



## CITY-COUNTY PLANNING DIVISION

"SERVING BILLINGS, BROADVIEW AND YELLOWSTONE COUNTY"

PLANNING & COMMUNITY SERVICES DEPARTMENT

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Karen Kosiarek  
PO BOX 911  
Billings, MT 59103

June 2, 2017

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

Dear Ms. Kosiarek,

Thank you for your recent letter regarding the Planning Division's approval of a Zoning Compliance Permit for the proposed solar power development on state owned land and private land north and west of the City of Billings, MT.

Administrative decisions of the Planning Division staff in regards to the interpretation or enforcement of zoning regulations, can be reviewed by myself as Planning Director. The code requires an administrative appeal to the County Board of Adjustment be accomplished within 30 days of the decision date. An administrative appeal to the County Board of Adjustment is out of time, however I will respond to your questions regarding the administrative decision of February 14, 2017, to approve PLN-17-00345 for the proposed solar power development.

The determination that solar power development is an allowed use in the Agriculture Open-Space (A-1) zone was made by reviewing the regulation definitions (Sec. 27-201) and the allowed use matrix (Sec. 27-305) adopted by the County. The County first adopted and applied zoning district regulations in November 1973. The code was unified with the City of Billings zoning code in 1997. The definition and use matrix regarding Public Utilities as an allowed use in the A-1 has not changed since 1973.

Here is the definition of a Public Utility as that term is used within the adopted zoning regulations:

**UTILITY, PUBLIC:** *A private business organization performing some public service and subject to special governmental regulations or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, gas and transportation for persons and freight.*

The definition is broad and not limited to the listed types of utility services. The definition does not limit the activity of the public utility – it simply defines the term as applied within the zoning code.

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The zoning code implements the allowed and prohibited uses within each district through a use matrix adopted in Section 27-305 for all agriculture and residential zoning districts. The matrix lists "Utilities – Public Service Installations" and identifies 2 separate categories for this use. The 2 categories are: "Station Only" and "Storage Yard". These terms are not defined. Terms not defined within the zoning regulations shall have their common meaning or as defined in a dictionary (Sec. 27-201). The common meaning of a "station only" within the context of a public utility would be a power generating station, a water or waste water treatment station, a power sub-station, a railway station or a bus station. The common meaning of a "storage yard" within the context of a public utility would be an area where equipment and supplies are stored that are necessary for the maintenance and service of a station. A storage yard is not required where a station is located.

The use matrix lists "Station Only" as an allowed use only within the A-1 zoning district and as a special review use in all other agricultural or residential zoning districts. A "Storage Yard" is listed as a special review use only within the A-1 zoning district. There are other uses listed in 27-305 that are also an allowed use within the A-1 district, such as veterinary clinics with boarding, commercial greenhouses, commercial stables, commercial kennels, cemeteries and blacksmiths. The A-1 zoning district requires a minimum lot area of 10 acres for each dwelling so lots in this zoning district are very low density. The lots in the Lone Eagle Subdivision range from 10 acres to over 18 acres and many have been developed with single family dwellings.

I have affirmed the Planning Division staff, Jeannette Vieg and Nicole Cromwell, have correctly interpreted and applied the zoning regulations for the proposed solar power development as a "Public Utility Station", an allowed use within the A-1 zone. The state is the public agency who owns and manages these land

You have requested also the Planning Division require the developer and the state Department of Natural Resources & Conservation (DNRC) to go through a special review approval for the proposed project as a "Storage Yard". This would be an incorrect interpretation of the plain meaning of the term "storage yard". It does not appear the developer intends to maintain any type of storage yard on the site. Maintenance equipment and supplies will be brought to the site as necessary. I cannot require a special review application where the code does not require such an application for a proposed use.

I also want to make you aware of a provision of state law at 76-2-401 & 402 that allows public agencies to use public lands contrary to local zoning as long as the public agency holds a public forum through the local Board of Adjustment. While a Zoning Compliance Permit was issued for the project and the DNRC has not pursued this option, the DNRC may exercise this option for its property at any time for any use that might be contrary to local zoning regulations. In this process, the County Board of Adjustment is required to hold a hearing but cannot place any conditions on the project or stop the project from proceeding.

I have spoken with the agent for the DNRC, Planner Jeff Bollman, who manages the state school trust lands in this area of Montana. The DNRC is the lessor of the land for the solar power development project. As required by state law, an Environmental Assessment (EA) is underway to

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determine any potential impacts from the proposed project. Those impacts to be studied include any potential effects on of adjacent residential and agricultural land uses. I strongly encourage you to participate in the public review of this important environmental document and testify or provide written comment on the EA and its findings. Mr. Bollman may be reached at 406-247-4404 or by email at [jbollman@mt.gov](mailto:jbollman@mt.gov).

Mr. Bollman has informed me a draft of the EA will likely be issued in June and released for public comment. A second public meeting will be held after the draft is released for public comment.

Again, thank you for taking the time to inquire on the proper interpretation of the Unified Zoning Regulations regarding this proposed solar power project. I believe the Planning Division staff have made the correct interpretation regarding the proposed use.

Please let me know if you have further questions.

Sincerely,



Wyeth Friday, AICP, Director  
Planning and Community Services Department

CC: Dan Schwarz, Chief Deputy County Attorney  
Jeff Bollman, Planner, Southern Land Office, DNRC  
Ros Rocco Vrba, MTSun, LLC  
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