

For Discussion – Wireless Communications Zoning Amendment

Motivation

Two tentative tower sites are under discussion, with aspirations for high towers that would have serious visual impacts. Under the current regulation, the permissibility and procedures for approval of a cell tower are ambiguous and sure to cause controversy.

Objectives

- Provide for wireless communications while conforming to the General Plan goals of preserving the natural beauty and rural character of Bridger Canyon.
 - Keep it simple, for speedy review and passage, and efficient operation. The recent *Natural Resources CUP* is about 5 pages of text. This draft is about the same.
 - Make standards objective to avoid controversy.
 - Interfere as little as possible with other topics, which will be proposed by the advisory board in a general amendment.
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A Proposed Amendment

Section 3: Definitions

Add:

Antenna. Any equipment or device used to receive or transmit electromagnetic waves for the provision of Personal Wireless Services including, but not limited to, cellular, paging, personal communications services (PCS), and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave and satellite dishes, and omnidirectional antennas, such as whips. This definition does not apply to broadcast antennas, antennas designated for amateur radio use, or satellite dishes designed for residential or household purposes.

Antenna Support Structure. Any structure, mast, pole, or tower used for the purpose of supporting an antenna.

Antenna Tower. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, television, radio, and similar voice data, and personal wireless

services communications purposes. The term includes, but is not limited to, radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and antenna tower alternative structures.

Domestic Wireless Equipment. Non-commercial wireless communication equipment serving 10 or fewer dwellings or parcels and conforming to height limits, setbacks and other standards in this Regulation, including amateur radios and domestic antennas, such as for the reception of terrestrial or satellite television signals or wireless internet service.

Lease. With respect to a Wireless Communications Facility, an agreement, however designated (such as, without limitation, lease, license, easement, right to use, access right), by means of which a property owner grants to the Wireless Communications Facility operator a right to construct or operate Wireless Communications Facility on his property.

Modification. An alteration to an existing Wireless Communications Facility that does not substantially change the physical dimensions of the facility, a tower, or base station. Modifications do not include routine maintenance or technology upgrades that have no impact upon the Facility's outside appearance.

Telecommunications Laws. Any statute or regulation enacted by any federal, state, or local governmental agency that in any way governs (a) telecommunications, (b) the placement, construction, or modification of a Wireless Communications Facility, (c) radio frequency emissions or their environmental impact, or (d) building, fire, plumbing, or mechanical standards applicable to Wireless Communications Facility, including any applicable judicial or administrative interpretation of any of the foregoing.

Wireless Communications Facilities. A facility for the provisions of communications and personal wireless services.

Sections 6-11: Districts

Amend as indicated:

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6.2 Uses Allowed as a Matter of Right. The cultivation of ground, including the preparation of soil, planting or seeding and the raising and harvesting of trees, timber, fruits, vegetables, flowers, grains and other crops. The raising, feeding, managing and breeding of livestock, poultry, fish, birds and other animals; the excavation of earth and the drilling of wells, exclusively for agricultural and domestic uses; signs warning against trespass, shooting and hunting on premises, without limitation as to number or size. Signs in accordance with Section 16. One single-family detached dwelling on each 40-acre parcel. Barns, corrals and other out buildings and structures accessory to the foregoing uses. The sale on the premises of products produced thereon. The packing, storing and processing of produce grown on the

land, together with accessory buildings and structures required therefore. Non-agricultural, home occupations and hobbies when conducted within buildings and structures, the principal use of which is one of the foregoing uses. Domestic Wireless Equipment.

6.3 Uses Permitted After Securing Approval of a Conditional Use Permit. Stands and other facilities for the purpose of selling products grown on the land, together with accessory picnic facilities and similar accommodations for the convenience of patrons; non-commercial airstrips for the use of aircraft used for agricultural purposes, together with accessory buildings and structure required therefore.

Residential buildings, including mobile homes, to house persons and their families who labor, either continuously or seasonally, on the same farm, ranch, or land unit on which such buildings are situated (40-acre minimum does not apply). Commercial feed lots; commercial chicken houses, commercial pig houses; public and private schools for the academic education of children below the seventh grade level; the development and processing of natural resources in accordance with Appendix A, Natural Resources Conditional Use Permits; guest houses, commercial snowmobile facilities, guest ranches; accessory buildings and structures the principal use of which is the pursuit of non-agricultural, home occupations and hobbies; bed and breakfast inns; the operation of private hunting and fishing clubs; caretaker's residences; Wireless Communications Facilities, subject to Appendix B; and electric transmission lines.

RF

7.2 Uses Allowed as a Matter of Right. One (1) single-family dwelling on each 40-acre parcel. Growing and harvesting of timber and other forest products and related activities, including logging and all operations incidental to and connected therewith; road building; crop farming and harvesting; forest stations and lookouts; grazing; riding and hiking trails; stables and corrals; public and private playgrounds and parks; picnic areas; public utility buildings; structures and uses; structures accessory to any use listed above; signs in accordance with Section 16. Non-agricultural home occupations and hobbies when conducted within buildings and structures; the principal use of which is one of the foregoing uses. Domestic Wireless Equipment.

7.3 Uses Permitted After Securing Approval of a Conditional Use Permit. Lumber mills, logging camps; the development and processing of natural resources in accordance with Appendix A, Natural Resources Conditional Use Permits; campgrounds; seasonal recreational campsites; golf courses; driving ranges; ski lift facilities; pack stations; airports; guest ranches; commercial snowmobile facilities; cross country ski facilities; structures and uses accessory to the uses listed herein; accessory buildings and structures the principal use of which is the pursuit of non-agricultural; home occupations and hobbies; Wireless Communications Facilities, subject to Appendix B; electric transmission lines.

B2

9.2.n. Domestic Wireless Equipment.

9.3.f. Wireless Communications Facilities, subject to Appendix B and electric transmission lines.

B3

10.2.I. Domestic Wireless Equipment.

10.3.f. Wireless Communications Facilities, subject to Appendix B and electric transmission lines.

B4

11.2.m. Domestic Wireless Equipment.

11.3.q. Wireless Communications Facilities, subject to Appendix B, and electric transmission lines.

General Provisions

Amend as indicated:

15.1 Utility Uses. Domestic Wireless Equipment and public utility distribution and transmission lines, both overhead and underground, shall be permitted in all districts without the necessity of first obtaining a building permit.

Add: Appendix B – Wireless Communications Facilities

A Wireless Communications Facilities Conditional Use Permit is required to erect any Wireless Communications Facility, including Antenna Structures, Antenna Towers and any Antennas, structures, buildings, and roads associated with the foregoing, and any Modifications of any of the foregoing.

1. Purpose

The purpose of this Appendix B is to provide for wireless communications in the Zoning District while conforming to the goals of preserving the natural beauty and rural character of Bridger Canyon, as expressed in the Bridger Canyon Development Pattern (General Plan).

2. Approval Criteria

The Bridger Canyon Planning and Zoning Commission may grant a permit for a use classified as a Wireless Communications Facility Conditional Use Permit only if it is found, in addition to the requirements of Section 17.3 of these Regulations:

- a. The use conforms to the objectives of the Bridger Canyon General Plan and Development Guide and the intent of these Regulations;
- b. The use will not adversely affect nearby properties, residents, natural resources or views;
- c. Provisions for the mitigation of any adverse effects are addressed;

- d. The use meets the standards in Section 3 of this Appendix B and meets the density, height, setback, lighting, and all other regulations of the district in which it is located, unless otherwise expressly provided in these Regulations;
- e. The use materially increases availability of or access to communications services to residents of and visitors in the Zoning District.
- f. The use meets all applicable Telecommunications Laws; and
- g. A public hearing, after notice has been given, has been held.

3. Standards

- 1) The proposed Facility shall comply with all applicable Telecommunications Laws.
- 2) The applicant must currently be licensed by the FCC to provide fixed or mobile wireless communication services or, if the applicant is not such an FCC licensee, must demonstrate that it has binding commitments from one or more current FCC licensees to utilize the proposed Wireless Communications Facility.
- 3) No Wireless Communications Facility shall be permanently staffed.
- 4) Servicing and construction shall occur during normal business hours, except as required for emergencies and repair of unscheduled breakdowns or outages.
- 5) The applicant shall at all times maintain in force general liability insurance a minimum of \$1,000,000, covering any liability arising out of its construction or operation of the Wireless Communication Facility. The applicant shall maintain such coverage in full force until such time as all above-ground portions of the Facility have been removed.
- 6) To the greatest extent possible, Wireless Communication Facilities shall be designed to survive fire, wind and other natural disasters without interruption in operation and provide backup power for a reasonable amount of time.
- 7) Wireless Communications Facilities and the surrounding environment.
 - a) Towers shall be of monopole design unless it is shown that an alternative design would better blend into the surrounding environment.
 - b) Facilities should be constructed such as to reasonably conceal antennas. Examples include, but are not limited to, artificial trees, a fire tower, paint to blend into the surroundings, and the like. Concealment shall be maintained for the lifespan of the Wireless Communication Facility.
 - c) Antennas shall be mounted on Towers so as to present the reasonably smallest silhouette, profile, or cross-section.
 - d) Facilities shall not be illuminated by artificial means and shall not display strobe lights or other warning lighting, unless required by the FAA.
- 8) All equipment enclosures, fencing and other improvements accessory to a Facility should be reasonably designed to blend in with the surrounding environment and should be maintained in good appearance and repair. No equipment enclosure may exceed 12 feet in height. Ground

mounted equipment should be reasonably screened from view by suitable vegetation, except where a design of non-vegetative screening better complements the character of the surrounding area.

- 9) Screening vegetation shall be provided for service road cuts and site grading, where it does not already exist and or replacement of existing vegetation
- 10) No grading shall occur on slopes in excess of 30%.
- 11) Antenna Structures, Towers and associated Antennas comprising the Facility shall conform to the following height requirements.
 - a) No communication tower shall be of a type or height, or placed in a location that the Federal Aviation Administration would require the tower to be lighted or painted.
 - b) Where the Facility is surrounded by a dense mature vegetative canopy within 100 feet of the Tower site, the height shall not exceed more than 30 feet above the average height of the mature vegetative canopy and 100 feet in total. The buffer shall not be harvested or otherwise removed. Should the buffer be destroyed by wildfire or other means, it shall be replanted with evergreen trees at least 10-12 feet in height.
 - c) Where the Facility is not surrounded by a dense mature vegetative canopy within 100 feet of the Tower site, the maximum height shall be 75 feet, unless otherwise approved.
- 12) Setbacks and Spacing
- 13) Antenna Structures and Towers shall observe the setbacks of the district in which they are located, including but not limited to setbacks from boundaries, creeks, watercourses, and roads.
 - a) Towers and structures shall observe additional setbacks of 300% of the Tower height from parcel boundaries and 250 feet from existing residences on adjacent parcels.
 - b) Towers of a particular carrier shall be located at least one mile from other Towers.
- 14) Facilities shall be designed structurally, electrically, mechanically and in all respects to accommodate both the applicant's antennas and comparable antennas for at least one additional user.
- 15) Abandonment/Discontinued/Obsolete Towers and Removal

If at any time the approved use of the facility is discontinued for 90 days, the County Planning Director or Building Official may declare the facility abandoned. The facility's owner/operator will receive written notice from the Planning Director or Building Official and instructed to either reactivate the facility's use within 90 days, or dismantle and remove the facility. If reactivation or dismantling does not occur, the County will remove or will contract to have removed the facility and assess the owner/operator the costs. The applicant may seek an extension of the use provided they can show good cause for granting an extension.

The applicant shall reclaim the disturbed area as approved by the County Environmental Health Department.
- 16) A proposal for an Antenna, Antenna Tower or other Wireless Communications Facility that will exceed [xx] feet in height shall include a proposed mock-up, balloon, or similar test to be performed upon direction of the County to demonstrate the height, silhouette, or profile of the proposed Wireless Communications Facility. If the County directs a test the Applicant shall provide notice, in a manner specified by the County, to District residents of the time and place of the test.

A proposal for a new or additional communication Tower shall not be approved unless the equipment planned for the proposed communication Tower cannot be accommodated on existing or approved towers, buildings, or alternative structures more than thirty (30) feet in height (after first considering electric transmission towers) within a one mile search radius of the proposed communication Tower site

4. Procedure

4.1. Permits shall be considered according to the procedure in Section 17.3.6 Conditional Use Permits in this Regulation.

- a) In addition, the applicant shall post 3 notices sign advertising the application for a proposed Wireless Communications Facility, and any scheduled public hearings, in a location visible to the public on or near the parcel containing the proposed Facility, or on a nearby public road. Such signs shall be posted at least (15) days prior to any public hearing.

4.2. Submission Requirements. An application for a Conditional Use Permit shall include:

- a) A completed conditional use application form and a development plan, prepared by the Applicant or Applicant's agent.
- b) Cover letter describing project .
- c) Plans for reclamation of all disturbances associated with project(s), including re-vegetation and noxious weed control.
- d) Copies of applicant's FCC licenses or binding commitments from an FCC licensee.
- e) Evidence of the liability insurance prescribed in Section 3(5) of this Appendix.
- f) The Lease, if applicable.
- g) Evidence documenting the infeasibility of locating the planned Wireless Communications Facility upon an existing or approved tower, building or other structure.
- h) A site development plan prepared by a Montana registered land surveyor, architect or professional engineer, containing the following information:
 - i) Vicinity maps, including:
 - (1) The name, address and telephone number of the applicant and the property owner, tax parcel identification number, scale, and north arrow.
 - (2) The location of Towers and electric transmission towers within one mile.
 - (3) A copy of the section of the 1:24,000 USGS quadrangle showing the proposed site and latitude and longitude coordinates.
 - ii) A detailed site map, including:
 - (1) The name, address and telephone number of the applicant and the property owner, tax parcel identification number, scale, and north arrow.
 - (2) The name, address and telephone number, signature and seal of the professional preparing the site development plan.
 - (3) All identifiable structures located on the parcel, all private and public roads, highways and underground and overhead utilities.

- (4) Surveyed boundary lines, and corners of the parcel containing the proposed communications tower construction and its fall zone.
- (5) The ground elevation of the proposed communication Tower's base, all proposed support structures.
- (6) Location and size of all proposed structures and access to any Wireless Communications Facility, including existing roads and any roads proposed to be constructed in connection with construction or operation of the Wireless Communications Facility.
- (7) Delineation of vegetative cover and slopes in excess of 30%.
- iii) Description of adjacent land use and all property owner names, tax parcel numbers and mailing addresses.
- iv) The site development plan shall be recorded upon approval.
- i) Any additional information as deemed reasonably necessary by the Planning Department during any pre-application reviews.

4.3. Conditional Approval. Applications for a Wireless Communications Facility Conditional Use Permit may be approved, conditionally approved, or denied by the Bridger Canyon Planning and Zoning Commission. The Commission shall make the granting of the Wireless Communications Facility CUP subject to reasonable limitations or conditions as it may deem necessary or appropriate to protect the health, safety, and general welfare of the citizens of the County and the Bridger Canyon Zoning District; to mitigate or avoid any and all adverse impacts; and to make the proposed Wireless Communications Facility conditional use more compatible and consistent with the intent of the Bridger Canyon General Plan and Development Guide and Zoning Regulations.

5. Nonconforming Uses

Any Wireless Communication Facility in existence on the date of enactment of this Appendix B which does not comply in all respects with these provisions shall be deemed a nonconforming use. Any Modification of any such pre-existing facilities is subject to the provisions of this Appendix B. In the event such pre-existing facility shall be destroyed, or suffer damage in excess of 50% of the tax value of the facility's improvements, such facility shall not be repaired or replaced and shall be removed unless any replacement facility complies in all respects with the provisions of this Appendix B.

6. Abandonment and removal

Abandoned or unused Wireless Communication Facilities shall be removed as follows:

A. All abandoned or unused Wireless Communications Facilities located above ground (not including any part of the foundation) that are not removed within ninety (90) days of the cessation of operations shall be removed by the permit holder, or may be removed as provided in Section 3(15) of this Appendix B. The costs of removal shall be borne by the permit holder or shall be recovered from the security provided pursuant to Section 3(16) of this Appendix.