

**ORDINANCE 2020-3  
FOR DESIGNATION OF AN AIRPORT  
INFLUENCE AREA FOR TILLITT FIELD, FORSYTH AIRPORT**

**AN ORDINANCE FOR DESIGNATION OF AN AIRPORT INFLUENCE AREA OTHERWISE REGULATING THE USE OF PROPERTY, IN THE VICINITY OF RICKS FIELD BY CREATING THE APPROPRIATE INFLUENCE AREA AND ESTABLISHING THE BOUNDARIES THEREOF; PROVIDING FOR CHANGES IN THE RESTRICTIONS AND BOUNDARIES OF SUCH AREA; DEFINING CERTAIN TERMS USED HEREIN; REFERRING TO THE TILLIT FIELD INFLUENCE AREA MAP WHICH IS INCORPORATED IN AND MADE A PART OF THIS ORDINANCE; PROVIDING FOR ENFORCEMENT; ESTABLISHING A BOARD OF ADJUSTMENT; AND IMPOSING PENALTIES.**

This Ordinance is adopted pursuant to the authority conferred by Montana Codes Annotated, Title 67, Chapter 4. It is hereby found that an incompatible use has the potential for endangering the lives and property of users of Tillitt Field, and property or occupants of land in its vicinity; that an incompatible use may affect the existing and future use of Tillitt Field; and that an incompatible use may destroy or impair the utility of Tillitt Field and the public investment therein. Accordingly it is declared:

- (1) that the creation or establishment of an incompatible use has the potential of being a public nuisance and may injure the region served by Tillitt Field;
- (2) that it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of incompatible uses that are a hazard to air navigation be prevented; and
- (3) that the prevention of these incompatible uses should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.

It is further declared that the prevention of the creation or establishment of incompatible uses is a public purpose for which a political subdivision may raise and expend public funds and acquire land or interests in land.

**IT IS HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ROSEBUD COUNTY, MONTANA, AS FOLLOWS:**

**SECTION I: SHORT TITLE**

This Ordinance shall be known and may be cited as Tillitt Field Influence Area Zoning Ordinance.

## **SECTION II: DEFINITIONS**

As used in this Ordinance, unless the context otherwise requires:

1. AIRPORT - means Tillitt Field, Forsyth Airport.
2. AIRPORT INFLUENCE AREA - An area longitudinally centered on a runway which extends 10,000 feet from the thresholds (ends) of the runway and is one (1) mile in width on each side of the runway and its extended centerline.
3. AIRPORT ZONING COMMISSION - A board of at least three (3) members appointed by the Rosebud County Commissioners as provided for in Section 67-6-202(2).
4. BOARD OF ADJUSTMENT - A board consisting of five (5) members appointed by the Rosebud County Commission as provided for in Section 67-4-312 and Sections 76-2-321 through 76-2-328 Montana Codes Annotated.
5. INCOMPATIBLE USE - Any use of land which is inconsistent with the provisions of this Ordinance or an amendment thereto.
6. PERSON - An individual, firm, partnership, corporation, company, association, joint stock association or governmental entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.
7. RUNWAY - A defined area on an airport prepared for landing and takeoff of aircraft along its length.

## **SECTION III: AIRPORT INFLUENCE AREA**

In order to carry out the provisions of this Ordinance, there is hereby created and established within the Airport Influence Area, an Airport Impact Zone and a Limited Development Area Zone which includes all of the land lying within the boundaries and zones defined on the Tillitt Field Land Use Compatibility Map. Such zones are shown on the Tillitt Field Land Use Compatibility Map consisting of one sheet, prepared by the Rosebud County Airport Zoning Commission and dated 2-14-02, which is attached to this Ordinance and made a part hereof. The various land uses are hereby established and defined as follows:

1. Urban Area - An area consisting of typical dense residential and commercial development such as retail, banking, hotel/motel, restaurant, and similar uses.
2. Suburban Residential Area - An area consisting of suburban residential development typically sited on acreages in excess of 1 acre but not in excess of 10 acres.

3. Industrial Area - An area consisting of heavy to light manufacturing activities, warehousing, distributing, machinery and vehicle dealerships, and similar uses.
4. Agricultural Area - Areas devoted to primarily agricultural uses, scattered residential development with density not greater than 1 residence/20 acres. Also, forested lands, wildlife and waterfowl reserves, and similar uses.
5. Terrain Obstructions - Areas where natural terrain height penetrates the FAA FAR Part 77 Surfaces for the airport.
6. Airport Impact Zone - An area defined on the Land Use Compatibility drawing and consisting of the runway protection zones and the primary surface. No development should occur in this area other than airport specific development whose needs are airport related. This area, according to Federal guidelines, should be under the airport's control to prevent incompatible land use development.
7. Limited Development Area Zone - An area defined on the Land Use Compatibility drawing. Land use in this limited area should be restricted to uses that are not noise sensitive; those that do not promote public assembly; those that do not have distracting lights, glare, or smoke, provide electronic interference; those that are not bird attractors.

#### **SECTION IV: AIRPORT INFLUENCE AREA LIMITATIONS**

In an Airport Impact Zone and Limited Development Area Zone, the following regulations shall apply:

1. Uses Permitted Outright. In an Airport Impact Zone, the following uses and their accessory uses are permitted outright:
  - a. Airport.
  - b. Farm use, excluding livestock feed or sales yard and excepting those uses set forth in subsection 2 of this section.
2. Conditional Uses. In Limited Development Area Zones, the following uses and their accessory uses may be permitted when authorized in accordance with the requirements of this ordinance:
  - a. Farm accessory buildings and uses.
  - b. Mining, quarrying, or other extraction activity, including the processing or refining of ore or other raw materials.

- c. Utility facility necessary for public service.
  - d. Golf course.
  - e. Park, playground, other public recreation site or facility, or community service facility owned and operated by a governmental agency or non-profit community organization.
  - f. Veterinary clinic, animal pound or kennel.
  - g. Private or public grounds and buildings for games, sports, riding arenas, race tracks and similar activities.
  - h. Water supply and treatment facility.
  - i. Manufacturing and warehousing.
  - j. Travelers' accommodation facilities.
  - k. Retail and wholesale trade facilities.
  - l. Residential use and development therefore.
3. Use Limitations. In a Limited Development Area Zone, the following limitations and standards shall apply to all uses permitted, unless a variance has been approved in accordance with section VII, 4:
- a. In approach zones up to **5,000** feet beyond the Runway Protection Zones for existing Runway 8/26 and **5,000** feet beyond the Runway Protection Zones for future Runway 11/29, no meeting place for public or private purposes which is designed to accommodate more than 25 persons at any one time shall be permitted. Residential use is limited to **1** living unit(s) per acre in this portion of the approach zone.
  - b. Mining or quarry operation will not be permitted if such use will allow or cause ponding which is likely to attract birds.
  - c. No use permitted by subsection (2)(c) of this section shall permit any power lines to be located in Runway Protection Zones and any power line located within an approach zone shall be in conformance with designated approach slope ratios as defined in Montana Codes Annotated, Title 67, Chapters 4, 5, and 6, FAA FAR Part 77 and other local ordinances that

regulate the height of objects.

- d. No use permitted by this section shall be allowed if such use is likely to attract an unusual quantity of birds, particularly birds which are normally considered high flight.
4. Design and Use Criteria. In the consideration of an application for a proposed use in an Airport Impact Zone or a Limited Development Area Zone, the Rosebud County Commissioners shall take into account the impact of the proposed use on nearby residential and commercial uses, on resource carrying capacities, on the capacity of transportation and other public facilities and services, and on the appearance of the proposal. In approving a proposed use, the Commission shall find that:
- a. Proposal is in compliance with the Airport Master Plan.
  - b. Proposal is in compliance with the intent and provisions of this ordinance and more particularly with this section.
  - c. That economic and environmental considerations are in balance.
  - d. That any social, economical, physical, or environmental impacts are reasonably minimized.
  - e. Any application for a proposed use in the Airport Impact Zone or a Limited Development Area Zone may be denied if, in the opinion of the Commission, the proposed use is not related to the present land use patterns in the area.
  - f. In approving a proposed use in the Airport Impact Zone or a Limited Development Area Zone, the Commission shall be satisfied that the applicant is fully apprised of the County's policy relative to development in the area in relation to the existing airport and accessory uses thereof.
  - g. The Commission may require establishment and maintenance of aesthetic or noise screens, the use of a flare resistant material in construction and landscaping, or may attach other similar conditions or limitations that will serve to reduce hazards to airport operations, including lighting and marking of airport hazards in accordance with Section 67-4-314 MCA.

## **SECTION V: USE RESTRICTIONS**

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within the Airport Influence Area or any zone established by this Ordinance in such a manner as

to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, creating bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

## **SECTION VI: NONCONFORMING USES**

1. Regulations Not Retroactive - The regulations prescribed by this Ordinance shall not be construed to require the removal or other change or alteration of any structure not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted.

## **SECTION VII: PERMITS**

1. Future Uses - No material change shall be made in the use of land, no structure shall be erected or otherwise established, in any zone hereby created unless a permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this Ordinance shall be granted unless a variance has been approved in accordance with Section VII, 4.
2. Existing Uses - No permit shall be granted that would allow a nonconforming use to become a greater hazard to air navigation than it was on the effective date of this Ordinance or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.
3. Nonconforming Uses Abandoned or Destroyed - Whenever the Commission determines that a nonconforming use has been abandoned, no permit shall be granted that would allow such use to deviate from the zoning regulations without submitting an application to the Board of Adjustment for a variance.
4. Variances - Any person desiring to use property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Board of Adjustment for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable air space. Such variances shall be allowed where it is duly found that a literal application or enforcement

of the regulations will result in unnecessary hardship and relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Ordinance. An application for variance to the requirements of this Ordinance will be considered by the Board of Adjustment, which will act to grant or deny said application.

### **SECTION VIII: ENFORCEMENT**

It shall be the duty of the Airport Zoning Commission to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Airport Zoning Commission upon a form published for that purpose. Applications required by this Ordinance to be submitted to the Airport Zoning Commission shall be promptly considered and granted or denied. Application for action by the Board of Adjustment shall be forthwith transmitted by the Applicant.

### **SECTION IX: BOARD OF ADJUSTMENT**

1. There is hereby created a Board of Adjustment to have and exercise the following powers: (1) to hear and decide appeals from any order, requirement, decision, or determination made by the Airport Zoning Commission in the enforcement of this Ordinance; (2) to hear and decide special exceptions to the terms of this Ordinance upon which such Board of Adjustment under such regulations may be required to pass; and (3) to hear and decide specific variances.
2. The Board of Adjustment shall be as provided for in Section 67-4-312 and 76-2-321 through 76-2-328 Montana Codes Annotated.

### **SECTION X: APPEALS**

1. Any person aggrieved, or any taxpayer affected, by any decision made in the administration of the Ordinance, may appeal to the Board of Adjustment.
2. All appeals hereunder must be taken within a reasonable time as provided by the rules of the Board of Adjustment, filing with the Airport Zoning Commission a notice of appeal specifying the grounds thereof. The Airport Zoning Commission shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

3. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Airport Zoning Commission certifies to the Board of Adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would in the opinion of the Airport Zoning Commission cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the Board of Adjustment with notice to the Airport Zoning Commission and on due cause shown.
4. The Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.
5. The Board of Adjustment may, in conformity with the provisions of this Ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision or determination as may be appropriate under the circumstances.

#### **SECTION XI: JUDICIAL REVIEW**

Any person aggrieved, or any taxpayer affected, by any decision of the Board of Adjustment, may appeal to the appropriate Court as provided in the Public Laws of the State of Montana.

#### **SECTION XII: PENALTIES**

Each violation of this Ordinance or of any regulation, order, or ruling promulgated hereunder shall be prosecuted in compliance with Montana Codes Annotated, Title 67, Chapter 4.

#### **SECTION XIII: CONFLICTING REGULATIONS**

Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

#### **SECTION XIV: SEVERABILITY**

If any of the provisions of this Ordinance or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.



**SECTION XV: EFFECTIVE DATE**


WHEREAS, this Ordinance shall be in full force and effect from and after its passage by the Rosebud County Commissioners and publication and posting as required by law.

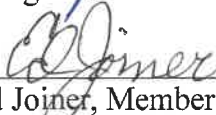
First and second reading completed, this ordinance passed and approved on December 15, 2020 by the County Commission. Ordinances shall take effect thirty days after acceptance.

This Ordinance shall become effective dated this 14th day of January, 2021

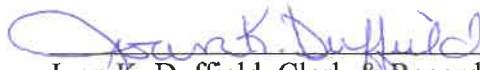
**ROSEBUD COUNTY COMMISSIONERS**

  
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Robert E. Lee, Presiding Officer

  
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Douglas D. Martens, Member

  
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Ed Joiner, Member

ATTEST:

  
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Joan K. Duffield, Clerk & Recorder