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SECTION I: GENERAL PROVISIONS

A. TITLE

These regulations shall be known and cited as the AIRPORT AFFECTED AREA REGULATIONS FOR RONAN AIRPORT of 2013.

B. AUTHORITY

Authorization for these regulations is in the Airport Compatibility Act found in Title 67, Chapter 7, Montana Code Annotated (MCA).

C. PURPOSE AND INTENT

The purposes of these regulations are to 1) promote the public health, safety, and general welfare of users of the Ronan Airport and the occupants of land in its vicinity; 2) protect the real property interests of users of the Ronan Airport and the occupants of land in its vicinity; and, 3) protect the public investment in, and the utility of the Ronan Airport.

D. DESIGNATION OF AIRPORT AFFECTED AREA

Public hearings were held by the Lake County Commissioners on November 28, 2012 and the Ronan City Council on November 13, 2012 before the Airport Affected Area (AAA) was designated, after notice was published according to [Section 7-1-2121, MCA/Section 7-1-4127, MCA]. A draft of these regulations was addressed at each hearing and public comment was taken and considered.

The Airport Affected Area for the Ronan Airport is shown on the attached sheet titled "Airport Affected Area Drawing ("AAA Drawing")." The legal description of the AAA is found in Section IV.C of these regulations and on the AAA Drawing. The AAA Drawing is on file at the Lake County Clerk & Recorder's Office and at Ronan City Hall.

E. JURISDICTION

The Ronan Airport Affected Area is located partially within the jurisdictional area of the Lake County Commissioners and partially within the jurisdictional area of the Ronan City Council. The City of Ronan Planning Department shall be responsible for the administration and enforcement of these regulations for those affected properties located inside the municipal boundary of the City of Ronan; the Lake County Planning Department shall be responsible for the administration and enforcement of these regulations for those affected properties located outside the municipal boundary of the City of Ronan.

The designated AAA lies within the Flathead Indian Reservation, and because Lake County and the City of Ronan have no jurisdiction over land held in Tribal and Individual Tribal Trust status on the Reservation, those Tribal lands that the County and City have no jurisdiction over are exempt from or otherwise not subject to these regulations.

F. SEVERABILITY

If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, that judgment affects only the part held invalid.

SECTION II: DEFINITIONS

A. GENERALLY

Unless specifically defined in this Section or elsewhere in these regulations, words or phrases used herein shall be interpreted so as to give them the meaning they have in common usage, and to give these regulations their most reasonable application. Definitions which generally apply to Title 67 and to these regulations are found in Section 67-1-101, MCA. Definitions specific to the Airport Compatibility Act are found in Section 67-7-103, MCA. The Airport Compatibility Act allows definitions from 14 CFR, Part 77 to apply to these regulations as well. In addition, FAA Advisory Circular (AC) 150/5300-13 provides additional definitions specific to airport terminology. The following specific definitions apply to these regulations. If there is a conflict in interpretation between Title 67 or 14 CFR, Part 77 and these regulations, the more restrictive applies.

B. SPECIFICALLY

AERONAUTICAL AREAS – Those areas of the airport property shown on maps for existing and future aviation needs such as runways, hangars, aprons, taxilanes, taxiways, etc.

AIRPORT – The Ronan Airport located in Lake County, Montana.

AIRPORT AFFECTED AREA (AAA) – The land and space above the ground surface of the airport in the proximity of the airport, the use of which may be affected by the airport's existence, and includes zones which are delineated areas on the ground which lie beneath parts of the horizontal surface, parts of the conical surface, the primary surface, the approach surfaces, and the transitional surface as described in 14 CFR, Part 77 and in these regulations. The AAA designated for the Ronan Airport is described in detail in Section IV of these regulations.

AIRPORT APPEALS BOARD – The Airport Appeals Board for the Ronan Airport is made up of one (1) Lake County Commissioner, one (1) Ronan City Council member, and one (1) Lake County Joint Airport Board member. Each member shall be appointed by the jurisdictional body or board they represent.

AIRPORT BOARD – The Lake County Joint Airport Board.

AIRPORT ELEVATION – The highest point on the airport's established runways measured in feet above mean sea level (MSL) and based on the North American Vertical Datum of 1988 (NAVD 88). The Airport Elevation for the Ronan Airport is 3082.30 feet.

AIRPORT HAZARD – A structure, tree, or use of land that obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to landing or taking off.

AIRPORT LAYOUT PLAN (ALP) – A graphic depiction of existing conditions and future development proposed at a specific airport. An ALP consists of several drawings, each intended to depict specific information about the airport, and an ALP report explaining the reasoning behind, and important features of the ALP. The Ronan Airport ALP consists of: Cover Sheet (Sheet 1), Airport Layout Plan (Sheet 2), Airport Airspace Drawing (Sheet 3), Inner Portion of the Approach Surface Drawing (Sheet 4), Terminal Area Drawing (Sheet 5), Airport Affected Area Drawing (Sheet 6), and Exhibit “A” Property Map (Sheet 7), and the ALP Update Final Narrative Report dated July 20, 2010.

AREAS – Land within certain boundaries shown on the AAA Drawing and described in Section IV of these regulations, the purpose for which is to designate where various land uses are permitted.

CONDITIONAL USE – Those uses listed as Conditional Uses within these regulations, which require public review by the Airport Board at a public hearing. A conditional use may be authorized by the Airport Board pursuant to the review requirements of the AAA regulations, upon findings by the Board that the use will be compatible with the operation of the airport and will comply with all conditions and standards for location, design, and operation of such use.

ELECTROMAGNETIC EFFECT – Any interference or impediment to the transmission or quality of navigation or communication signals to or from AIRCRAFT, meteorological equipment, navigation equipment, communications equipment, or air traffic control facilities caused by a power source, radio frequency transmitter, or an object or surface that emits, reflects or re-radiates an electromagnetic signal or electrical pulse.

ENFORCEMENT OFFICER – A person designated by the applicable governing body and/or the owner of the airport to serve as the governing body’s representative to issue permits and variances under these regulations and to administer the regulations.

FAA – The Federal Aviation Administration.

GOVERNING BODY – The Lake County Commissioners and/or the Ronan City Council, as applicable under the jurisdictional areas outlined by these regulations.

HEIGHT – The vertical difference in feet between the highest point of a structure or tree and the ground elevation coinciding with its location shown on the Vicinity Sketch.

NAVAID – An acronym used in reference to electrical and visual navigational aids, lighting, signage, and associated supporting equipment at an airport.

NON-AERONAUTICAL AREAS – Those areas of the airport property, outside of the aeronautical areas, which might be suitable for uses such as office space for governmental entities.

NONCONFORMING USE – Any preexisting structure, tree or other object of natural growth or use of land that is lawfully in existence when these regulations become effective, but does not conform to the height or use provisions of these regulations.

OBJECT FREE AREA (OFA) – An area on the ground centered on a runway, taxiway, or taxilane centerline provided to enhance the safety of aircraft operations by having the area free of objects, except for objects that need to be located in the OFA for air navigation or ground maneuvering purposes.

RUNWAY – The defined and prepared surface of the airport, suitable for landing or taking off by aircraft, as well as planned extensions identified on an approved ALP. There is a single runway at the Ronan Airport which is currently identified as Runway 17/35 (Note: the existing runway is currently marked 16/34 but will be changed to 17/35 on a remarking project in 2013).

RUNWAY 17/35 – The primary runway at the Ronan Airport with existing dimensions of 75-foot width and 4,800.48-foot length and an orientation of N 03° 19' 53" E.

RUNWAY PROTECTION ZONE (RPZ) – An area beyond the end of the runway provided to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered on the extended runway centerline.

STRUCTURE – Any object five feet (5') or taller, constructed or installed by a person, including but not limited to buildings, towers, smokestacks, and overhead transmission lines.

SUPPLEMENT – The Supplement to the Airport Affected Area Regulations for the Ronan Airport.

SURFACES – The civil airport imaginary surfaces, as defined by Title 14 CFR, Part 77, located above and in relation to a runway or runways. Types of surfaces include the Approach Surface, Conical Surface, Horizontal Surface, Primary Surface and Transitional Surface which are further defined in the Supplement to these regulations.

TAXILANE – A defined pathway in an aircraft parking area established for the taxiing of aircraft between taxiways and aircraft parking positions.

TAXIWAY – A defined path established for the taxiing of aircraft from one part of an airport to another.

TERRAIN PENETRATION – Any natural land surface that penetrates into any of the civil airport imaginary surfaces as defined in 14 CFR, Part 77.25.

THRESHOLD – The beginning of the portion of a runway which is available for landing.

TREE – Any vegetation or other naturally growing object with an expected height at maturity greater than twenty feet (20') above the ground.

VARIANCE – An allowed deviation from the height or use requirements of these regulations.

VICINITY SKETCH – An 8 ½" x 11", non-reduced copy of a portion of a 7.5 minute USGS Quadrangle Map that shows the location of a proposed Structure, Tree or land use, and identifies the ground elevation at the proposed location. The Vicinity Sketch must include the name of the USGS Map copied, the Township and Range of the area shown, and the horizontal and vertical datums upon which the map is based (typically found in the lower right-hand corner).

WILDLIFE ATTRACTANT – Any human-made structure, land use practice, or human-made or natural geographic feature that can attract or sustain hazardous wildlife within the landing or departure airspace, aircraft movement area, loading ramps, or aircraft parking areas of an airport. These attractants can include but are not limited to architectural features, landscaping, waste disposal sites, wastewater treatment facilities, agricultural or aquacultural activities, surface mining, or wetlands. FAA AC 150/5200-33 provides guidance on activities that may promote “hazardous wildlife attractants on or near airports”.

WILDLIFE HAZARD – An airport hazard associated with the presence of hazardous wildlife at or near an airport with the potential for causing a damaging aircraft collision.

ZONES – Land within certain boundaries shown on the AAA Drawing and described in Section IV of these regulations, the purpose for which is to regulate the height of structures and trees in the vicinity of an airport.

SECTION III: ADMINISTRATION

A. APPOINTMENT OF ENFORCEMENT OFFICER

One (1) staff member of the City of Ronan Planning Department and one (1) member from the Lake County Planning Department shall be appointed to the positions of AAA Enforcement Officers. The Enforcement Officers shall be responsible for the administration and enforcement of these regulations within their jurisdictional boundaries. The Enforcement Officers shall serve as representatives of the County, City, and Airport Board to issue permits pursuant to the requirements of these regulations. The Enforcement Officers will also be the primary authority on the content of the regulations and will work towards educating the public as to the requirements and that their purpose is to protect the health, safety and general welfare of the users of the Ronan Airport and the public in its vicinity.

B. PERMIT AND REVIEW FEES

Permit review fees, if any, may be established by the City of Ronan's City Council or the Board of Lake County Commissioners and shall be paid to either the City of Ronan or the Lake County Planning Department depending on which administration conducts the permit review. Variances, conditional uses, and any other special review beyond that of a basic permit review are subject to additional review fees. See the applicable Planning Department of the Enforcement Officer to obtain information regarding adopted fee schedules and to obtain the necessary permit applications and forms.

No permit fee shall be required for trees which conform to these regulations. Tree permits that require a variance, conditional use, or other review beyond a basic tree permit review, are subject to the additional review fees.

C. PERMIT REQUIREMENTS

The purpose of the permitting process is to allow the Enforcement Officers to monitor the height of Structures or Trees and the uses in the AAA and to advise those members of the public who wish to alter or erect Structures, plant Trees, or establish uses that there are legal restrictions on that activity in effect to protect the public health, safety and general welfare as well as protect the current flying operations at the Airport and those in the future. A permit must be obtained before the changes or additions are established.

1. **ACTIONS REQUIRING A PERMIT** – Not all construction or development activities proposed within an Airport Affected Area require a permit. Specific actions that do require a permit are set forth as follows:
 - a) Construction, erection, installation, or placement of any new structure within the Approach Zones and Transitional Zone.

- b) Construction, erection, installation, or placement of any new structure exceeding fifty (50) feet in height within the Airport Affected Area.
- c) Planting any new tree, including replacement, within the Approach Zones and Transitional Zone which is expected to grow taller than twenty (20) feet¹.
- d) Planting any new tree, including replacement, within the Airport Affected Area which is expected to grow taller than one hundred and fifty (150) feet¹.
- e) Alteration of any existing structure within the Approach Zones and Transitional Zone that will increase the structure's height.
- f) Alteration of any existing structure within the Airport Affected Area that will increase the height of the structure to over fifty (50) feet.
- g) Changing the use of any structure or property that is located within the Airport Affected Area and for which certain land use regulations have been established, by these regulations or otherwise.
- h) Alteration of any existing structure that is located within the Airport Affected Area and for which certain land use regulations have been established that, by the nature of such alteration, changes the use associated with the land.
- i) Any action to a nonconforming use, structure, or tree that requires a permit, as set forth in Section VI of these regulations.

2. PROCEDURE FOR OBTAINING A STRUCTURE PERMIT

- a) Obtain an application for a permit from the Enforcement Officer.
- b) Submit to the Enforcement Office the fee, the completed application, a drawing with enough detail to determine height of the structure above ground level and a vicinity sketch on a photocopy of a 7.5 minute USGS Quad Map which shows the location of the structure in relation to section lines, parcel boundaries, and other useful features.
- c) The requested permit may be discussed with the Airport Board prior to making a decision about whether or not to grant the permit.
- d) After review of the permit application and potentially consulting with the Airport Board, the Enforcement Officer shall either grant, grant with conditions, or deny the requested permit in writing, explaining the decision. Denied applications for structures may be resubmitted for further review by the FAA. The procedure for requesting FAA review of denied permits is described in Paragraph 6, below.
- e) The decision by the Enforcement Officer may be appealed to the Airport Appeals

¹ An Enforcement Officer has the ability to use best available information if there are any questions regarding the expected heights of trees.

Board, pursuant to Section 67-7-302, MCA and the appeals procedures outlined by these regulations and applicable statutes (*See III.E below*).

3. PROCEDURE FOR OBTAINING A TREE PERMIT

- a) Obtain an application for a permit from the Enforcement Officer.
- b) Submit the application and a description of the planned tree, including species and expected height at maturity, existing height relative to the ground and a location on a vicinity sketch, a photocopy of a 7.5 minute USGS Quad Map, which shows the location of the tree in relation to section lines. (No fee is required for conforming trees).
- c) The Enforcement Officer shall either grant, grant with conditions, or deny the requested permit in writing, explaining the decision. Denied applications for trees may be resubmitted for further review by the FAA. The procedure for requesting FAA review of denied permits is described in Paragraph 6, below.
- d) The decision by the Enforcement Officer may be appealed to the Airport Appeals Board, pursuant to Section 67-7-302, MCA (*See III.E below*).

4. PROCEDURE FOR OBTAINING A USE PERMIT

- a) Obtain an application for a permit from the Enforcement Officer.
- b) Submit to the Enforcement Officer the fee, the application and a description of the existing use and proposed use of the land or structure, explaining why that proposed use is either a permitted or conditional use under these regulations. In addition, submit a vicinity sketch, a photocopy of a 7.5 minute USGS Quad Map, with enough detail to determine the location of the proposed use in relation to section lines. If the proposed use involves changes to an existing structure, combine this application with a structure permit set forth above.
- c) The requested permit may be discussed with the Airport Board prior to making a decision about whether or not to grant the permit. The meeting at which the discussion occurs must be properly noticed and public comment about the proposed use must be allowed at the meeting of the Airport Board.
- d) If the requested permit is for a conditional use, the person requesting the permit shall notify the adjacent landowner(s) of the request by mail at least 10 days before the meeting and the discussion of the requested permit with the Airport Board must be set forth as an agenda item in the notice for the meeting of the Airport Board and public comment allowed.
- e) After consulting with the Airport Board and taking into consideration any public comment, the Enforcement Officer shall either grant, grant with conditions or deny the requested permit in writing, explaining the decision. Denied applications

for uses may be resubmitted for further review by the FAA. The procedure for requesting FAA review of denied permits is described in Paragraph 6, below.

- f) The decision by the Enforcement Officer may be appealed to the Airport Appeals Board, pursuant to Section 67-7-302, MCA (*See III.E* below).
5. CRITERIA FOR GRANTING PERMITS – The Enforcement Officer’s decision to grant, grant with conditions, or deny a permit will be strictly based on the criteria established below. Applicants may request a variance for any proposed structure, tree, or use which does not meet the necessary criteria for granting a permit, subject to the variance requirements set forth in paragraph C of this section.
- a) Permits will be granted for structures and trees that clearly comply with the provisions set forth in Section V, paragraph B of these regulations.
 - b) Permits will be granted for permitted uses that clearly comply with the provisions set forth in Section V, paragraph C of these regulations.
 - c) All permits are subject to appropriate and reasonable conditions to ensure the permitted structure, use, and/or activity complies with these regulations.
 - d) Permits may be granted or granted with conditions for conditional uses when a determination is made by the Airport Board after consultation with the FAA that the proposed use will not create an airport hazard.
 - e) Permits will not be granted for structures or trees, the height of which would result in an obstruction to the surfaces described in the Supplement, and the provisions of Section V, paragraph B of these regulations unless a subsequent review by the FAA determines that the proposed action will not create a hazard to air navigation.
 - f) Permits will not be granted for any use that is not identified as permitted use or conditional use as set forth in Section V, paragraph C of these regulations, and for any conditional use that is found by the Airport Board after consultation with the FAA to create an airport hazard unless a subsequent review by the FAA determines that the proposed action will not create a hazard to air navigation.
 - g) Any permit may be granted with conditions that require the owner of the structure or tree in question to allow the airport owner, administrator, or controller, at the property owner’s expense, to install, operate and maintain the lights and markers necessary to warn pilots of the presence of that structure or tree.
6. FAA REVIEW FOR DENIED PERMITS – Permits for structures, trees, or uses which are denied by the Enforcement Officer may still be allowable if FAA review of the proposed Structure, Tree, or Use determines that the proposal will not create a hazard to air navigation in the vicinity of the Airport. It is the applicant’s

responsibility to prepare and submit the required documentation required by the FAA for an airspace review.

- a) Applications that require FAA review will be returned to the applicant by the Enforcement Officer as “denied” with a blank FAA Form 7460.
- b) If the applicant requests further consideration of the proposal, the applicant will need to complete the FAA Form 7460 in full and submit the completed form back to the Enforcement Officer for further review by the FAA.
- c) The Enforcement Officer will forward the completed form to the FAA for review. FAA reviews may take up to 60 days for a response as an airspace action may be required.
- d) The FAA will make a determination as to whether the proposed action would create a hazard to air navigation and/or whether the hazard could be mitigated with obstruction marking or lighting.
- e) Based on the FAA’s determination, the Enforcement Officer shall either grant, grant with conditions, or deny the requested permit in writing, explaining the decision.
- f) Any decision by the Enforcement Officer may be appealed to the Airport Appeals Board, pursuant to Section 67-7-302, MCA (*See III.E below*).

D. VARIANCE REQUIREMENTS

A person who seeks to erect or increase the height of a structure, or permit the growth of a tree, in excess of the height limitations in these regulations or use property in a manner which is not a permitted or conditional use may seek a variance from these regulations. All variance requests require FAA notification and consultation prior to making a determination.

1. CIRCUMSTANCES FOR GRANTING A VARIANCE

- a) A variance must be granted when the following two conditions are demonstrated by the applicant.
 - i. Substantial Practical Difficulty or Unnecessary Hardship: If a literal application or enforcement of these regulations would result in substantial practical difficulty or unnecessary hardship, a variance must be granted, subject to the public interest evaluation below.
 - ii. Public Interest: A variance is not contrary to the public interest when it is determined, upon review pursuant to these regulations and after consultation with the FAA, that there is no immediate hazard to air navigation or to persons and property in the vicinity of the airport and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to structures. Public interest considerations include hours of operation and the annoyance to the intended users of the structures.

- b) Conditions may be imposed for granting the variance, including, but not limited to, a requirement that the owner of a structure or tree pay for the installation, operation and maintenance of lights and markers necessary to warn pilots of the presence of a hazard to air navigation. The owner, administrator, or controller of the airport may install the lights or markers. If it is impractical to mark a tree, the marking will not be required.
- c) Granting of a variance puts the person who builds a structure pursuant to that variance or buys property for which a variance has been granted on notice the airport existed before the variance was granted and that noise, fumes, vibrations, light, or any other effects from normal and anticipated normal airport operations may occur.

2. PROCEDURE FOR OBTAINING AN OBSTRUCTION VARIANCE

- a) Obtain an application for a variance from the Enforcement Officer and a FAA Form 7460-1.
- b) Submit to the Enforcement Officer the variance fee, the completed application, a drawing with enough detail to determine the overall height of the structure or tree above ground level, a vicinity sketch which shows the location of the structure or tree within the AAA in relation to property or section lines, and a copy of the filled out FAA Form 7460-1. The Form 7460-1 must be filled out and submitted to the FAA by the applicant. In addition explain in detail why literal application or enforcement of these regulations would result in substantial practical difficulty or unnecessary hardship. The application must address, to the best of the applicant's ability, why granting the variance will not create a immediate hazard to persons or property in the vicinity of the airport as well as assurance that the normal and anticipated normal airport operations will not be likely to cause damage to any proposed structure(s).
- c) The requested variance must be reviewed by the Airport Appeals Board prior to the Airport Appeals Board making a decision about whether or not to grant the variance. The person requesting the variance shall notify the adjacent landowner(s) of the request by mail at least 10 days before the Airport Appeals Board meeting and this notice must include the date, time and place of the meeting. The discussion of the requested variance with the Airport Appeals Board must be specifically set forth as an agenda item in the notice for the meeting of the Airport Appeals Board. Public comment about the variance must be allowed at the meeting of the Airport Appeals Board.
- d) After the Airport Appeals Board reviews the variance request, accepts any public comment, and considers the FAA determination (Form 7460-1), the Airport Appeals Board shall either grant, grant with conditions, or deny the requested variance, and the Enforcement Officer shall notify the applicant of the decision of the Airport Appeals Board in writing, with an explanation of the Board's decision.

- e) Any decision of the Airport Appeals Board may be appealed to a court of record pursuant to MCA 67-7-303 (2), and the procedures outlined by MCA 76-2-227 and/or 76-3-327, as applicable (*See* III.E below).

3. CRITERIA FOR GRANTING AN OBSTRUCTION VARIANCE

- a) The requested variance will not be scheduled for discussion by the Airport Appeals Board until the FAA has made a determination, pursuant to Form 7460-1, whether or not there is a hazard to air navigation.
- b) A variance must be granted when the applicant demonstrates a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship, when the variance would not be contrary to the public interest and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to the proposed structure(s). Whether or not the FAA determines that there is a hazard to air navigation, FAA recommended mitigation must be a condition of granting the variance.

4. PROCEDURE FOR OBTAINING A USE VARIANCE

- a) Obtain an application for a variance from the Enforcement Officer.
- b) Submit to the Enforcement Officer the variance fee, the completed application with a description of the existing use and proposed use of the land or structure, a detailed explanation why that proposed use should be allowed by variance, and a vicinity sketch which shows the location of the proposed use within the AAA in relation to property or section lines. Also explain in detail why literal application or enforcement of these regulations would result in substantial practical difficulty or unnecessary hardship. The application must address, to the best of the applicant's ability, why granting the variance will not create an immediate hazard to air navigation or to persons or property in the vicinity of the airport as well as assurance that the normal and anticipated normal airport operations will not be likely to cause damage to any proposed structure(s) and any steps which will be taken to mitigate the effects of normal airport operations.
- c) The requested variance must be reviewed by the Airport Appeals Board prior to the Airport Appeals Board making a decision about whether or not to grant the variance. The person requesting the variance shall notify the adjacent landowner(s) of the request by mail at least 10 days before the Airport Appeals Board meeting and this notice must include the date, time and place of the meeting. The discussion of the requested variance with the Airport Board must be specifically set forth as an agenda item in the notice for the meeting of the Airport Board. Public comment about the variance must be allowed at the meeting of the Airport Appeals Board. Prior to the meeting, the Enforcement Officer will notify

the FAA of the proposed use variance and request a determination of an “airport hazard”.

- d) After the Airport Appeals Board reviews the variance request, accepts any public comment, and considers the FAA’s determination of an “airport hazard”, the Airport Appeals Board shall either grant, grant with conditions, or deny the requested variance, and the Enforcement Officer shall notify the applicant of the decision of the Airport Appeals Board in writing, with an explanation of the Board’s decision.
- e) Any decision of the Airport Appeals Board may be appealed to a court of record pursuant to MCA 67-7-303 (2), and the procedures outlined by MCA 76-2-227 and/or 76-3-327, as applicable (*See* III.E below).

5. CRITERIA FOR GRANTING A USE VARIANCE

- a) A variance must be granted when the applicant demonstrates a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship, when the variance would not be contrary to the public interest and when the applicant demonstrates the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to any proposed structure(s).
- b) If noise will affect the use sought by variance, a public interest criterion is the extent to which the applicant proposes to mitigate the effect of that noise.
- c) Any variance that is found to meet the applicable criteria for a variance and is therefore approved by the Airport Appeals Board shall not be deemed approval of the use by the FAA.

E. APPEALS

- 1. An appeal from a decision by the Enforcement Office must be submitted, in writing, to the Enforcement Officer, within thirty (30) days of the written decision by the Enforcement Officer. Appeals may be filed by the applicant, by any aggrieved person or taxpayer or by the governing body of a political subdivision and must state, with specificity, the basis of the appeal. An unsuccessful appellant may appeal further to a court of record. The Enforcement Officer will then forward the appeal to the Airport Appeals Board along with the Enforcement Officer’s written determination, report, or comments related to the appeal (as applicable), and a public hearing on the appeal will be scheduled within thirty (30) days of the applicant filing the appeal. The public hearing will be properly noticed similar to a variance to the regulations, and the appellant shall be responsible for providing proper notice at the direction of the Enforcement Officer, and/or the costs for any noticing paid for by the City or County.

2. This appeal process does not apply to a determination by the FAA that a requested obstruction would create a hazard to air navigation.
3. The governing bodies of Lake County and the City of Ronan shall appoint the Airport Appeals Board contemplated by these regulations. Pursuant to 67-7-302, the Airport Appeals Board functions in the same manner as a board of adjustment provided for in Title 76, chapter 2. The provisions of MCA 76-2-223 and 76-2-225 through 76-2-228 apply to the appointed Airport Appeals Board when an appeal of the Lake County Enforcement Officer is filed, and the provisions of MCA 76-2-323 and 76-2-325 through 76-2-328 apply to the Airport Appeals Board when an appeal of the City of Ronan's Enforcement Officer is filed.

F. ENFORCEMENT

The Lake County Enforcement Officer is the agent designated by the Lake County Commissioners to enforce these regulations within the jurisdictional area of Lake County. The City of Ronan Enforcement Officer is the agent designated by the City of Ronan to enforce these regulations within the municipal boundaries of Ronan. Written notice of a violation must be given by the Enforcement Officer to the violator, specifying how these regulations have been violated, how the violation can be remedied and setting a reasonable deadline for the correction of the violation, prior to the imposition of a penalty. The penalty provisions of these regulations must also be included in the notice.

G. PENALTY

If a person who violates the provisions of these regulations does not correct a violation, after notification pursuant to Section F above, that person is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each day that the violation is not remedied after the applicable governing body has determined there is a violation for which a fine should be assessed against the violator, has given its own written notice of the violation to the violator, has held a hearing on the violation and has provided a written determination to the violator that there is a violation.

In addition, the County Attorney or City Attorney, as applicable, may file misdemeanor criminal charges for a violation of these regulations. Pursuant to Section 45-2-104, MCA, a person is absolutely liable for a violation of these regulations. Upon conviction a fine of \$500 must be imposed.

H. INJUNCTION.

The Lake County Commissioners or Ronan City Council may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of Title 67, Chapter 7 statutes or of these regulations adopted pursuant to the Montana Airport Compatibility Act.

I. IMMUNITY

1. **GENERALLY** – After the designation of an AAA, a person may not recover damages from a local government, an airport authority, an airport operator, or an airport owner for any injury caused by noise, fumes, vibrations, light, or any other effects from normal and anticipated normal airport operations.
2. **AFTER GRANTING A VARIANCE** – A person owning or using a structure built pursuant to a variance may not collect damages from a governing body or local government or from an airport authority, airport operator, or airport owner for interference with the enjoyment of that structure caused by noise, fumes, vibrations, light, or any other effects from normal and anticipated normal airport operations.

SECTION IV: AIRPORT AFFECTED AREA

A. GENERAL

Utilizing its police power, the Lake County Commissioners and the City of Ronan designated an AAA for the Ronan Airport in accordance with Section 67-7-201, MCA.

Utilizing its police power, the Lake County Commissioners and the City of Ronan designated the following zones and areas within the AAA in accordance with Section 67-7-203, MCA:

1. HORIZONTAL ZONE
2. CONICAL ZONE
3. PRIMARY ZONE
4. APPROACH ZONE
5. TRANSITIONAL ZONE
6. AIRPORT OPERATIONS AREA
7. AIRPORT DEVELOPMENT AREA
8. RESTRICTED DEVELOPMENT AREA
9. LIMITED DEVELOPMENT AREA

B. REFERENCE DRAWINGS AND MAPS

The Airport Affected Area Drawing (Sheet 6 of the Ronan Airport Layout Plan) identifies the Airport Affected Area for the Ronan Airport graphically, including all designated Zones and Areas. The Airport Layout Plan includes other drawings that are beneficial to understanding many of the aeronautical components that were used to establish the Zones and Areas designated for these regulations. The Airport Layout Plan (Sheet 2 of the ALP) graphically identifies the areas and zones encompassed within the Airport Operations Area. The Exhibit "A" Property Map (Sheet 7 of the ALP) identifies the properties included within the Airport Operations Area and the Airport Development Area. The Airport Airspace Drawing (Sheet 3 of the ALP) graphically depicts the surfaces used to establish the Zones designated for these regulations.

The current Ronan Airport ALP, dated July 20, 2010, is on file with the Lake County Clerk and Recorder and the Ronan City Clerk. In accordance with FAA requirements, the ALP must be kept up to date by the Airport Owner at all times and therefore may be revised or updated periodically to reflect changed conditions at the Airport. Specific drawings and maps referenced by these regulations shall mean the most current set of drawings and maps signed and approved by the FAA and the Airport Owner.

C. DESCRIPTION OF THE AIRPORT AFFECTED AREA

The Ronan Airport Affected Area is located partially within the jurisdictional area of the Lake County Commissioners and partially within the jurisdictional area of the Ronan City Council and is more specifically described as follows:

An area wholly encompassing: Sections 11, 12, 13, 14, 22, 23, 24, 25, 26, 35, and 36 of Township 21 North, Range 20 West; partially encompassing Sections 1, 2, 3, 10, 15, 16, 21, 27, 28, and 34 of Township 21 North, Range 20 West; wholly encompassing Sections 7, 17, 18, 19, 20, 29, 30, and 31 of Township 21 North, Range 19 West; partially encompassing Sections 5, 6, 8, 9, 16, 21, 28, 32 and 33 of Township 21 North, Range 19 West; partially encompassing Section 6 in Township 20 North, Range 19 West; and partially encompassing Sections 1, 2, and 3 in Township 20 North, Range 20 West.

The Ronan Airport Affected Area includes all land and property, and the space situated above, within a boundary coinciding with the outer perimeter of the Conical Surface as shown on the Airport Airspace Drawing (Sheet 3 of the Ronan Airport Layout Plan), the boundary of which is more specifically described as follows:

Beginning at a point on the extended centerline and 200 feet from the end of RUNWAY 17 (16); and beginning at a point on the extended centerline and 200 feet from the end of RUNWAY 35 (34); a perimeter constructed by swinging arcs with a 14,000 foot radius and connecting the adjacent arcs by lines tangent to those arcs.

D. DESCRIPTION OF ZONES

In an effort to control the occurrence and magnitude of airport hazards caused by surface obstructions, Zones are designated to reasonably regulate the height of structures and trees within the AAA. The Supplement to these regulations includes definitions and descriptions of the Approach Surfaces, Conical Surface, Horizontal Surface, Primary Surface and Transitional Surface as used to designate the Zones in these regulations. Accordingly, Zones are delineated areas on the ground that coincide with the boundary of, and include all of the land lying beneath, each specific surface. Zones are more specifically described as follows:

1. **HORIZONTAL ZONE** – An area coinciding with the inner and outer perimeter of the Horizontal Surface established on the ground.
2. **CONICAL ZONE** – An area coinciding with the inner and outer perimeters of the Conical Surface established on the ground.
3. **PRIMARY ZONE** – An area coinciding with the perimeter of the Primary Surface established on the ground.
4. **APPROACH ZONES** – An area coinciding with the perimeter of the Approach Surfaces established on the ground.

5. TRANSITIONAL ZONE – An area coinciding with the inner and outer perimeters of the Transitional Surface established on the ground.

E. DESCRIPTION OF AREAS

In an effort to address the concern the FAA has about compatible uses of land around airports, Areas are designated to restrict the use of land adjacent to and in the immediate vicinity of the Airport to activities and purposes compatible with normal airport operations, including the landing and taking off of aircraft. Accordingly, specific Areas were developed to allow for differing uses of land taking into consideration geographic boundaries in the vicinity of the airport, FAA standards and recommendations for airport design, and the nature of flight in the vicinity of the airport. The term “Area” or “Areas” as used in these regulations and as shown on sheets which are parts of the AAA maps or drawings may differ from the Zones set forth in Section IV.D.

1. AIRPORT OPERATIONS AREA – The Aeronautical Areas of Airport Property defined by a single boundary that encompasses the Runway Object Free Area (ROFA), the Taxiway Object Free Area (TOFA), and the Runway Protection Zones (RPZ). Additional background and descriptions of these areas are provided in FAA Advisory Circular 150/5300-13.
 - a) ROFA – An area 500 feet wide by 5,400 feet long, centered along the Runway 17/35 (16/34) centerline; and an area 400 feet wide by 5,280 feet long, centered along the planned Runway 3/21 centerline.
 - b) TOFA – An area 131 feet wide, centered along the full-length parallel Taxiway “A”, the location of which is 240 feet from the centerline of Runway 17/35 (16/34) to its centerline; and an area 89 feet wide, centered along the future full-length parallel taxiway, the location of which is 225 feet from the centerline of Runway 3/21 to its centerline.
 - c) RPZ – The areas beginning 200 feet beyond the ends of Runway 17 (16) and Runway 35 (34), each of which is 500 feet (inner width) by 1,010 feet (outer width) by 1,700 feet long; and the areas beginning 200 feet beyond the planned ends of Runway 3 and Runway 21, each of which is 500 feet (inner width) by 700 feet (outer width) by 1,000 feet long.

The boundary of the Ronan Airport Operations Area generally lies 250 feet east and 306 feet west of the Runway 17/35 (16/34) centerline and extends 1,900 feet beyond the ends of Runway 17 (16) and Runway 35 (34); and 200 feet southeast and 269.5 feet northwest of the Runway 3/21 centerline and extends 1,200 feet beyond the ends of Runway 3 and Runway 21 to include the areas within each RPZ.

2. AIRPORT DEVELOPMENT AREA – The Non-Aeronautical Areas of Airport Property outside of the Aeronautical Areas owned by the City of Ronan and designated for airport use. The Airport Development Area is bounded by the Airport

Property Boundary but does not include the land within the Airport Operations Area or the Restricted Development Areas.

3. RESTRICTED DEVELOPMENT AREAS – Areas which are identical to, and coinciding with the Approach Zones established by these regulations.
4. LIMITED DEVELOPMENT AREA – An Area which is identical to and coinciding with the Transitional Zone established by these regulations.

SECTION V: AIRPORT AFFECTED AREA REGULATIONS

A. GENERAL

Height restrictions for zones and land use restrictions in specified areas found in these regulations are meant to be reasonable and are designed to promote the health, safety and general welfare of airport users and persons and property in the vicinity of the airport, taking into consideration the character of the flying operations conducted or expected to be conducted at the Airport, the nature of the terrain, future development of the airport, and FAA recommendations for aeronautical surfaces necessary for safe flying operations. In addition, these regulations protect the Airport and its operations from uses which may infringe on airport operations and result in liability to the Airport.

B. ZONE HEIGHT LIMITATIONS

Restricting the height of structures and trees within the AAA protects the health, safety and general welfare of the users of the airport as well as persons and property in the vicinity of the airport. In order to comply with Federal requirements of 14 CFR, Part 77 and those found in Section 67-7-203 (1), MCA, the following height restriction have been adopted within the AAA:

1. **HEIGHT LIMITATION CRITERIA** – Except as otherwise provided in these regulations, no new structure or alteration of an existing structure shall be constructed and no tree shall be allowed to grow in any Zone designated within the AAA so as to penetrate, or have a height exceeding that of its coinciding Surface as defined in the Supplement. Notwithstanding, nothing in these regulations should be construed to prohibit the construction of any structure or the growth or maintenance of any tree to a height equal to or below the Airport Elevation.
2. **EXCEPTION CRITERIA** – Construction of new structures or the alteration of existing structures proposed by the Airport Board, designated for airport use, and **specifically requiring the approval of the FAA** are not subject to the height restrictions or permit requirements of these regulations.
3. **FAA NOTIFICATION** – Nothing in these regulations shall diminish the responsibility of project proponents to submit a Notice of Construction or Alteration (FAA Form 7460-1) to the FAA if required in accordance with Title 14 CFR, Part 77, Subpart B.

C. AREA USE REGULATIONS

Regulation of land uses in Areas adjacent to and in the immediate vicinity of the Airport serves to protect the health, safety, and general welfare of the users of the Airport and the

public in its vicinity. Land use regulations protect persons and property in the vicinity of the airport from airport-related effects such as high-probability accident areas, noise, fumes, vibrations, light or any other effects from normal and anticipated normal airport operations.

Permitted uses are those uses which are allowed, and obtaining a permit for these uses pursuant to these regulations serves as notification to the Enforcement Officer of those uses. Conditional uses are those uses which may be allowed provided a permit is obtained pursuant to the procedures set forth in these regulations. Conditional uses will be scrutinized to a greater extent than permitted uses and may be limited in duration. All other uses are prohibited, including sources of electromagnetic effects that may interfere with electronic navigational aids, lights other than navigational aids that glare upward or shine on or in the direction of the airport, private-use airstrips, and bird attractants such as solid waste disposal sites and transfer stations, sewage lagoons, wetlands, and certain types of agriculture (ref. AC 150/5200-33). Under extraordinary circumstances some uses which are not permitted or listed as conditional uses may be allowed, provided a variance is obtained pursuant to these regulations.

When the following Areas overlap, the more restrictive uses apply.

1. AIRPORT OPERATIONS AREA – The Airport Operations Area is an Aeronautical Area dedicated to the operation and movement of aircraft at the airport. Only airport-related development is allowed in this Area. This Area is under the control of the Airport Board and is not subject to any permitting provisions established in these regulations.
2. AIRPORT DEVELOPMENT AREA – All uses described in these regulations that would be established on land acquired with Federal grant funds and as shown on the current, approved Airport Property Map (Exhibit “A” in the ALP) for airport development and/or airport approaches, and which included specific grant assurances, are subject to any use restrictions required by those grant assurances. All uses within the Airport Development Area are conditional and require the review and approval of the FAA.
 - a) PERMITTED USES: None.
 - b) CONDITIONAL USES:
 - i. Runways, taxiways, aircraft parking areas, and fuel storage facilities.
 - ii. Aircraft operational facilities including, but not limited to instrument landing systems, NAVAIDS and related equipment, communication facilities, weather service offices and equipment.
 - iii. Hangars and buildings which may be used for the storage or maintenance of aircraft, airport snow removal equipment, sweeping and other maintenance equipment, and other aviation-related or ancillary activities.

- iv. Terminal buildings that may house offices of airline companies and other businesses and concessionaires.
- v. Offices and facilities for airport management, air charter, air taxi, crop spraying, aircraft sales or rentals, and air cargo processing facilities in non-aeronautical areas.
- vi. Agriculture (other than forestry, livestock farms or crops which might create a wildlife attractant on or near the Airport).
- vii. Flight schools, flying clubs, and other schools or training facilities relating to aviation or air-related transportation.
- viii. Offices and facilities for the operation and maintenance or air rescue, emergency, and firefighting services.
- ix. Aircraft maintenance, manufacturing and testing facilities.
- x. Offices and facilities of federal, state and local government entities.
- xi. Light commercial development.
- xii. Industrial development provided it does not create large areas of standing water, or generate smoke or steam which may reduce visibility at the airport.
- xiii. Outdoor baseball/softball facilities and other public or private recreational uses, provided such use does not result in a concentration of people during times of peak airport use.
- xiv. Firearm and sport shooting ranges.
- xv. Driver education test track.
- xvi. Export facilities.
- xvii. Water storage tanks or towers that comply with height restrictions of an overlapping zone.
- xviii. Businesses not located in the terminal building, and those uses that are sanctioned by the Airport Board as non-aeronautical uses allowed by the FAA, but have not already been mentioned.

3. RESTRICTED DEVELOPMENT AREA – Standard approach and departure paths generally coincide with the Approach Surfaces established at an airport. The Restricted Development Areas are the Areas lying beneath portions of those Approach Surfaces. Because of a greater potential for the occurrence of an accident in these Areas, land uses that concentrate people indoors or outdoors should be avoided.

a) PERMITTED USES:

- i. Below ground utilities.

- ii. Roadways, automobile parking areas and railroads that comply with height restrictions of an overlapping zone.
- iii. Agriculture (other than forestry, livestock farms or crops which might create a wildlife attractant on or near the Airport).

b) CONDITIONAL USES:

- i. Residential use if the residences are clustered with un-built open space, provided the development is away from the extended runway centerline, the utilities are underground and steps are taken by the applicant to mitigate noise.
- ii. Retail and wholesale trade facilities.
- iii. Agriculture-related buildings within the height restrictions for an overlapping zone, provided those buildings do not house a concentration of people.
- iv. Storage and warehouse facilities.
- v. Park, playground, other public recreation site or facility, or community service facility owned and operated by a governmental agency or non-profit community organization provided its use does not result in a concentration of people during daylight operating hours.
- vi. Industrial development provided it does not create large areas of standing water, or generate smoke or steam which may reduce visibility at the airport.
- vii. Mining, quarrying, or other extraction activity, including the processing or refining of ore or other raw materials provided that activity does not result in ponding of water which will attract birds or involve equipment which exceeds the height limitations for an overlapping zone.
- viii. Cemeteries.
- ix. Private or public grounds and buildings for games, sports, riding arenas, race tracks and similar activities provided their use does not result in a concentration of people during times of peak airport use.
- x. Golf course with limited water hazards.
- xi. Veterinary clinic, animal pound or kennel provided steps are taken to mitigate such that the facility will not be a bird attractant.
- xii. Firearm and sport shooting ranges.
- xiii. Water storage tanks or towers that comply with height restrictions of an overlapping zone.
- xiv. Above ground utilities that comply with height restrictions of an overlapping zone.
- xv. Utility facility (i.e. substations) necessary for public service.

xvi. Water supply and treatment facility; provided the facility is not a bird attractant.

5. LIMITED DEVELOPMENT AREA –The Limited Development Area is the Area lying beneath the Transitional Surface, which generally encompasses those periphery areas exposed to higher risk. Land uses that concentrate people indoors or outdoors in these areas should also be avoided.

a) PERMITTED USES:

- i. Below ground utilities.
- ii. Roadways, automobile parking areas and railroads that comply with height restrictions of an overlapping zone.
- iii. Agriculture (other than forestry, livestock farms or crops which might create a wildlife attractant on or near the Airport).
- iv. Agriculture-related buildings within the height restrictions for an overlapping zone, provided those buildings do not house a concentration of people.
- v. Storage and warehouse facilities.
- vi. Industrial development provided it does not create large areas of standing water, or generate smoke or steam which may reduce visibility at the airport.
- vii. Mining, quarrying, or other extraction activity, including the processing or refining of ore or other raw materials provided that activity does not result in ponding of water which will attract birds or involve equipment which exceeds the height limitations for an overlapping zone.
- viii. Cemeteries.
- ix. Golf course with limited water hazards.
- x. Veterinary clinic, animal pound or kennel provided steps are taken to mitigate such that the facility will not be a bird attractant.
- xi. Firearm and sport shooting ranges.
- xii. Water storage tanks or towers that comply with height restrictions of an overlapping zone.
- xiii. Above ground utilities that comply with height restrictions of an overlapping zone.
- xiv. Utility facility (i.e. substations) necessary for public service.
- xv. Water supply and treatment facility, provided the facility is not a bird attractant.

b) CONDITIONAL USES:

- i. Residential use if the residences are clustered with un-built open space, provided the development is away from the extended runway centerline, the utilities are underground and steps are taken by the applicant to mitigate noise.
- ii. Retail and wholesale trade facilities.
- iii. Travelers' accommodation facilities.
- iv. Eating and drinking establishments.
- v. Park, playground, other public recreation site or facility, or community service facility owned and operated by a governmental agency or non-profit community organization provided its use does not result in a concentration of people during times of peak airport use.
- vi. Private or public grounds and buildings for games, sports, riding arenas, race tracks and similar activities provided their use does not result in a concentration of people during times of peak airport use.
- vii. Light commercial development.

SECTION VI: NONCONFORMING USES

The purpose of nonconforming use provisions is to establish standards and procedures for regulating the continuation, improvement, and replacement of uses, structures, and trees which legally existed at the time these regulations took effect and which do not comply with these regulations. It is not the intent of these regulations to require removal or alteration of any existing structure or tree or to require the cessation or alteration of a use that is lawfully in existence when these regulations become effective. However, it is not intended that nonconforming uses will continue forever. The provisions addressing nonconforming uses are designed to reasonably address nonconforming uses or structures or trees.

A. DOCUMENTATION OF USES, STRUCTURES, AND TREES

The Enforcement Officers shall document, to the best of the Officers' ability and within a reasonable time after adoption of these regulations, those existing uses of land and structures or trees found in the Airport Affected Area, with an estimate of the height of structures or trees.

B. CONTINUATION OF A NONCONFORMING USE

A nonconforming use may continue at the level of use or height existing on the date that these regulations took effect, subject to the following provisions:

1. **NONCONFORMING USES** - Any lawful use of land in existence when these regulations become effective may continue, but reconstruction of a structure which contains a nonconforming use after destruction or substantial damage which affects that use may be prohibited. Any addition to or remodel of structure containing a nonconforming use would require a variance under these regulations.
2. **NONCONFORMING STRUCTURES OR TREES** - Existing structures or trees may continue to exist but their expansion is prohibited unless a variance is obtained under the provisions of these regulations.

C. SUBSTANTIAL DAMAGE TO A NONCONFORMING USE

“Substantial damage” occurs when 80 percent or more of a structure or tree has deteriorated or decayed or when a structure or tree has been torn down or destroyed. The Enforcement Officer has the authority to determine and interpret “substantial damage”. A substantially damaged structure or tree may not be reconstructed or replaced without first obtaining a variance under the provisions of these regulations and then obtaining a permit.

D. MAINTAINING NONCONFORMING TREES

After identification of trees in place at the time these regulations become effective, the airport owner, administrator, or controller may trim those trees, at its expense, to maintain their heights at the time of identification.

E. MARKING NONCONFORMING STRUCTURES OR TREES

A nonconforming structure or tree will require markings and/or lighting if the FAA makes a determination that the structure or tree is a hazard to air navigation and recommends marking and/or lighting as a suitable disposition. Under these conditions, the owner of the structure or tree will permit the airport owner, administrator, or controller, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an air navigation hazard.

F. NOTIFICATION OF A NONCONFORMING RESIDENTIAL USE

If land in an area in which residential use is not permitted by these regulations has been developed for that use or platted for that use, the residential use may continue, but existing owners must be notified by the Enforcement Officer that the lots are within an adopted AAA within a reasonable time after its designation. It is the responsibility of those owners to notify subsequent purchasers of the property that the property is in an AAA and may be affected by these regulations.

SECTION VII: AMENDMENT OF REGULATIONS

These regulations may be amended by following the same procedure for adoption as set forth in 67-7-201, MCA. If appropriate, other boards or commissions may be involved.

SECTION VII: ADDITIONAL PROVISIONS

A. ACQUISITION OF PROPERTY RIGHTS

A political subdivision within which a property or nonconforming use is located, or a political subdivision owning an airport or served by an airport, may protect that airport by utilizing statutory rights set forth in 67-7-210, MCA.

B. RELATIONSHIP OF AAA REGULATIONS TO ZONING ORDINANCES

If a governing body has adopted a zoning ordinance or resolution, and there is a conflict between these regulations and the zoning ordinance or resolution, the more stringent limitation or requirement prevails.