

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE  
CONDITIONAL USE PERMIT REPORT (#FCU-11-05)  
MELODY WATTS/MIDWAY MINI-MART  
OCTOBER 14, 2011**

A report to the Flathead County Board of Adjustment regarding a request by Melody Watts and the Midway Mini-Mart for a conditional use permit to install a personal wind turbine which will exceed the height limitation in the Happy Valley zoning district.

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on November 1, 2011 beginning at 6:00 PM in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell.

**I. APPLICATION REVIEW UPDATES**

**A. Land Use Advisory Committee/Council**

The proposed land use is not within the advisory jurisdiction of a specific local land use advisory committee.

**B. Board of Adjustment**

This section will be updated following the Board of Adjustment meeting on November 1, 2011.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Applicant**

Melody Watts  
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**B. Property Location and Size**

The subject property is located south of Whitefish at 4899 US Highway 93 South, on the corner of Timber Lane and Antelope Trail. The property consists of two lots, both approximately 0.5 acres. The proposed wind turbine will be located on the lot legally described as Lot 284 of the Happy Valley Home Sites in Section 25, Township 30 North, Range 22 West. The subject property is shown in the figure below.

**Figure 1: Subject property (yellow)**



**C. Existing Land Use(s) and Zoning**

The property is located within the Happy Valley Zoning District and is currently zoned B-1, depicted in Figure 2 below. There is an existing convenience store and gas pumps known as the Midway Mini-Mart located partly on the property. Figure 3 shows the existing land use using the available 2009 aerial photography.

Figure 2: Subject property (yellow)

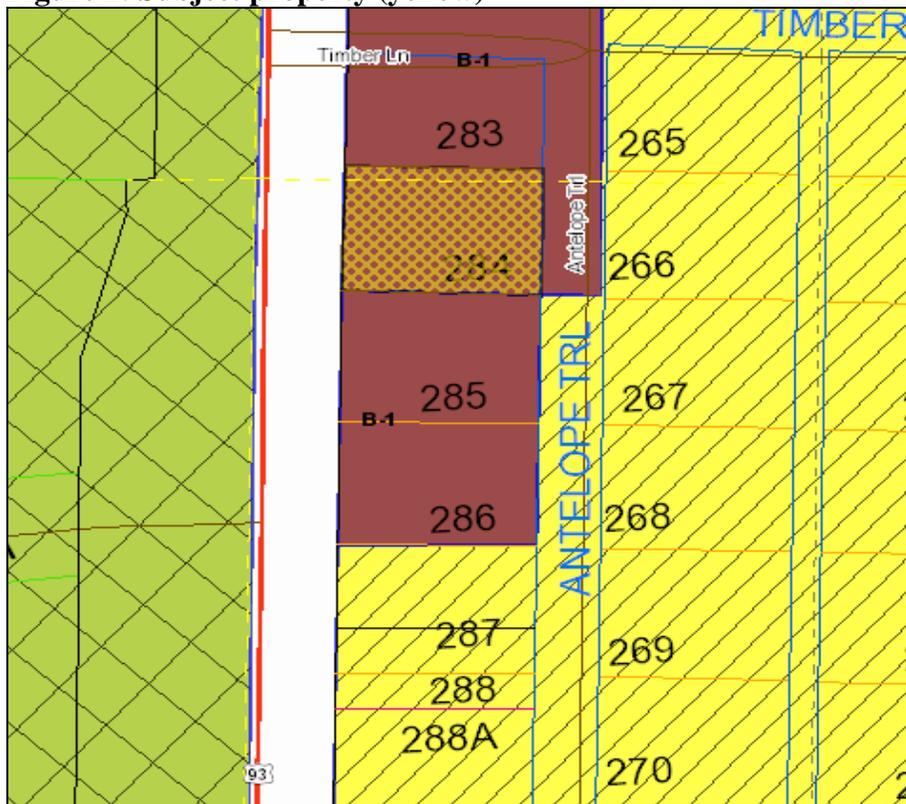


Figure 3: Aerial of subject property, outlined in red.



**D. Adjacent Land Use(s) and Zoning**

Adjacent land surrounding the subject property is zoned B-1 and R-2. To the west, across Highway 93, property is zoned AG-20. The character of the surrounding area is rural residential with uses mixed between residential and commercial.

**E. Summary of Request**

The applicant is requesting a conditional use permit to place a personal wind turbine, which will exceed the height requirements of the B-1 zoning, on the subject property. On June 28, 2011 a Zoning Administrator Interpretation was issued regarding personal wind turbines. It stated that the proposed monopole wind turbine would act as an accessory use to the existing commercial business on the subject property, which is the Midway Mini-Mart. Additionally, the property is zoned B-1 which places a height restriction for structures at a maximum of 35 feet. However, Section 3.03.020(6) of the Flathead County Zoning Regulations (FCZR) lists types of structures that are not subject to the building height limitations of the zoning regulations. Under that section, masts and aerials are listed but require the issuance of a Conditional Use Permit prior to use. It was interpreted by the Zoning Administrator that a monopole wind turbine would be similar to a mast or aerial, and would therefore fall under the category of a structure not subject to the height restrictions of the B-1 zoning following the issuance of a Conditional Use Permit. The applicant is proposing the wind turbine to have a maximum height of 52 feet from ground to blade tip. The proposed wind turbine would be located south of the existing gas pumps, on the southeast corner of the property, near Antelope Trail. The site is a small bermed area covered in grass located adjacent to the paved parking area. The turbine would be connected to the batteries and controllers located on the Midway Mini-Mart by a 300 foot underground line.

**F. Compliance With Public Notice Requirements**

Notification will be mailed to property owners within 150 feet of the subject property on October 7, 2011. Legal notice of the public hearing on this application will be published in the October 16, 2011 edition of the Daily Interlake.

**G. Agency Referrals**

Referrals were sent to the following agencies on September 13, 2011:

- Montana Department of Transportation-James Freyholtz
  - Reason: The proposal has the potential to impact US Highway 93.
- Bonneville Power Administration-Jamie Murray
  - Reason: The proposal has the potential to impact BPA transmission lines.
- Montana Department of Transportation (Right-of-Way)-Jean Crow
  - Reason: The proposal has the potential to impact US Highway 93.
- Flathead Municipal Airport Authority

- Reason: The proposal has the potential to impact rural flight patterns because of the height increase.
- Whitefish Planning Office
  - Reason: The proposal is located in proximity to the city’s jurisdiction.
- Whitefish Rural Fire District
  - Reason: The proposal is located within the Fire District and has the potential to impact the department.
- Montana Fish, Wildlife, and Parks
  - Reason: The proposal has the potential to impact wildlife habitats.
- Flathead Electric
  - Reason: The proposal has the potential to impact rural electric supply.

**III. COMMENTS RECEIVED**

**A. Public Comments**

Notification will be mailed to property owners within 150 feet of the subject property on October 7, 2011. Legal notice of the public hearing on this application will be published in the October 16, 2011 edition of the Daily Interlake. Since the report will be finalized prior to adjacent property notification and the publishing of the legal notice, any comments received will be presented and summarized verbally by staff at the hearing.

**B. Agency Comments**

Below is a list of comments received from the requested agencies. Any comments received after this report is sent to the Board will be presented and summarized verbally by staff at the hearing.

- Bonneville Power Administration-Peggy Weyant
  - Comment: In reviewing the proposed plan, they have found the proposed will not impact any BPA transmission line corridors located within the area. BPA does not have any objections to the approval of the request at this time.
- Flathead Municipal Airport Authority-Robert Ratkowski
  - Comment: Due to the height, distance, and direction from the airport, they have no objection to the proposed development.
- Montana Fish, Wildlife & Parks-Mark Deleray and John Vore
  - Comment: They have no comment on the proposed project.

**IV. CRITERIA REQUIRED FOR CONSIDERATION**

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations, what follows are criteria required for consideration of a Conditional Use Permit and suggested findings of fact based on review of each criterion.

**A. Site Suitability**

**i. Adequate usable space**

The subject property contains approximately 0.5 acres. There are existing gas pumps located on the property which is associated with the Midway Mini-Mart located to the north. The proposed wind turbine will be located on a 6 foot by 6 foot concrete foundation in the southeastern corner of the property, on a small grassy area adjacent to the paved parking lot. The proposed location is approximately 90 feet from the existing gas pumps. Besides the existing gas pumps and proposed wind turbine, the property would be clear of any other structures. The Flathead County Zoning Regulations lists setbacks for property zoned B-1. The wind turbine would have to comply with the setbacks listed for the front, side, and rear property lines under Section 3.16.040(4) FCZR. However, there does appear to be adequate space on the property for the wind turbine to meet the applicable setbacks and not interfere with the other uses on the property.

**Finding #1-** The subject property contains adequate usable space because the lot is 0.5 acres, the only other structure is the existing gas pump, and the proposed wind turbine will be located on a 6 foot by 6 foot concrete pad that is approximately 90 feet away from the current use.

**ii. Adequate access**

The subject property is located between US Highway 93 and Antelope Trail, near the intersection of US Highway 93 and Timber Lane. The property is accessed from multiple entries off Timber Lane, Antelope Trail, and US Highway 93. The proposed site for the wind turbine is located adjacent to Antelope Trail, but is not anticipated to interfere with the existing access. The proposed use will not require any additional access other than what currently exists for the Midway Mini-Mart and associated gas station.

**Finding #2-** There is adequate access for the proposed use because the subject property is located between US Highway 93 and Antelope Trail, it will not require any additional access, and it is not anticipated that the use will interfere with the current access off Antelope Trail.

**iii. Absence of environmental constraints**

The subject property is relatively flat with no significant elevation changes occurring. The majority of the lot has been paved for the existing gas pumps and the Midway Mini-Mart. The proposed wind turbine will be located in the southeastern corner of the lot with a concrete pad foundation. The installation of the turbine will require a small amount of vegetation to be removed for the placement of the foundation. The subject property is located on FEMA FIRM Panel 30029C 1405G as an un-shaded Zone X, which is classified as an area outside the 500-year floodplain. Therefore it is not located within the 100-year floodplain regulated by Flathead County. Additionally, it does not appear that the height of the proposed wind turbine will affect any wildlife, per the Montana Fish, Wildlife and Parks no comment statement during agency referrals.

**Finding #3-** The proposed wind turbine will not impact the environment because the use is not anticipated to affect existing wildlife, and the subject property does not contain any areas with steep slopes or regulated floodplains.

**B. Appropriateness of design**

**i. Parking scheme**

The proposed use does not require any additional parking per the parking requirements located in Chapter 6 of the Flathead County Zoning Regulations. The location for the wind turbine will be in the southeast corner of the property, approximately 90 feet away from the existing gas pumps. The proposed site is also adjacent to the existing parking area. There does appear to be adequate space on the property for any parking associated with the gas pumps and Midway Mini-Mart.

**Finding #4-** There is adequate parking on the subject property because the proposed use will not require any additional parking spaces per the parking requirements of the Flathead County Zoning Regulations, and the proposed location will be approximately 90 feet away from the existing gas pumps.

**ii. Traffic circulation**

The subject property is accessed from three different public roads, US Highway 93, Timber Lane, and Antelope Trail. The proposed wind turbine will be located approximately 90 feet away from the existing gas pumps. According to the minimum parking lot requirements found in Appendix A of the Flathead County Zoning Regulations, a typical parking space requires a minimum aisle width of 20 feet in order for vehicles to turn around. Based on the location of the current parking area and the existing gas pumps, there does appear to be enough space on the subject property for adequate traffic circulation.

**Finding #5-** Traffic circulation is satisfactory because the subject property is accessed by three public roads, the proposed wind turbine will be located approximately 90 feet from the existing gas pumps, and there is adequate space for vehicles to maneuver within the subject property.

**iii. Open space**

The B-1 zoning lists permitted lot coverage of 45% in Section 3.16.040(6) of the FCZR. As the property contains approximately 0.5 acres, the permitted lot coverage allowed would equal approximately 0.225 acres, or a little less than half of the property. Currently the property contains the gas pumps for an existing gas station, the Midway Mini-Mart. The proposed wind turbine does not appear to affect the open space on the property as its footprint will only be a 6 foot diameter circle, located near the existing parking area. The applicant is requesting the Conditional Use Permit in order to increase the height of the wind turbine to 52 feet.

**Finding #6-** There is adequate open space for the proposed use because the applicant can meet the permitted lot coverage allowed for the B-1 zoning.

**iv. Fencing/screening**

The applicant has indicated they are not proposing any fencing around the wind turbine because there is no way to climb the tower, and there will be no external wires, switches, or other electronics that could become a potential hazard. The monopole and supporting foundation will be exactly the same as nearby streetlights located along Highway 93. Additionally, all wiring will be routed down the inside of the hollow tower and underground through the foundation to the Midway Mini-Mart. Since there are no external hazards, a fence is not necessary to ensure public health and safety.

**Finding #7-** The applicant is not proposing any fencing and screening because it is not possible to climb the tower, and all wiring will be routed down the inside of the hollow tower and placed underground through the foundation to the Midway Mini-Mart.

**v. Landscaping**

The current landscaping on the subject property will not be affected by the proposed wind turbine. The site location for the turbine will be a small grass covered area that is adjacent to an existing paved parking lot. The applicant does not propose to remove or add any additional landscaping around the wind turbine.

**vi. Signage**

The only signage associated with the wind turbine will be an engraved plaque/sign located at the tower base with a 24 hour service number and contact information in the case of emergencies. This is very similar to other uses such as cell towers. Therefore, if a problem is occurring with the structure, for example a blade breaks or the tower shifts, the owners may be contacted. The proposed sign must comply with the Section 5.11 of the Flathead County Zoning Regulations regarding on-site or directional signage. Current signage for the existing gas pumps and Midway Mini-Mart will not be affected.

**Finding #8-** The proposed monopole wind turbine is not anticipated to impact adjacent properties because the current landscaping will not be affected, and the applicant is not proposing any signage other than an emergency contact sign at the base of the monopole for emergency responders.

**vii. Lighting**

The applicant is not proposing any additional lighting then what currently exists on the property for the existing gas pumps. The current lighting is acceptable because it is recessed into the roof above the gas pumps and is therefore shining straight down, not visible from a horizontal plane at or above the adjacent ground as outlined in a previous Zoning Administrator Interpretation.

If the applicant wishes to provide additional lighting on the property in the future, it must comply with Section 5.12 of the FCZR. Additionally, Staff contacted the Deputy Airport Director for the Glacier Park International Airport and the Flathead Municipal Airport Authority regarding safety lighting on the monopole. He indicated that the Federal Aviation Administration (FAA) has criteria used to determine if a proposal would impact local airports. Some of the criteria include distance to the airport and height of the structure. Based on the proposed wind turbine specifications, it does not appear to meet their criteria for impact. Also, as identified in the U.S. Department of Transportation's Advisory Circular regarding Obstruction Marking and Lighting, the FAA only requires safety lighting to be placed at the apex of the structure if it exceeds 200 feet in height or if they feel it will cause an impact based on its proposed location. At this time, the applicant is not proposing a safety light at the apex of the turbine because the total height of the turbine from the ground to the end of the extended blade will only be approximately 52 feet, and the airport has stated it is not required based on the proposed location.

**Finding #9-** The lighting for the property is appropriate because the applicant is not proposing the installation of any additional lighting, the current lighting on the property is compliant, and the Flathead Municipal Airport Authority is not requiring a safety light at the apex of the tower due to its proposed location and height.

### **C. Availability of Public Services and Facilities**

#### **i. Sewer**

The proposed monopole wind turbine will not require the use of the current septic facilities to operate on the subject property.

#### **ii. Water**

The proposed wind turbine will not require the use of water to operate. Therefore, it will not impact the existing water system located on the subject property.

#### **iii. Storm Water Drainage**

The proposed wind turbine is not anticipated to impact the current storm water drainage system located on the property. The turbine will include a 6 foot by 6 foot concrete foundation, but no other impervious surface is proposed with this application. The Conditional Use Permit is only for the height of the monopole wide turbine to exceed the maximum height requirements of the B-1 zoning.

**Finding #10-** It is not anticipated that the proposed monopole wind turbine will impact the current services because the turbine does not require sewer or water facilities, and the applicant is not proposing any other impervious surfaces other than the concrete foundation.

#### **iv. Fire Protection**

Fire protection would be provided by the Whitefish Rural Fire District. No comments were received from the District during agency referrals. No significant impact to the District is anticipated because the wind turbine system is designed to shut down automatically if there are any operational issues, and the system components for the turbine are not combustible. The applicant is also proposing to install an engraved plaque/sign at the tower base with a 24 hour service number and contact information in the case of emergencies. This type of sign is very similar to other uses such as cell towers. Therefore if a potential safety hazard were to arise, emergency personnel would be able to contact the appropriate individuals to shut down the turbine.

**v. Police Protection**

The property would be served by the Flathead County Sheriff's Department. There is no significant impact anticipated to the Department as a result of the proposed use because the wind turbine will not require any additional police protection. Additionally, the applicant is proposing the placement of a sign with a 24 hour service number and contact information in case of emergencies.

**Finding #11-** The proposed use is not anticipated to impact public services as fire and police protection are available to the subject property, the turbine can shut down automatically if there are any operational issues, and the applicant is proposing the placement of an emergency sign with 24 hour contact information.

**vi. Streets**

The subject property is located between US Highway 93 and Antelope Trail, near the intersection of Timber Lane and US Highway 93. The property can be currently accessed from all three roads. There is an existing approach permit for the access off US Highway 93, as was determined during a previous Conditional Use Permit application for the lot south of the subject property. The proposed wind turbine will not require any changes to the existing approaches. The turbine will be located on a grassy area adjacent to the existing parking lot on the property and the existing approach off Antelope Trail.

**Finding #12-** The subject property has adequate access for the proposed use because it can be reached from three different roadways, and will not require any changes to the existing approaches.

**D. Immediate Neighborhood Impact**

**i. Excessive traffic generation**

There is no estimate for how much a monopole wind turbine would contribute to daily traffic. However, it is anticipated that the only time vehicles would visit the turbine was if a part of the turbine needed potential maintenance. Additionally, the turbine will be located on the opposite corner of the property from the existing gas pumps and Midway Mini-Mart, so any impact to the adjacent properties should be minimal.

**Finding #13-** It is not anticipated that the proposed use would have a negative impact on the surrounding properties because the number of vehicles visiting the turbine would be minimal.

**ii. Noise or vibration**

The proposed wind turbine will generate minimal noise during use. The applicant has stated that the average noise created by the monopole wind turbine will be around 40 to 50 decibels. This is equivalent to an average home, a quiet office, bird calls or a library as outlined by Industrial Noise Control, Inc. using their table of “Comparative Examples of Noise Levels.” According to the U.S. Department of Labor’s Occupational Safety & Health Administration (OSHA), any use which creates 85 decibels or more must be monitored and mitigated. (29 CFR Section 1910.95, OSHA) Since the proposed wind turbine will not exceed OSHA’s maximum decibel level, it is anticipated that adjacent property owners would not be impacted by the proposed use.

**Finding #14-** It is not anticipated the proposed use would generate excessive noise or vibration because the proposed wind turbine would only produce sound at a level around 40 to 50 decibels, which is equivalent to a library or quiet office, and the proposed decibel level is less than the maximum allowed under OSHA regulations.

**iii. Dust, glare or heat**

The proposed wind turbine would have a dull, grey finish to reduce any potential glare. The finish will be very similar to adjacent streetlights along Highway 93. Additionally, the majority of the property is already paved around the proposed location. Therefore, it is not anticipated that potential traffic would generate dust greater than what currently exists.

**iv. Smoke, fumes, gas, or odors**

No smoke, fumes, or other odors are anticipated to be generated by the proposed wind turbine.

**Finding #15-** It is not anticipated the proposed use would generate excessive glare, heat, smoke, fumes, or other odors because the proposed wind turbine will have a dull grey finish similar to streetlights in the area, the majority of the property is already paved for dust control, and the wind turbine will not generate any odors during utilization.

**v. Inappropriate hours of operation**

The proposed monopole wind turbine will operate any time the wind exceeds 7 miles per hour. The turbine will not necessitate any staff or employees, and there is no need for the public to visit the location. Therefore, no hours of operation are required. Additionally, as stated under previous criteria, the wind

turbine is extremely quiet and generally cannot be heard over the sound of blowing wind while operating.

**Finding #16-** There are no inappropriate hours of operation because the general public will not be visiting the proposed wind turbine, and the turbine will not necessitate any staff or employees to operate.

## V. SUMMARY OF FINDINGS

**Finding #1-** The subject property contains adequate usable space because the lot is 0.5 acres, the only other structure is the existing gas pump, and the proposed wind turbine will be located on a 6 foot by 6 foot concrete pad that is approximately 90 feet away from the current use.

**Finding #2-** There is adequate access for the proposed use because the subject property is located between US Highway 93 and Antelope Trail, it will not require any additional access, and it is not anticipated that the use will interfere with the current access off Antelope Trail.

**Finding #3-** The proposed wind turbine will not impact the environment because the use is not anticipated to affect existing wildlife, and the subject property does not contain any areas with steep slopes or regulated floodplains.

**Finding #4-** There is adequate parking on the subject property because the proposed use will not require any additional parking spaces per the parking requirements of the Flathead County Zoning Regulations, and the proposed location will be approximately 90 feet away from the existing gas pumps.

**Finding #5-** Traffic circulation is satisfactory because the subject property is accessed by three public roads, the proposed wind turbine will be located approximately 90 feet from the existing gas pumps, and there is adequate space for vehicles to maneuver within the subject property.

**Finding #6-** There is adequate open space for the proposed use because the applicant can meet the permitted lot coverage allowed for the B-1 zoning.

**Finding #7-** The applicant is not proposing any fencing and screening because it is not possible to climb the tower, and all wiring will be routed down the inside of the hollow tower and placed underground through the foundation to the Midway Mini-Mart.

**Finding #8-** The proposed monopole wind turbine is not anticipated to impact adjacent properties because the current landscaping will not be affected, and the applicant is not proposing any signage other than an emergency contact sign at the base of the monopole for emergency responders.

**Finding #9-** The lighting for the property is appropriate because the applicant is not proposing the installation of any additional lighting, the current lighting on the property is compliant, and the Flathead Municipal Airport Authority is not requiring a safety light at the apex of the tower due to its proposed location and height.

**Finding #10-** It is not anticipated that the proposed monopole wind turbine will impact the current services because the turbine does not require sewer or water facilities, and the applicant is not proposing any other impervious surfaces other than the concrete foundation.

**Finding #11-** The proposed use is not anticipated to impact public services as fire and police protection are available to the subject property, the turbine can shut down automatically if there are any operational issues, and the applicant is proposing the placement of an emergency sign with 24 hour contact information.

**Finding #12-** The subject property has adequate access for the proposed use because it can be reached from three different roadways, and will not require any changes to the existing approaches.

**Finding #13-** It is not anticipated that the proposed use would have a negative impact on the surrounding properties because the number of vehicles visiting the turbine would be minimal.

**Finding #14-** It is not anticipated the proposed use would generate excessive noise or vibration because the proposed wind turbine would only produce sound at a level around 40 to 50 decibels, which is equivalent to a library or quiet office, and the proposed decibel level is less than the maximum allowed under OSHA regulations.

**Finding #15-** It is not anticipated the proposed use would generate excessive glare, heat, smoke, fumes, or other odors because the proposed wind turbine will have a dull grey finish similar to streetlights in the area, the majority of the property is already paved for dust control, and the wind turbine will not generate any odors during utilization.

**Finding #16-** There are no inappropriate hours of operation because the general public will not be visiting the proposed wind turbine, and the turbine will not necessitate any staff or employees to operate.

## **VI. CONCLUSION**

Upon review of this application, the request for a monopole wind turbine which exceeds the height restrictions of the B-1 zoning on the subject property is generally supported by the review criteria and all 16 Findings of Fact listed above. Should the Flathead County Board of Adjustment choose to adopt staff report FCU-11-05 as Findings of Fact and approve the conditional use permit, the following 7 conditions would ensure compliance with the review criteria and mitigate potential impacts:

## **VII. CONDITIONS**

1. The proposed monopole wind turbine shall be in substantial conformance with the original application and site plan submitted and approved by the Board of Adjustment. [Section 2.06.010 FCZR]
2. Changes or modifications to the approved use or the site plan shall not be affected unless specifically approved in writing by the Flathead County Board of Adjustment. [Section 2.06.010 & 2.06.020 FCZR]
3. The proposed monopole wind turbine shall comply with the setbacks as required for the B-1 zoning located in Section 3.16.040(4) of the Flathead County Zoning Regulations.
4. Any fencing installed on the property shall be in compliance with Section 3.16.040(7) and Section 5.04 of the Flathead County Zoning Regulations.
5. Current and future lighting installed on the property shall be in compliance with Section 5.12 of the Flathead County Zoning Regulations.
6. An emergency contact sign which includes a 24 hour phone number shall be installed on the monopole wind turbine, and remain visible at all times to ensure public health and safety. Any additional signage must comply with Section 5.11 of the Flathead County Zoning Regulations.
7. The operation of the proposed use shall commence within one year from the date of issuance of the conditional use permit per FCZR 2.06.060. The permit may be extended for one additional year if the permittee requests additional time prior to the expiration date.