

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**CONDITIONAL USE PERMIT REPORT (#FCU-14-03)**  
**MONTANA SKY NETWORKS, INC.**  
**MARCH 17, 2014**

This is a report to the Flathead County Board of Adjustment regarding a request from Montana Sky Networks, Inc. for a conditional use permit to establish a ‘transmission tower’ on the subject property. The property is located within the Evergreen Zoning District and is zoned ‘B-2 General Business’ and ‘Evergreen Enterprise Overlay.’

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on April 1, 2014 beginning at 6:00 P.M. in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

**I. APPLICATION REVIEW UPDATES**

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

The proposed land use is not located within the advisory jurisdiction of a Land Use Advisory Committee.

**B. Board of Adjustment**

This space is reserved for an update regarding the April 1, 2014 Flathead County Board of Adjustment review of the proposal.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Landowner**

Montana Sky Networks, Inc.  
1286 Burns Way  
Kalispell, MT 59901

**ii. Applicant**

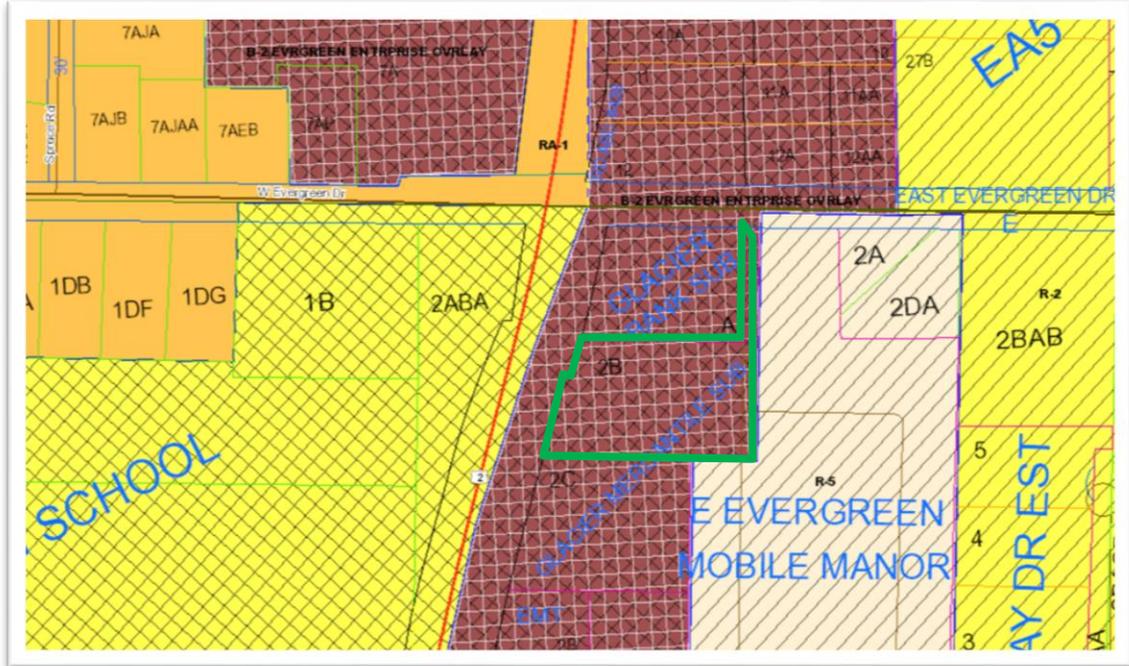
Richard Dasen  
Montana Sky Networks, Inc.  
1286 Burns Way  
Kalispell, MT 59901

**B. Property Location and Size**

The subject property is located at 2185 Highway 2 East in Evergreen, MT (see Figure 1 below). The property is approximately 1.3 acres in size and can be legally described as Lot 2B in Glacier Mercantile an Amended Subdivision Plat of Lot B of Glacier Bank Subdivision in Section 4, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana.



**Figure 2:** Zoning surrounding the subject property (outlined in green)



**E. Summary of Request**

The applicant is requesting a conditional use permit to construct a 150 foot ‘transmission tower’ on the subject property. In the application the applicant references both a communications tower and cellular tower. Staff called the applicant for clarification regarding the intended use of the tower. The applicant stated that it will be a communication tower but could be used to co-locate a cellular antenna. This request is being reviewed for a conditional use permit for a ‘transmission tower’ under Section 3.03.020(6) Flathead County Zoning Regulations (FCZR) because a cellular tower in all areas zoned commercial is a permitted use, per Section 5.13.115(A) FCZR. Section 3.03.020(6) FCZR identifies structures that are not subject to the height restrictions of the regulations. ‘Transmission towers’ are included in this list of structures, but require the issuance of a conditional use permit prior to placement and use. The review of which is subject to specific guidelines set forth under Section 2.06.080 FCZR regarding criteria for the issuance of a conditional use permit.

The ‘transmission tower’ shall be being engineered and will have a concrete base sunk 12 feet into the ground. The concrete of the base will be reinforced with steel rebar to provide stability to the tower.

**F. Compliance With Public Notice Requirements**

Notification was mailed to property owners within 150 feet of the subject property on March 11, 2014, pursuant to Section 2.06.040(3) of the Flathead County Zoning Regulations. Legal notice of the public hearing on this application will be published in the March 16, 2014 edition of the Daily Interlake.

**G. Agency Referrals**

Referrals were sent to the following agencies on February 24, 2014:

- Montana Department of Transportation
  - Reason: The property is located on a U.S. highway and has the potential to impact MDT facilities.

- Flathead County Solid Waste (FCSW)
  - Reason: The property is located within the department’s jurisdiction and has the potential to impact county facilities.
- Evergreen Fire Department
  - Reason: The property is located within the department’s jurisdiction and has the potential to impact Evergreen Fire Department response times.
- Evergreen Water and Sewer
  - Reason: The property is located within the department’s jurisdiction and has the potential to impact Evergreen Water and Sewer facilities.
- Flathead City-County Environmental Health Department
  - Reason: The property is located within the department’s jurisdiction.
- Flathead County Weeds and Parks Department
  - Reason: The property is located within the department’s jurisdiction and new construction could lead to the development of weeds on the subject property.
- Bonneville Power Administration
  - Reason: The BPA has requested a copy of all agency referrals.

### **III. COMMENTS RECEIVED**

#### **A. Public Comments**

No written public comments have been received to date regarding the conditional use permit request. It is anticipated any individual wishing to provide public comment on the proposal will do so during the public hearing scheduled for April 1, 2014. Any written comments received following the completion of this report will be provided to the Board and summarized during the public hearing.

#### **B. Agency Comments**

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Bonneville Power Administration
  - Comment: “In reviewing the proposed plan, it appears this request will not affect any BPA facilities located within this area. BPA does not have any objections to the approval of this request at this time.” Email dated February 26, 2014.
- Flathead City-County Health Department
  - Comment: “This office has reviewed the information provided. We have no comments at this time as proposed development will not affect water, wastewater, or storm water drainage on this property.” Letter dated March 6, 2014.
- Evergreen Water and Sewer District
  - Comment: “The only comment from us would be that they contact us before they do any outside work for any purpose as we have water and sewer mains going around and behind their building.” Email dated March 4, 2014.
- Montana Department of Transportation
  - Comment: “I do not have any comments regarding this proposal.” Email dated February 26, 2014.

### **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

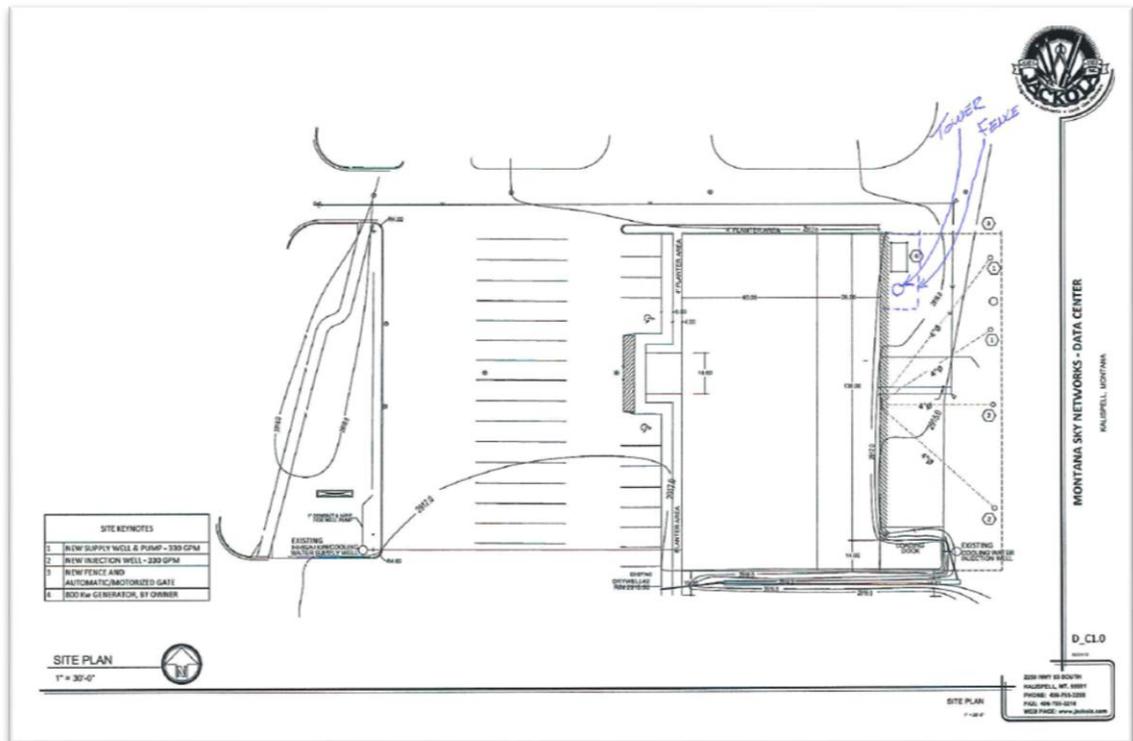
### i. Adequate Usable Space

The subject property currently contains a building and parking lot. The proposed 'transmission tower' will be a monopole structure and will be located on the northeast corner of the property adjacent to the existing building. The lot is approximately 56,628 square feet in size. Based on the site plan the parking lot is approximately 32,054 square feet and the existing building is approximately 13,906 square foot. Staff calculated the area of monopole tower, based on the site plan, to be 18.09 square feet. The structures will cover approximately 25% of the lot; however in the B-2 zone lot coverage is not applicable.

The minimum yard requirements within the B-2 zone are 20 feet for the front and side corner, 5 feet from the side and 15 feet from the rear for principal structures. The property is located along Highway 2 so the structures are required to be setback an additional 10 feet from the road (30 feet total). The existing building appears to meet applicable setback requirements. The proposed tower will be located 40 feet from the rear property line and 50 feet from the nearest side property line.

Based upon staff's site visit and the submitted site plan, it appears the subject property has adequate useable space to accommodate the tower, the existing building and parking lot on the subject property.

**Figure 3:** Site plan



### ii. Adequate Access

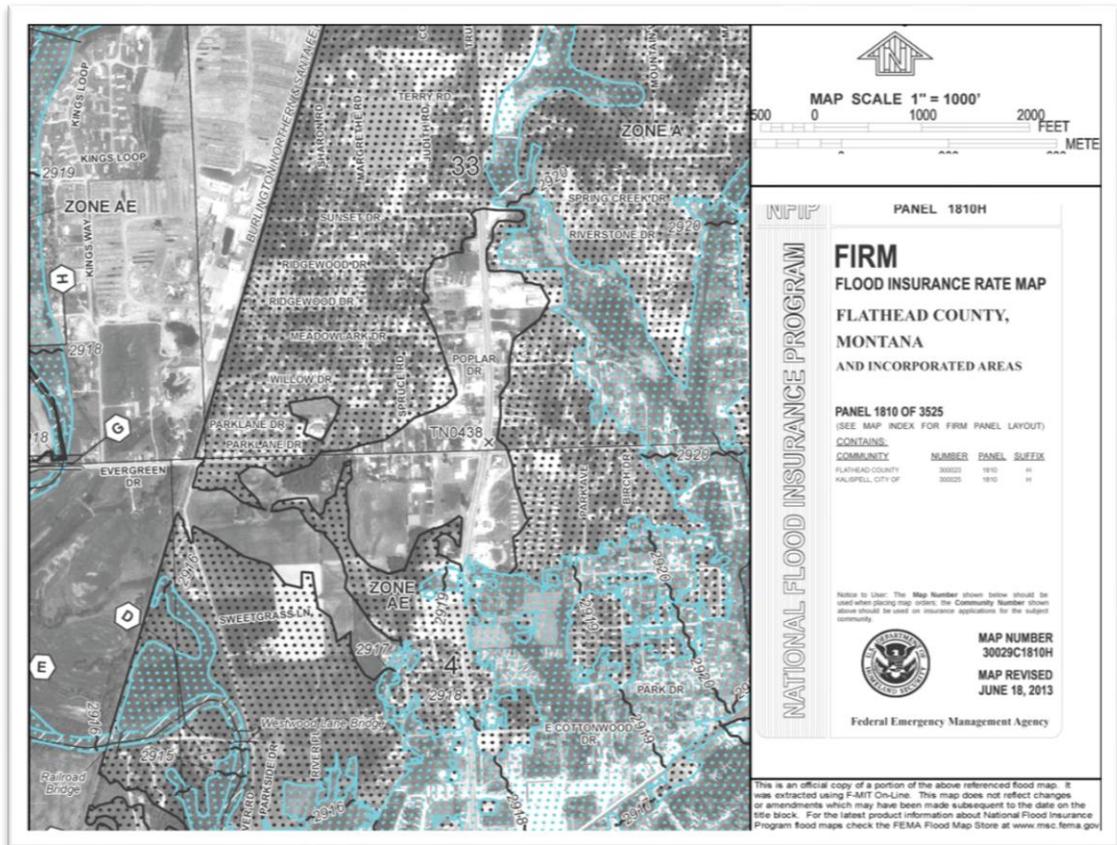
The subject property is accessed via U.S. Highway 2 East and East Evergreen Drive. U.S. Highway 2 is a paved, five lane highway approximately 60 feet wide. East Evergreen Drive is a paved two lane county collector within a 60 foot easement. The existing approaches are approximately 24 feet wide and would provide ingress and egress to the property. Access for the 'transmission tower' appears adequate because

the tower would be un-manned and would only be accessed minimally for routine maintenance. All access shall be approved by the County Road and Bridge Department and/or the Montana Department of Transportation, as applicable, with the issuance of an approach permit, per Section 6.16.020(4) [FCZR].

**iii. Absence of Environmental Constraints**

The subject property is relatively flat with no significant elevation changes and is located on FEMA FIRM panel 30029C 1810H. The lot is designated as both an un-shaded and shaded Zone X. The un-shaded Zone X is classified as an area outside the 500-year floodplain and the shaded Zone X is classified as ‘0.2% annual chance flood hazard’ or 500-year floodplain. There are no wetlands, streams, or creeks located on the parcel, and there appears to be no other environmental constraints.

**Figure 4:** FEMA FIRM Panel 30029c1810H (Subject property outlined in yellow)



**Finding #1** – The site appears suitable for the proposed use because the B-2 zone has no applicable lot coverage, the existing and proposed structures meet applicable setbacks, there appears to be adequate access via a paved county road and U.S. highway which may require a revised approach permit, and there are currently no environmental impacts present that would affect the placement of the tower.

**B. Appropriateness of Design**  
**i. Parking Scheme**

The Flathead County Zoning Regulations do not impose any parking requirements for monopole facilities. There appears to be adequate parking to accommodate building and the proposed tower.

**ii. Traffic Circulation**

The sites primary access is via U.S Highway 2 and secondary access is via East Evergreen Drive. The existing approaches are approximately 24 feet wide and would provide ingress and egress to the property. The tower would be located at the rear of the building, accessed rarely and not impact traffic circulation in the vicinity of or on the subject property.

**iii. Open Space**

The subject property currently has a building and parking lot. The proposed ‘transmission tower’ will be a monopole structure and will be placed at the northeast corner of the property adjacent to the existing building. The lot is approximately 56,628 square feet in size. Based on the site plan the parking lot is approximately 32,054 square feet and the existing building is approximately 13,906 square foot. Staff calculated the area of monopole tower, based on the site plan, to be 18.09 square feet. The structures and parking lot will cover approximately 81% of the lot. In the B-2 zone permitted lot coverage is not applicable, therefore the building, parking lot and tower shown on the site plan would allow for adequate open space on the subject property.

**Finding #2** – The parking, traffic circulation and open space appears to be adequate for the proposed use because the approaches appear to meet standards set forth in Appendix A [FCZR], the tower would not interfere with traffic circulation, and there are no parking requirements for monopole facilities or open space requirements for the B-2 zone.

**iv. Fencing/Screening**

There is currently a chain link fence between the existing building and the neighboring manufactured home park on the south and east side of the property. The applicant is proposing to install fencing around the ‘transmission tower’. According to the applicant the fencing around the tower will be chain link with privacy slates and will not be more than 6 feet tall.

Section 5.05.010 FCZR states, “All sites in a commercial (“B” and “BR” designations) district having a common boundary with a residential district (“R”, “RA”, or “RC” designation) shall erect and maintain a view-obscuring fence or dense coniferous hedge along such common boundary. Fences shall be six (6) feet high. Hedges shall obtain a height of at least six (6) feet within three (3) years. Where the wall of a building is on such common boundary, no separate wall, fence, or hedge is required along the portion of the common boundary occupied by the building.” The property is bordered on the south and east by R-5 zoning. The applicant will be required to erect and maintain a view-obscuring fence or dense coniferous hedge along such common boundary with the adjacent R-5 zoning and all fencing constructed would be required to comply with Section 5.04 FCZR.

**v. Landscaping**

The application states, “No additional landscaping will be needed.” As previously stated in the B-2 sharing a common boundary with a residential zone shall erect and maintained a view-obscuring fence or dense coniferous hedge along such common boundary. The applicant will be required to erect and maintained a view-obscuring fence or dense coniferous hedge along such common boundary with the adjacent R-5 zoning in compliance with 5.05.010 FCZR.

**Finding #3** - The fencing/screening and landscaping on the subject property will be adequate with the imposed conditions because the proposed use will be required to erect and maintained a view-obscuring fence or dense coniferous hedge along such common boundary with the adjacent R-5 zoning in compliance with 5.05.010 FCZR.

**vi. Signage**

The applicant is not proposing any signs as part of this request for a conditional use permit. Any signs installed on the property in the future, would require compliance with Section 5.03 FCZR.

**vii. Lighting**

The applicant is not proposing any additional lighting for the proposed tower. Any exterior lighting would be required to comply with the performance standards set forth in [FCZR] Section 5.12. Additionally, any proposed lighting shall adhere to all applicable Federal Aviation Administration requirements.

**Finding #4** - The signage and lighting on the subject property appear adequate because there is no lighting or signage requirements for transmission towers and any lighting shall be conditioned to adhere to all applicable Federal Aviation Administration requirements.

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

**i. Sewer**

The subject property is located within the Evergreen Water and Sewer District. It is anticipated the property will be served by the public sewer. Evergreen Water and Sewer District provided comments stating, “The only comment from us would be that they contact us before they do any outside work for any purpose as we have water and sewer mains going around and behind their building.” Sewer services are not necessary for the un-manned operation of the ‘transmission tower’ and no impact on sewer services is anticipated as a result of the proposed use, provided the applicant contacts Evergreen Water and Sewer prior to construction of the tower.

**ii. Water**

The subject property is located within the Evergreen Water and Sewer District. It is anticipated the property will be served by the public water. Evergreen Water and Sewer District provided comments stating, “The only comment from us would be that they contact us before they do any outside work for any purpose as we have water and sewer mains going around and behind their building.” Water services are not necessary for the un-manned operation of the ‘transmission tower’ and no impact on water services is anticipated as a result of the proposed use, provided the applicant contacts Evergreen Water and Sewer prior to construction of the tower.

**iii. Storm Water Drainage**

The applicant has stated there is a storm drain under the parking lot which empties into a ditch at the rear of the property. The ‘transmission tower’ is 18.09 square feet but will be located in an area that is currently impervious cover. Therefore, the tower would not increase impervious cover on the lot and would likely not impact the existing storm drainage system on the property.

**Finding #5** – There appears to be adequate availability of sewer, water and storm drainage for the proposed use because sewer and water are not necessary for an un-manned tower, the applicant shall contact Evergreen Water and Sewer prior to

construction of the tower as a condition of approval at the request of the district, the tower will not increase the impervious surface of the lot and storm water run-off will be managed on-site through an existing storm water management system.

**iv. Fire Protection**

The subject property is served by the Evergreen Fire Department, and is located approximately a quarter of a mile south of an existing fire station. Due to the close proximity to the fire station, it is anticipated response times in the event of an emergency would be reasonable.

**v. Police Protection**

The property would be served by the Flathead County Sheriff's Department. It is anticipated response times in emergency would not be unreasonably long given the property's proximity to an urban, developed area of the County.

**vi. Streets**

As previously stated, the subject property is accessed via U.S. Highway 2 and East Evergreen Drive. U.S. Highway 2 is a paved, five lane highway approximately 60 feet wide. East Evergreen Drive is a paved two lane county collector within a 60 foot easement. It appears that both roads are adequate to serve the proposed use. The 'transmission tower' will be an un-manned structure and would be accessed during construction and maintenance.

**Finding #6** – The proposed use appears to have acceptable impacts on public services and facilities because the Evergreen Fire Department and Flathead County Sheriff could provide services to the subject property with an acceptable response time and the property is accessed by U.S. Highway 2 and East Evergreen Drive.

**D. Immediate Neighborhood Impact**

A neighborhood impact not generally reviewed is safety. However, because the tower being proposed is 150 feet tall, stability and safety of the tower is a concern. According to the applicant, the 'transmission tower' will be engineered and have a concrete base sunk 12 feet into the ground. The concrete of the base will be reinforced with steel rebar to provide stability to the tower. Additionally, the State of Montana Building Department confirmed that a transmission tower used for co-locating cell tower would require a State building permit.

**i. Excessive Traffic Generation**

The 'transmission tower' will be an un-manned structure and would generate minimal traffic during construction and maintenance. Traffic generated by the proposed use would have a minimal impact on the neighborhood.

**ii. Noise or Vibration**

It is anticipated that the proposed tower would generate no noise or vibrations, as it would be an unmanned tower and therefore would have a minimal impact on the neighborhood.

**iii. Dust, Glare or Heat**

The tower will be painted a dull grey and is not anticipated to produce dust, glare or heat that would adversely impact the neighborhood.

**iv. Smoke, Fumes, Gas, or Odors**

It is anticipated that the proposed tower would generate no smoke, fumes, gas, or odors, as it would be an unmanned tower and therefore would have a minimal impact on the neighborhood.

**v. Inappropriate Hours of Operation**

The ‘transmission tower’ is un-manned and hours of operation are not applicable.

**Finding #7** – The immediate neighborhood impact from the proposed use is acceptable because the proposed facility will not create excessive traffic, noise, vibration, dust, glare, heat, smoke, fumes, gas or odors, hours of operation are not applicable for an un-manned ‘transmission tower,’ the tower base will be reinforced concrete and the tower require a building permit from the State.

**V. SUMMARY OF FINDINGS**

1. The site appears suitable for the proposed use because the B-2 zone has no applicable lot coverage, the existing and proposed structures meet applicable setbacks, there appears to be adequate access via a paved county road and U.S. highway which may require a revised approach permit, and there are currently no environmental impacts present that would affect the placement of the tower.
2. The parking, traffic circulation and open space appears to be adequate for the proposed use because the approaches appear to meet standards set forth in Appendix A [FCZR], the tower would not interfere with traffic circulation, and there are no parking for monopole facilities or open space requirements for the B-2 zone.
3. The fencing/screening and landscaping on the subject property will be adequate with the imposed conditions because the proposed use will be required to erect and maintained a view-obscuring fence or dense coniferous hedge along such common boundary with the adjacent R-5 zoning in compliance with 5.05.010 FCZR.
4. The signage and lighting on the subject property appear adequate because there is no lighting or signage requirements for transmission towers and any lighting shall be conditioned to adhere to all applicable Federal Aviation Administration requirements.
5. There appears to be adequate availability of sewer, water and storm drainage for the proposed use because sewer and water are not necessary for an un-manned tower, the applicant shall contact Evergreen Water and Sewer prior to construction of the tower as a condition of approval at the request of the district, the tower will not increase the impervious surface of the lot and storm water run-off will be managed on-site through an existing storm water management system.
6. The proposed use appears to have acceptable impacts on public services and facilities because the Evergreen Fire Department and Flathead County Sheriff could provide services to the subject property with an acceptable response time and the property is accessed by U.S. Highway 2 and East Evergreen Drive.
7. The immediate neighborhood impact from the proposed use is acceptable because the proposed facility will not create excessive traffic, noise, vibration, dust, glare, heat, smoke, fumes, gas or odors, hours of operation are not applicable for an un-manned ‘transmission tower,’ the tower base will be reinforced concrete and the tower require a building permit from the State.

## **VI. CONCLUSION**

Upon review of this application, the request to allow for a 'transmission tower' on the subject property is generally supported by the review criteria and the Findings of Fact listed above. Should the Flathead County Board of Adjustment choose to adopt staff report FCU-14-03 as Findings of Fact and approve the conditional use permit, the following conditions would ensure compliance with the review criteria and appropriate measures to mitigate impacts:

## **VII. CONDITIONS OF APPROVAL**

1. The 'transmission tower' on the subject property shall be in substantial conformance with the application materials and site plan as submitted and approved by the Board of Adjustment and modified by the conditions below [FCZR Section 2.06.010].
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 [FCZR Section(s) 2.06.010 and 2.06.020].
3. The applicant shall adhere to all applicable Federal Aviation Administration requirements.
4. The 150 foot tower shall not be lit at night unless specifically required by a federal or state agency.
5. The applicant shall erect and maintained a view-obscuring fence or dense coniferous hedge along such common boundary with the adjacent R-5 zoning in compliance with 5.05.010 FCZR.
6. All fencing installed on the property shall be in compliance with Section 3.26.040(6) and Section 5.04 of the Flathead County Zoning Regulations.
7. Current and future lighting installed on the property shall be in compliance with Section 5.12 of the Flathead County Zoning Regulations.
8. The applicant shall contact Evergreen Water and Sewer prior to construction of the tower because they have water and sewer mains going around and behind their building.
9. The applicant shall obtain all necessary building permits from the State of Montana for tower. A copy of the approved permit shall be available upon request by Flathead County Planning and Zoning.
10. The proposed use shall be re-reviewed by the Montana Department of Transportation to obtain an updated approach permit. A copy of the approved permit shall be available upon request by Flathead County Planning and Zoning.
11. The proposed use shall be re-reviewed by the Flathead County Road and Bridge Department to obtain an updated approach permit. A copy of the approved permit shall be available upon request by Flathead County Planning and Zoning.
12. The conditional use permit shall terminate twelve (12) months from the date of authorization if commencement of the activity has not begun, unless the applicant can demonstrate and maintain a continuous effort in good faith in commencing the activity. [FCZR Section 2.06.060].
13. At the end of 12 months from the date of authorization of this permit staff will inspect to verify compliance [FCZR Section 2.06.060].

Planner: EKM