

# *Friends of Park County*

P.O. Box 23, Pray, Montana 59065

*Promoting thoughtfully planned growth in order to protect and enhance Park County's vibrant communities, sustainable working lands, and healthy natural resources.*

Mr. John Heidke, Chair  
Park County Planning Board  
414 East Callender Street  
Livingston, MT 59047

July 1, 2021

Re: Suggested Improvements to the Conflict Mitigation Regulations

Dear John,

Friends of Park County greatly appreciates the efforts of the Planning Board to consider the adoption of regulations to manage growth and development in Park County.

We are firm advocates for traditional zoning and will continue vigorously to advocate for managing rural residential growth in Park County by zoning as a better approach.

However, now that the Planning Board has embarked on the official public review process for the draft Conflict Mitigation Zoning District Regulations (CMR) we wish to assist the board in its efforts to improve so that it can be as effective as possible if it is adopted:

This is our list of top ten improvements to the CMR. Given the draft CMR's length and the potential complexity of the procedures, we may suggest other revisions to the CMR later.

The improvements listed in this letter are consistent with the suggestions we have already made in our written and oral testimony at Planning Board meetings since November 2020.

We respectfully request that this letter and the testimony we submitted to you during your monthly meetings starting in November be made a part of the official CMR public review record and entered into the log of comments described by Director Inman.

**1. Exempt just one primary residence per tract of record from CMR review; not three homes or vacation rentals.**

The current draft allows three homes for full-time or part-time residency or vacation rentals on every legal tract with no permit review under the CMR.

We know some members of the County Commission and the Planning Board oppose limiting other peoples' ability to build their home on "their piece of paradise." But that sentiment does not justify allowing three homes or vacation rentals on each tract of record without any review and mitigation of their potential negative impacts.

Why should a triplex in Gardiner or a 6-unit motel be required to undergo CMR permit review but not three vacation rentals?

Exemption of one home per tract of record from review would be consistent with the Part 1 zoning in the Paradise Valley, O'Rea Creek, East Yellowstone and Cokedale Zoning Districts. The attachment contains excerpts from and links to those zoning districts.

(As noted below, we do think any homes built in hazard areas should be subject to review and regulation to protect lives and property.)

People who want to build vacation rentals will go through the CMR application and review process, just like applicants for other commercial recreational uses, like a RV park.

**2. Review the Draft CMR for consistency with the County's 2016 Growth Policy and/or reference the Growth Policy in the CMR.**

The 2016 Park County Growth Policy describes itself this way:

*At its core, a growth policy includes big-picture goals, measurable objectives, and sets policies that will assist the County Commissioners in making decisions about how to manage county resources. It is designed to be results-oriented ... page 2.*

The draft CMR should be reviewed against the many goals, policies and action steps in the County's Growth Policy.

At a minimum that review would be useful in identifying the various policies, objectives and action steps the CMR will implement. But the review may identify gaps or inconsistencies in the CMR relative to the Growth Policy that the Planning Board might wish to correct.

A broader and simpler approach would be for the Planning Board to revise the CMR to incorporate the Growth Policy policies and objectives as factors to consider in reviewing permit applications.

**3. Update the draft CMR to assist Livingston with the implementation of its new Growth Policy.**

When the first draft of the CMR was prepared, Livingston had not even begun the update of its Growth Policy. Now that it has been approved by the City, the County can assist with and accelerate the implementation of the Livingston Growth Policy by revising the draft CMR to substitute the policies and land use designations from the newly adopted Livingston Growth Policy in the extraterritorial jurisdiction for the provisions of the CMR.

The most important provisions that should be supported by the CMR are the implementation of the Pastoral/Open Space land use designation, the controls on subdivisions and limits on road construction.

**4. Help achieve the CMRs' purposes, increase fairness and consistency for applicants, neighbors and decision makers by adding criteria to govern the choice between approval with mitigating conditions and denial of an application.**

The draft CMRs lack criteria to help the County, the applicants or concerned residents decide whether to deny a permit for a development that would have negative impacts or to approve it with mitigating conditions.

The draft CMR also doesn't require any particular level of mitigation.

Without criteria to be used in evaluating the negative impacts and a target level of mitigation there is a high risk of unpredictable, inconsistent and therefore unfair treatment of applicants and neighbors.

This unpredictability could lead to litigation based on the claim the County's administration of the CMR is arbitrary and capricious, a contention that may be hard to avoid in the absence of guiding criteria. Avoiding litigation is one of the major goals of the CMR.

The best approach would be to draft or cross reference measurable numerical performance or impact standards for the list of negative impacts to be considered.

Even in the absence of measurable performance standards, the CMR could be improved if it required "substantial" mitigation of all "major" negative impacts, and if that mitigation were not possible the application would have to be denied.

We realize that the words "substantial" and "major" are not precise and easily applied criteria. They would have to be defined in practice. But they are far superior to no criteria at all.

(Using words like "substantial" and "major" as criteria is not ideal but the lack of precision and certainty is an inherent problem with a conditional permitting system that can be largely avoided using traditional zoning.)

## **5. To protect water, wildlife, agriculture and taxpayers, consider cumulative impacts.**

The draft CMR's purposes (Part II) include protecting wildlife and wildlife habitat, protecting agriculture, and mitigating impacts on county infrastructure and services. The review factors also require consideration of the proposed land use impacts on water quantity and water quality.

We have seen in Park County and other places in the region where case-by-case approvals of septic systems, each one of which was apparently justified, led to the potential or actual pollution of streams and drinking water. That lack of consideration of cumulative impacts is why Livingston felt obliged to annex the Green Acres subdivision approved by Park County.

And what about the depletion of water supplies? What happens to groundwater or surface water supplies if every new home and business can have a new well regardless of water supplies. Water supplies are going to be under increasing pressure from climate change, as snowpack shrinks and spring runoff occurs earlier.

The same thing can happen with wildlife. Just a few more houses may close off needed winter grazing or cut the last remaining opening in a wildlife migration corridor. Future West's webinar on this subject this past spring made this point.

Conflicts between rural residential development and agriculture also cumulate over time, until finally conflicts over farm practices or competition for land finally drives farms out of business.

It also applies to taxpayer impacts. A few additional residences may be the tipping point requiring a new fire truck, an upgraded road or new school buses.

For these reasons, the draft CMR would be improved by considering cumulative impacts.

That analysis would need to be applied both retroactively (what is the combined and cumulative impact on taxpayers and resources of this land use, combined with other land uses already in the area) and prospectively (what will be the combined and cumulative impacts on taxpayers and resources if other land uses are approved in the area in the future based on the same reasoning and subject to the conditions applicable to this proposed use.)

**6. Clarify or confirm that the CMR will apply to subdivision proposals.**

We assume the CMR will be applied to the review of subdivisions along with the statutory consideration but excluding provisions inconsistent with recently passed limitations on the subdivision review standards.

**7. Add provisions to keep people and property safe from fires and floods, risks that are become far more severe as the climate becomes hotter and more extreme.**

The 2016 Park County Growth Policy states at page 61:

*Wildland fires are a fact of life in Park County, and fires are burning faster, hotter and scorching more acreage than in the recent past. At the same time, more homes are being built in the hills and forests across the county. As a result, the costs of fighting fires is increasing, as well as the risk to people and property.*

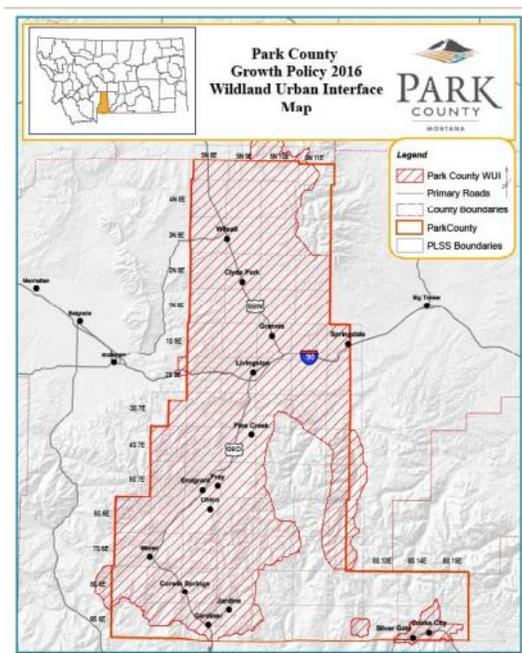


Figure 13: Wildland Urban Interface in Park County

The recent record-breaking heat which is related to climate change now underway underscores the urgency for being more pro-active in considering wildfire risks.

Consider this comment in a recent Livingston Enterprise article: *First-ever ecosystem-level report shows dire threats to regional ecology, economy*: “A recent example of the dangers of drier conditions at higher elevations is the Robertson Draw Fire south of Red Lodge. The fire, which ignited June 13, sits around 5,600 feet. In the first two days, the human-caused fire grew from 200 acres to 21,000 acres, according to information from the U.S. Forest Service.”

On page 62, the Growth Policy includes Figure 13, a map of the wildland urban interface where the risk of fires is greatest, shown at left. The Growth Policy

notes that the County has already adopted special fire protection plan regulations for subdivisions built in the wildland urban interface.

The CMR needs to be supplemented with factors governing whether and under what conditions homes (including the first home on a tract of record) and other structures proposed to be built in areas with high risk of fire.

Parallel provisions should be adopted for areas at risk of flooding and landslides.

**8. Exempt needed types of housing in Gardiner and other rural communities from review under the CMR.**

There is a housing affordability crisis in Park County. Apartments, duplexes, three-plexes, four plexes, manufactured home parks in established rural communities (Gardiner, Cooke City/Silvergate, Wilsall) are needed to increase the supply of market-affordable housing. These types of housing in established rural communities should be exempted from review under the CMR.

**9. Add an ethics standard.**

Nothing will erode public confidence in the fairness of planning procedures than the reality, or the perception, that decision makers are letting family, financial or political considerations – and not the regulations themselves – influence decisions.

The CMR needs an ethics standard based on a determination of whether business and family relationships and political campaign contributions would create the appearance of impropriety in the minds of reasonable people.

**10. Require a CMR Implementation Performance Review.**

If the CMR is adopted, it should be reviewed after it has been used to process, after its application to 50 applications, or two years, whichever comes first.

The three purposes of that review would be to determine whether the CMR is:

- (a) fulfilling its stated purposes;
- (b) being administered fairly, efficiently and effectively; and
- (c) helping to implement the County Growth Policy in addressing the challenges of development.

**Our questions about the CMR review and revision schedule and process.**

If the Planning Board expresses interest in any of these ten improvements, we can offer draft language for its consideration.

When that might be is unclear.

The February 19 schedule for review of the CMR states that public review and comment will occur during Phase II “April through June/July.” That will be followed by review and revisions by the Planning Board in Phase III July through September during which the Board will “further refine the draft District and Regulations based upon public comment, if necessary....”

Does this mean that all proposed revisions must be provided to the Planning Board by July 31, 2021 after which the record will be closed to further comments to the public? Would the Planning Board receive any testimony on potential changes during Phase III?

Mr. Inman reported at the June 2021 Planning Board meeting that staff is maintaining and continually updating a log of the public comments made during the Phase I process. We request that the log be available and easily accessible to the public on an ongoing basis so that the public is able to comment on suggestions and concerns made by the public as well as the draft CMR itself.

We appreciate the continued opportunity to participate in these discussions and welcome your questions and responses

Sincerely,

A handwritten signature in black ink that reads "Frank C. Schroeder". The signature is written in a cursive style with a large initial 'F'.

Frank Schroeder, Chair and Co-Founder  
Friends of Park County

Copies:       Jean Keffeler, Co-Founder, Friends of Park County  
                  Ken Cochrane, Co-Founder, Friends of Park County  
                  Park County Planning Board Members  
                  County Commissioners  
                  Mr. Mike Inman  
                  Livingston Planning Board Members  
                  Other interested persons

## Attachment

### Excerpts from Park County's Part 1 Zoning Districts Authorizing A Single Dwelling

Paradise Valley District: "Single-family residential dwellings with attached or detached garage" page 10 <https://www.parkcounty.org/uploads/files/pages/26/Paradise-Valley-Zoning-District-Regulations-Signed-6.1.04.pdf>

O'Rea Creek Zoning: "Only one single-family dwelling may be built on any tract or subdivision thereof. Such single-family residence shall not accommodate more than a single family, servants and occasional guests" page 10 <https://www.parkcounty.org/uploads/files/pages/26/Orea-Zoning-Regulations-Signed-8.12.02.pdf>

East Yellowstone District: "On-site constructed single family residential [Any detached building containing one dwelling unit, containing facilities for cooking, living, and sleeping and designed for permanent occupancy by one family] with an attached or detached garage." Pages 5-6 <https://www.parkcounty.org/uploads/files/pages/26/East-Yellowston-Zoning-Regulations-Resolution-Signed-11.13.97.pdf>

Cokedale District: ""One unit per forty (40) Acres, One guest house not to exceed 800 square feet." Page 4 <https://www.parkcounty.org/uploads/files/pages/26/Cokedale-Zoning-Regulations-Resolution-Signed-10.25.99.pdf>