

From the **KAREN KOSIAREK**  
Desk of:

Wyeth Friday  
Planning & Community Services Director  
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Billings, MT 59101

VIA ELECTRONIC MAIL TO: [fridayw@ci.billings.mt.us](mailto:fridayw@ci.billings.mt.us)

Subject: Request for Appeal of Permit PLN-17-00345,  
COS 2074 Yellowstone County, Tax ID# X00416, X00417

Dear Mr. Friday:

I am writing to request that the Planning Division review the zoning decision made for the above-captioned properties as outlined in a 14 February 2017 letter from Jeannette Vieg of the Billings Planning & Community Services Department to MTSun, LLC of Sandy, Utah. I obtained a copy of the letter from the Department on 4 May 2017 after filing a public request.

The Department's 14 February 2017 letter is in response to a permit application filed by MTSun LLC regarding their proposed 370-acre solar farm development on State Land managed by the Montana Department of Natural Resources and Conservation (DNRC). MTSun is seeking to install, per the permit application, a "substation/maintenance shop – only one" and "Solar PV, substation". Based on the documents attached to the permit application and other documents obtained from DNRC, MTSun is planning to build a substation as well to install solar panels, approximately 10-ft high, covering approximately the entire 370 acres of State Land.<sup>1</sup> DNRC has begun an Environmental Assessment process regarding this development which will be ongoing over the next several months.

The properties in question are zoned Agricultural Open (A1). Ms. Vieg's approval letter states simply "Solar Photo-Voltaic Facilities are an allowed use in this zoning district." It gives no supporting information for that conclusion nor cites to any governmental authority or historical precedent in supporting her conclusion. I spoke via telephone to Ms. Nicole

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<sup>1</sup> MTSun is also planning to install solar panels on another approximately 340 acres of nearby private land outside of the Jurisdictional Area of Yellowstone County.

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Cromwell of the Department on 9 May 2017 about the letter, and she informed me that the decision was based on a reading of the Billings Code of Ordinances §27-201 and §27-305.

The former section contains definitions, including a definition of “utility, public” which the Department believes applies to the solar project. The latter section, entitled “District regulations: Residential uses” encompasses agricultural uses and includes a table stipulating which uses are allowed in certain zoning districts, which require special review and which are seemingly not allowed (designated by blanks in the table cells). The table includes two entries for “Utilities (Public Service Installations):” upon which it appears the Department is basing its decision. The first applies to “Station only”, and in Agricultural – Open, this is shown as an allowed use. The second entry in the table pertaining to Utilities (Public Service Installations)” is for “Storage Yard” and for Agricultural – Open, this is shown as requiring special review.

Therefore, it appears based on the 14 February 2017 letter that the Department is equating 370 acres of solar panels to a utility substation. This logic is faulty, as there is no equivalence between the two. A utility substation is typically a relatively small pad-mounted set of structures covering several hundred square feet to a few square acres at most. The picture below shows a solar substation in the foreground with rows of solar panels behind it. A substation is not at all the same as 370 continuous acres of shiny solar panels.

Based on these facts, the Department cannot unilaterally conclude that 370 acres of solar panels can be substituted in the Code for “utility station” and that the project can be simply administratively approved. That is not only a sloppy interpretation of the Code but is a gross



*Image: S&C Electric Company (sandc.com)*

misuse of the trust placed in the Department by the citizens of the County. This is an issue that requires more thorough review and public input. Even if one concluded that these solar panels were more akin to a public utility storage yard, that in itself would trigger the need for special review and a public hearing.

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This large solar farm is clearly an industrial facility. Its presence in an agriculturally zoned area, immediately adjacent to other properties (including mine) that are zoned residential is a significant issue that should not be allowed to be administratively approved without public discourse. This requires special review, public deliberations and input from the Zoning Commission. The Department's 14 February 2017 letter essentially creates a de facto change in land use without the appropriate public process and is an egregious overstep of the Department's authority. It also creates a negative and dangerous precedent for land use decisions in the County of Yellowstone.

I respectfully appeal the Department's determination regarding Permit PLN-17-00345 that "Solar Photo-Voltaic Facilities are an allowed use in this zoning district" and request that you require a special review of the permit application with the appropriate public notice, comment period and public hearing.

Respectfully,

Karen Kosiarek, P.E.  
Yellowstone County Resident and Property Owner

Copy to: Jeff Bollman, Area Planner, DNRC Southern Land Office  
Steve Wade, Esq., Browning, Kaleczyc, Berry & Hoven, P.C.