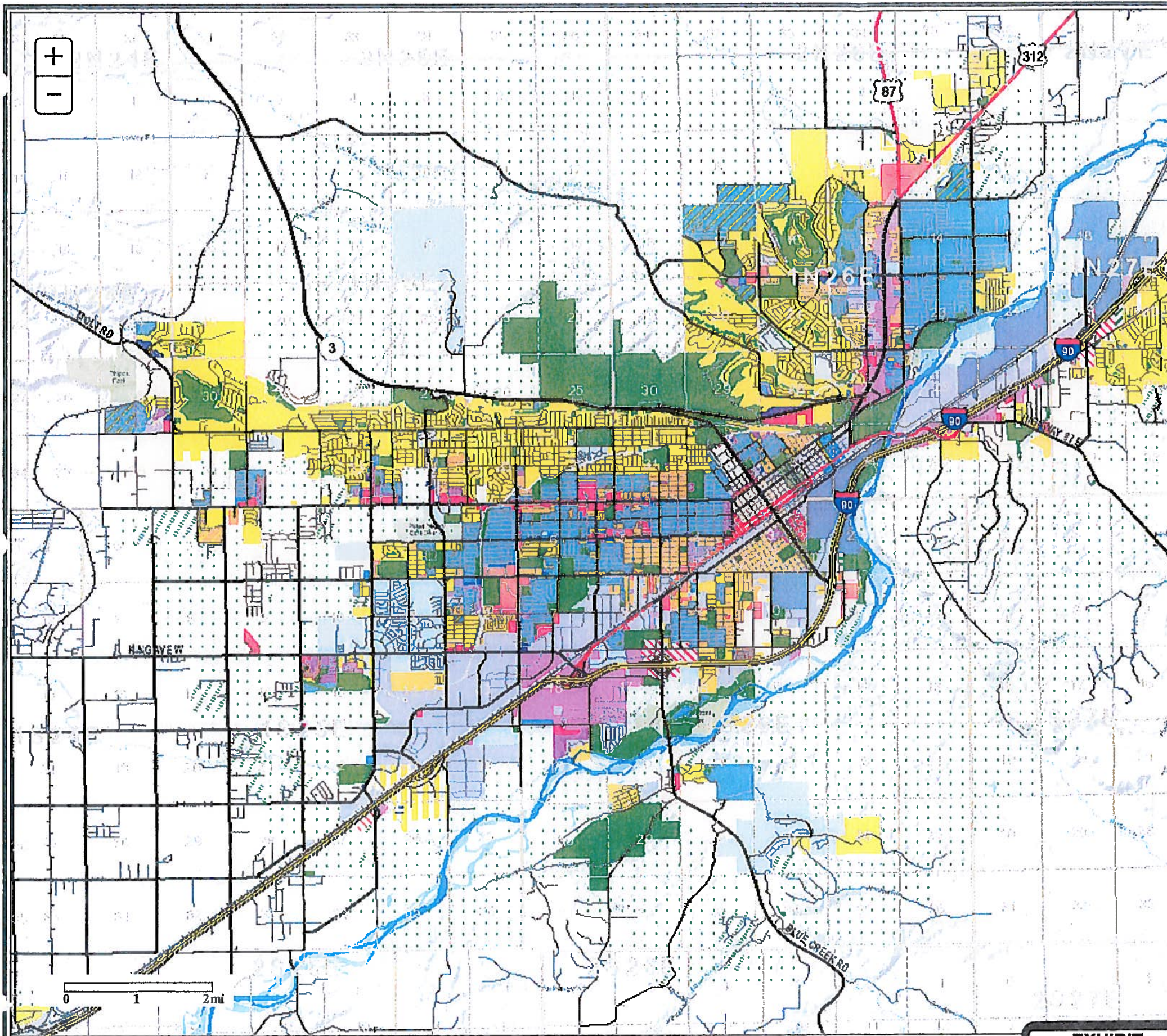
Figure 76. Emission level comparison.

To account for specific pavement types, grade conditions, and interrupted-flow traffic, similar regression equations were developed by applying adjustments to the "tire/pavement noise" component and/or the "engine/exhaust noise" component of the above baseline regression curves.

The general REMEL equation, expressed as a function of vehicle speed (mph) and frequency (Hz), is defined as follows:

$$L_E(s,f) = 10 \cdot \log_{10} [10^{(C+E_c)/10} + (s^{A/10})(10^{(B+E_b)/10})] - (K1+K2*s) + D1+D2*s + (E1+E2*s)\log_{10}f + (F1+F2*s)(\log_{10}f)^2 + (G1+G2*s)(\log_{10}f)^3 + (H1+H2*s)(\log_{10}f)^4 + (I1+I2*s)(\log_{10}f)^5 + (J1+J2*s)(\log_{10}f)^6$$

where: A is the slope of the tire/pavement-noise portion of the regression curve;



12/21/2015

W

Legend

Zoning

- Public
- Residential 15000
- Residential 9600
- Residential 8000
- Residential 7000
- Residential 7000 Restricted
- Residential 6000
- Residential 6000 Restricted
- Residential 5000
- Residential Multi-Family
- Residential Multi-Family Restricted
- Residential Manufactured Home
- Residential Professional
- Neighborhood Commercial
- Community Commercial
- Central Business District
- Planned Unit Development
- Highway Commercial
- Heavy Industrial
- Controlled Industrial
- Agricultural Open
- Agricultural Suburban
- Entryway Light Commercial
- Entryway General Commercial
- Entryway Mixed Use
- Entryway Light Industrial
- East Billings Railspur Village
- East Billings Railspur Village Main St.
- East Billings Central Works
- East Billings 13th St. Main St.
- East Billings Industrial Sanctuary
- Medical Corridor Permit Zoning District
- S. 27th Street Permit Zoning District
- Residential Suburban (Laurel)
- Residential Tracts (Laurel)
- Residential 7500 (Laurel)
- Residential Limited Multi-Family (Laurel)
- Light Industrial (Laurel)

Longitude: -108.701 Latitude: 45.821  
State Plane X, Y: 662041.241, 174915.912

tabbies  
**EXHIBIT**  
**4**

Legend

January 6, 2016

Mr. Timothy A. Filz  
Christensen, Fulton & Filz, PLLC  
2825 3rd Avenue North, Suite 100  
P.O. Box 339  
Billings, MT 59103-0339

Via email: filz@cfflawfirm.net

Reference: County Zone Change 669  
Billings Flying Service  
Concepts 'A' and 'B' Alternative Approaches  
Project No. 16002

Dear Mr. Filz:

With this letter we transmit the reference land use concepts for your use. Each concept depicts an alternative to the land use scheme presented to Yellowstone County for a zone change.

Concept 'B' includes a heliport on the north 600 feet of Tracts 13 and 14. The southern remainder portion of Tract 14 is shown as Highway Commercial Zoning. We envision the "front" portion being anchored by a small hotel with small out parcel uses that respond to the Highway 3 Corridor, existing adjacent neighborhoods and proximity to the Billings Logan International Airport. The "back" portion is shown as small lot office warehouse and distribution/assembly.

Tract 13, while zoned Highway Commercial, also is shown with a mix of commercial, residential professional, live-work (a building type where the self-employed, sole-proprietors, or residents with home offices live and work in one building), and residential of about R-5 density.

Additional plan elements include utilizing the site's existing low spots for stormwater conveyance and retention. Greenways containing stormwater swales, trails alongside earthen berms of 7 to 12 foot height would provide visual screens, planting areas and noise attenuation. Three connected greenways are located along Highway 3, separating the Highway Commercial office/warehouse uses from the lower density and residential uses and running east to west along the south edge of the heliport.

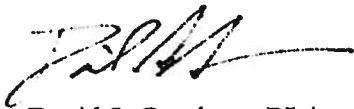


Concept 'A' is of a mixed use inclusive Highway Commercial Zoned development. A heliport is not included with that area being used for additional acreages of residential and highway commercial.

Both concepts are, in our opinion, viable opportunities and relationships between conventional real estate components and the existing setting. Each concept is an attempt to render an appropriate gradation of urban land uses as a transition from the Billings Logan International Airport, west and south to the Highway 3 Corridor/City Entryway and residential neighborhoods.

We trust the ideas presented will be helpful in bringing about a positive outcome for your client. Please call if you need additional information at 406/869-3308.

Sincerely,

A handwritten signature in black ink, appearing to read 'DSG', with a long horizontal flourish extending to the right.

David S. Groshens, RLA  
Landscape Architect

DSG/cas

Enc.

P:16002:Filz\_Billings\_Flying\_Service\_Zone\_Change\_Options\_ltr\_010616\_SC

# CONCEPTUAL PLAN B

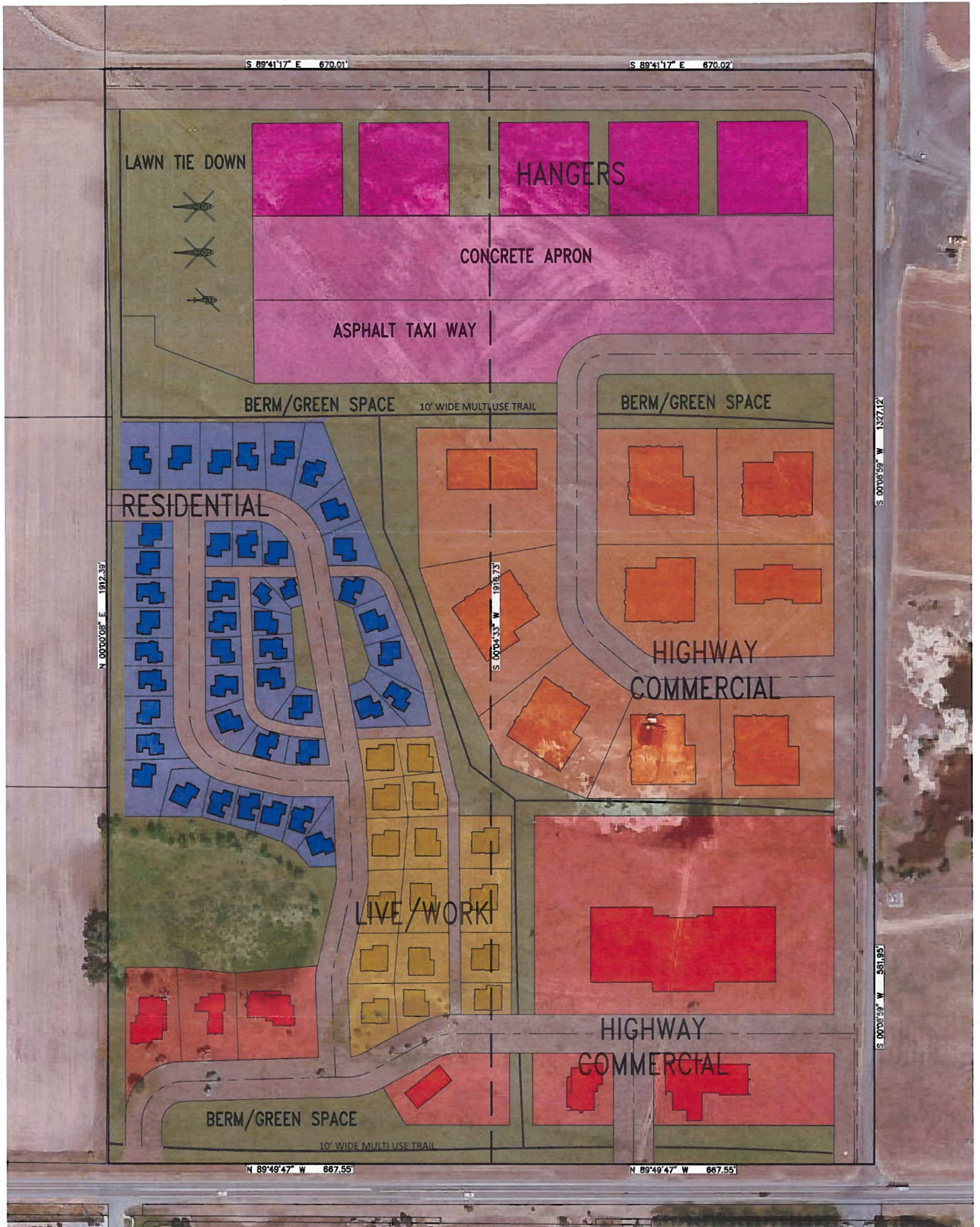
CONCEPTUAL LOT LAYOUT  
WITHIN  
S26, T01, R 25 E. COS 2037, PARCELS 13 & 14



JANUARY 2016

PREPARED BY : SANDERSON STEWART 

BILLINGS, MONTANA



# CONCEPTUAL PLAN A

CONCEPTUAL LOT LAYOUT  
WITHIN  
S26, T01, R 25 E. COS 2037, PARCELS 13 & 14



JANUARY 2016

PREPARED BY : SANDERSON STEWART 

BILLINGS, MONTANA





January 13, 2016

Planning & Community Services Department  
c/o Zoning Commission of Yellowstone County  
2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor  
Billings, Montana 59101

**Re: County Zone Change #669, Project Number 15-217**

Zoning Commission of Yellowstone County:

My name is Robb Bergeson and I am the General Manager of Edwards Jet Center – a Fixed Base Operation (FBO) and aircraft charter company located at Billings Logan Field.

Please allow this letter to serve as my formal support for County Zone Change #669 made by Almon Blain and Billings Flying Service.

The basis for this support is three-fold: first and foremost, the planned development complements and is compatible with the Airport operations which are located directly adjacent to this property.

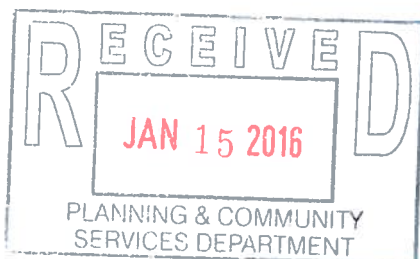
Second, I believe that a move by Billings Flying Service to this location improves aviation SAFETY. To have their operations near the Airport, in controlled airspace, is good for the overall safety of the aviation community in Billings.

Finally, a move by Billings Flying Service to this property, as opposed to one onto Billings Logan Field, will allow the Airport infrastructure, like the runways and taxiways, to be used as they were originally intended – to support the numerous fixed-wing Commercial and General Aviation flights that currently serve Billings and the surrounding area.

In conclusion, I am in support of County Zone Change #669 made by Almon Blain and Billings Flying Service.

Regards,

  
Robb Bergeson





1004 Division Street • Post Office Box 1913 • Billings, MT 59103-1913  
Phone: (406) 256-9600 • Fax: (406) 256-0781 • www.tolliverlaw.com

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January 25, 2016

City of Billings Planning Division  
2825 3rd Avenue North  
Billings, MT 59101



**RE: Consideration of County Zone Change #669 – West of Billings Logan Airport – 2300 Block of Highway 3 N.**

Dear Members of the Yellowstone County Zoning Commission and Member of the Billings Planning Division,

Thank you for your time and efforts.

This letter seeks to showcase the impact of the Billings Logan International Airport on the property currently under consideration for a zone change. As this process has unfolded, it is clear there are a number of individuals with varied interests in proposed development north of the Billings Rimrocks. However, the Airport is clearly the predominant feature north of the Rimrocks. As a feature, the Airport is destined to grow and the impact of its operations on neighboring properties will grow more pronounced.

Property owners in the vicinity of any airport face considerable challenges when attempting to develop property. Aircraft noise and building restrictions, by design, limit the ability to develop property. However, the current zoning proposal comes complete with a contract purchaser who will benefit from proximity to the Airport.

As the Federal Aviation Administration has observed:

Land use decisions that conflict with aviation activity and airport facilities can result in undue constraint being placed on an airport. In order enable this sector of the economy to continue to expand, to provide for a wide variety of job opportunities for local citizens and to meet the needs of the traveling public, it is vitally important that airports operate in an environment that maximizes the compatibility of the airport with off-airport development.

*(Land Use Compatibility and Airports, Federal Aviation Administration, pg. I-3—I-4.)*

Responding to this charge, the Federal Aviation Administration recommends the use of preventative land use controls. Chief among preventative land use controls is compatible use

zoning using commercial, industrial, or farmland zoning. (*Land Use Compatibility and Airports*, Federal Aviation Administration, pg. V-25.)

As has been expressed earlier, it is our belief that we are seeking a compatible zoning change. Furthermore, the timing of this proposal gives Yellowstone County a brief window to guarantee the full development of the property in spite of the Airport's restraining influence on development. This point is illustrated below.

This analysis describes what a typical approach path to Runway 7 and departure from Runway 25 at Billings Logan Airport looks like. The attached page contains a map drawn by myself. The red line on the map details a typical approach path to runway 7 and departure path from runway 25. Points 3 and 4 are the west and east boundary of the affected property. Points 1 and 2 are arbitrary points chosen at certain distances along the approach/departure path.

As shown on the map, when Aircraft arriving and departing Billings Logan International Airport cross over the affected property their altitude can range from 166 feet to 425 feet. Put in context the Billings Crowne Plaza Hotel is 245 feet tall.

Point	Distance (Miles)	Distance (Feet)	Altitude on Approach	Altitude on Departure ( 90 mph)	Altitude on Departure (120 mph)
1	1.63	8602	451	488.8	814.6
2	1.29	6805	357	386.6	644.4
3	0.85	4493	235	255.3	425.5
4	0.60	3170	166	180.1	300.2
				Represents small single engine airplane	Represents turboprop/small jet shallow departure

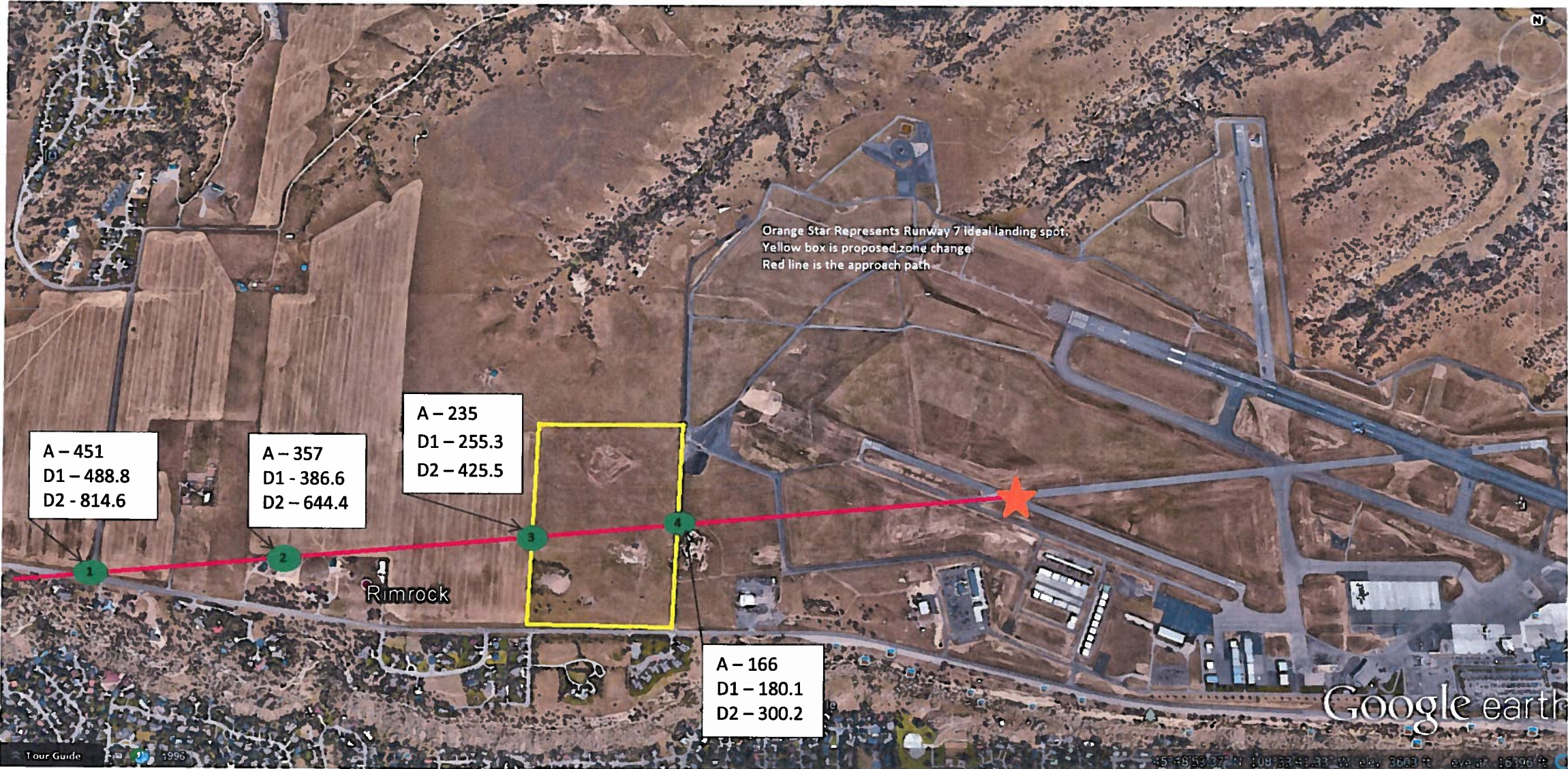
In short, substantial aircraft noise will indefinitely be a substantial feature of the property. As aircraft traffic increases so will noise impact on the property. Simply put, it takes a special purchaser to assume the financial burden and develop property under the above described conditions. The current owners, Yellowstone County, and the City of Billings might not get another opportunity to effectively put this property to work.

Sincerely,

  
Kenneth Tolliver

Attorney at Law  
Tolliver Law Firm

Map Detailing Airplane Approach and Departure Altitudes Over Property Under Consideration For Zone Change



**Key**  
 "A" – Altitude (ft) on Approach (Column 4)  
 "D1" – Altitude (ft) on Departure (90 mph) (Column 5)  
 "D2" – Altitude (ft) on Departure (120 mph) (Column 6)

This map assumes a typical airplane glide path of 3 degrees. In comparison, the typical glide path for a helicopter is 6 degrees.