

**Ordinance No. \_\_\_-2009**

**MADISON COUNTY AIRPORT AFFECTED AREA REGULATIONS**

**Section I. General Provisions**

**A. Title**

These regulations shall be known as the Madison County Airport Affected Area (AAA) Regulations.

**B. Authority**

Authorization for these regulations is in the Airport Compatibility Act found in Title 67, Chapter 7, Montana Code Annotated (2005).

**C. Purpose and Intent**

It is the purpose of these regulations to promote the public health, safety and general welfare of airport users and persons and property in the vicinity of the Big Sky (Ennis) and Twin Bridges Airports by addressing the effects of noise,<sup>1</sup> height of structures and trees, lighting, and land use in the vicinity of the Airports, in accordance with Section 67-7-203, MCA.<sup>2</sup> These regulations are intended to protect the transportation infrastructure provided to the community by the Airports from incompatible development and protect the Airports from personal or property injury claims due to noise and hours of operations.

**D. Designation of Airport Affected Area**

A hearing was held by Madison County Commissioners on     (date)     before the Airport Affected Areas (AAA) were designated, after notice was published according to [Section 7-1-2121, MCA/Section 7-1-4127, MCA].<sup>3</sup> A draft of these regulations was addressed at that hearing and public comment was taken and considered.

The Airport Affected Area for each airport is shown on the attached sheets designated "Airport Affected Area Drawing ("AAA Drawing")." The AAA encompasses the entire 14 CFR, Part 77 surfaces which are shown on the "Airport Airspace Drawing." The Airport Airspace Drawing also identifies existing airport hazards and natural terrain penetrations that intrude into the Part 77 surfaces.<sup>4</sup> The legal description of the AAA is found on an attachment to the

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<sup>1</sup> The best way to address noise around an airport is to do a 14 CFR, Part 150 study.

<sup>2</sup> See 67-7-203 (1)(a), MCA.

<sup>3</sup> Refer to 67-7-201 (5)(b), MCA, and choose which applies.

<sup>4</sup> See 67-7-203 (2)(c), MCA. This is a permissive provision in the law.

sheet(s) and is separately recorded.<sup>5</sup> The AAA Drawing is on file with the Madison County Clerk and Recorder and the Twin Bridges Town Clerk.<sup>6</sup>

## **E. Jurisdiction**

### **1. Big Sky (Ennis).**

The AAA for the Big Sky (Ennis) is located entirely within the jurisdictional area of the Madison County Commissioners. Madison County shall be exclusively responsible for the administration and enforcement of the provisions of these regulations for those areas affected.

### **2. Twin Bridges.**

The AAA for the Twin Bridges Airport is located partially within the jurisdictional area of Madison County Commissioners and partially within the jurisdictional area of the Twin Bridges Town Council.<sup>7</sup> By a resolution of each governing body, a copy of which is attached to these regulations, a joint airport affected area regulation board has been created,<sup>8</sup> and that board shall administer and enforce these regulations.<sup>9</sup>

## **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<sup>10</sup>**

### **A. Generally**

Definitions which generally apply to Title 67 and to these regulations are found in Section 67-1-101, MCA (2005). In addition, 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. The following 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.

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<sup>5</sup> Recording this legal description should result in title reports noting subsequently transferred property is in the AAA. Merely filing the AAA Drawing does not necessarily have this result.

<sup>6</sup> If either the airport or the AAA lie within a city or town, the AAA Drawing should be filed with both clerks. *See* 67-7-201 (4) and (5), MCA.

<sup>7</sup> This alternate is used when the airport lies in two jurisdictions. For the purposes of the Airport Compatibility Act, the commissioners of an airport authority are a governing body. *See* 67-7-202, MCA, for the law for joint boards.

<sup>8</sup> Each of the governing bodies must follow 67-7-202 for the appointment of the board.

<sup>9</sup> This power is given to a joint board by 67-7-201 (1)(c) and -202 (2), MCA.

<sup>10</sup> *See* 67-7-203 (2)(b), MCA. This definition section is very general and can be expanded upon, utilizing Title 67 and 14 CFR, Part 77 definitions.

## B. Specifically

1. **“Administration Officer”** is that person designated by the governing body of 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.
2. **“Aeronautical areas”** are those areas of the airport property shown on maps for existing and future aviation needs such as runways, hangars, aprons, taxiways, taxi lanes, etc.
3. **“Airport”** is the Big Sky (Ennis) and /or Twin Bridges Airport.
4. **“Airport Affected Area (AAA)”** is the land and space above the ground surface of an 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 the horizontal surface, the conical surface, the primary surface(s), the approach surfaces and the transitional surface as described in 14 CFR, Part 77 and in these regulations<sup>11</sup>.
5. **“Airport Appeals Board”** is a board appointed by the governing body to determine appeals from a decision by the administrative officer<sup>12</sup>.
6. **“Airport Board”** is the Madison County Airport Board<sup>13</sup>.
7. **“Airport Elevation”** is 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).
8. **“Airport Layout Plan (ALP)”** is a graphic depiction of existing conditions and future proposed development for an airport adopted by the Board of County Commissioners. An ALP typically 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.
9. **“Areas”** consist of land within certain boundaries shown on the AAA Drawing and designate where various land uses are permitted.
10. **“Electromagnetic Effect”** is 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

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<sup>11</sup> See 67-7-103 (2)(a), MCA. Whether the zones lie beneath parts of or entirely beneath the surfaces depends upon the extent of the AAA.

<sup>12</sup> See 67-7-302 (1), MCA. An appointed Airport Appeals Board must consist of at least three members.

<sup>13</sup> This is a board created pursuant to Title 67, Chapter 10.

frequency transmitter, or an object or surface that emits, reflects or re-radiates an electromagnetic signal or electrical pulse.

11. **“Enforcement Officer”** *see Administration Officer.*
12. **“FAA”** is the Federal Aviation Administration.
13. **“Governing Body”** is the Madison County Commission
14. **“Height”** is 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.
15. **“Non-aeronautical areas”** are those areas of the airport property, outside of the aeronautical areas, which might be suitable for uses such as office space for governmental entities.
16. **“Nonconforming Use”** is 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.
17. **“Runway”** is the defined and prepared surface of an airport, suitable for landing or taking off by aircraft, as well as planned extensions documented on the AAA Drawing.
18. **“Structure”** is an object [five feet (5')<sup>14</sup> or taller,] constructed or installed by a person, including but not limited to buildings, towers (cell or otherwise), radio antennae, cranes, smoke stacks, earth formations, and overhead transmission lines.
19. **“Surfaces”** are 14 CFR, Part 77.25 civil airport imaginary surfaces for existing and planned development of the Airports as documented on the AAA Drawings. These surfaces are located above and in relation to a runway or runways. Types of surfaces include Approach Surfaces, Conical Surface, Horizontal Surface, Primary Surface and Transitional Surface<sup>15</sup>. *See Appendix B.*
20. **“Terrain penetration”** is any natural land surface that penetrates into any of the civil airport imaginary surfaces as defined in 14 CFR, Part 77.25.

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<sup>14</sup> Each locale should decide the height above which it wishes to regulate, and the zones within which it wishes to regulate heights. This decision may depend upon the extent of the airport property and consultation with the airport engineer, but the height for structures and trees should be the same.

<sup>15</sup> The primary surface is typically owned by the airport, is regulated by the Airport Board or Airport Authority in accordance with existing FAA regulations in order to preserve the eligibility for federal funding and should not need protection by these regulations.

21. **“Threshold”** is the beginning of the portion of a runway which is available for landing.
22. **“Tree”** is any vegetation or other naturally growing object greater than **[five feet (5')]**<sup>16</sup> above the ground.
23. **“Variance”** is an allowed deviation from the height or use requirements of these regulations.
24. **“Vicinity Sketch”** is an 8 ½" x 11", non-reduced copy of a portion of a 7.5 minute USGS Quadrangle Map showing 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 data upon which the map is based (typically found in the lower right-hand corner).
25. **“Zones”** are delineated areas on the ground as shown on the AAA Drawings within which certain height restrictions apply.

### **Section III. Administration**

#### **A. Appointment of Administration Officer<sup>17</sup>**

The Madison County Planner who shall be known as the “AAA Administration Officer” shall serve as the County’s representative to issue permits and variances under these regulations and to administer the regulations.

#### **B. Fees for Permits and Variances**

An administrative fee shall be assessed for processing permits and variances as set by resolution of the Board of County Commissioners. The fees shall be based on a basic permit with additive fees for a conditional use permit and for each variance request.

#### **C. Permit Procedure<sup>18</sup>**

The purpose of the permitting process is to allow the Administration Officer 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 change or add structures, trees or uses there are legal restrictions on that activity, in order to protect the public health, safety and general welfare as well as protect the current flying operations at the

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<sup>16</sup> See FN 18.

<sup>17</sup> See 67-7-301, MCA.

<sup>18</sup> See 67-7-212, MCA. This model provides suggestions, but the local jurisdiction may add or delete whatever it wishes.

airport and those expected in the future. A permit must be obtained before the changes or additions are made.

**1. When a Permit is Required<sup>19</sup>**

A permit must be obtained before:

- a. Erecting a new structure in the AAA.
- b. Planting new trees or replacing trees in the AAA which are expected to grow taller than **five feet (5')** in height<sup>20</sup>.
- c. Substantially altering, repairing or replacing existing structures in the AAA which would increase their existing perimeter, height or use.
- d. Changing uses of land or structures.

**2. Procedure for Obtaining an AAA Structure Permit<sup>21</sup>**

- a. Obtain an application for a permit from the Administration Officer.
- b. Submit to the Administration Officer the fee, the completed application, a drawing with enough detail to determine height of the structure above ground level and a vicinity sketch which shows the location of the structure within the AAA in relation to property or section lines. It must be clear to the Administration Officer the proposed structure will not penetrate any of the surfaces. Where there is a question, a variance and FAA Form 7460-1 will be required.
- c. The requested permit may be discussed with the Airport Board prior to making a decision about whether or not to grant the permit<sup>22</sup>. If FAA notification by Form 7460-1 is required, consultation with the FAA is recommended.

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<sup>19</sup> The local jurisdiction can decide to exempt certain zones or areas from the permit requirement, such as the airport property and structures or trees less than a certain height, if appropriate.

<sup>20</sup> See FN 18.

<sup>21</sup> It must be clear to the Enforcement Office the proposed structure will not penetrate any of the surfaces, in order for a permit to issue. If there is any question, a variance and completion of FAA Form 7460-1 is appropriate.

<sup>22</sup> The local jurisdiction, when considering these regulations, should decide upon a procedure which works for that jurisdiction. If the discussion takes place with the [Airport Board][Airport Authority], it must occur at a properly noticed meeting, at which public comment is allowed.. If a structure may require FAA notification by Form 7460-1, a copy of which is attached to these regulations, consultation with the FAA is recommended.

- d. The Administration Officer shall grant, grant with conditions or deny the requested permit in writing, explaining the decision<sup>23</sup>.
- e. The decision by the Administration Officer may be appealed to the Airport Appeals Board, pursuant to Section 67-7-302, MCA.

### **3. Procedure for Obtaining an AAA Tree Permit**

- a. Obtain an application for a permit from the Administration 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 of the tree within the AAA to the Administration Officer. No fee is required for trees.<sup>24</sup>
- c. The Administration Officer shall grant, grant with conditions or deny the requested permit in writing, explaining the decision.
- d. The decision by the Administration Officer may be appealed to the Airport Appeals Board, pursuant to Section 67-7-302, MCA.

### **4. Procedure for Obtaining an AAA Use Permit**

- a. Obtain an application for a permit from the Administration Officer.
- b. Submit to the Administration Officer the fee(s)<sup>25</sup>, 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. Submit a vicinity sketch with sufficient detail to determine the location of the proposed use within the AAA and in relation to property or section lines. If the proposed use involves changes to an existing structure, combine this application with a structure permit set forth in Section III.C.1.d.
- c. The requested permit for a use permitted outright may be discussed with the Airport Board prior to making a decision about whether or not to grant the permit.<sup>26</sup> The discussion of the requested permit with the

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<sup>23</sup> This provision applies if the consultation with the airport board or airport authority is mandatory; it can be revised if the consultation is permissive.

<sup>24</sup> During the legislative session the legislators were concerned about requiring permits for trees. Not requiring a fee is a possible solution, while still keeping track of trees within the AAA.

<sup>25</sup> The fee for a basic permit differs from one for a conditional use. In all likelihood the Enforcement Office can process a permit for a permitted use without involving the airport board or airport authority, but may want input from one of those entities for a conditional use. This may require a staff report to the airport board or airport authority and will require more time.

<sup>26</sup> Again, the local jurisdiction has to consider and decide what the procedure will be.

Airport board must be set forth as an agenda item in the notice for the meeting of the Airport Board and public comment allowed.

- d. If the requested permit is for a conditional use, the applicant shall send written notification to the landowner(s) of the request by mail at least 10 days before the meeting. 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.<sup>27</sup>
- e. After consulting with the Airport Board and taking into consideration any public comment, the Administration Officer shall grant, grant with conditions or deny the requested permit in writing, explaining the decision.<sup>28</sup>
- f. The decision by the Administration Officer may be appealed to the Airport Appeals Board, pursuant to Section 67-7-302, MCA.

#### **5. Criteria for Granting Permits**

- a. Permits will not be granted for structures or trees that will exceed the height limitations of zones set forth in these regulations or for uses which are not in accordance with these regulations, unless a variance has been granted pursuant to the procedure in Section III.D.
- b. Any permit may require the owner of the structure or tree in question to allow the County Commissioners, at the owner's expense, to install, operate and maintain the lights and markers necessary to warn pilots of the presence of that structure or tree<sup>29</sup>.
- c. Permits will not be granted for structures or trees which result in obstructions to surfaces, or to allow a change in a nonconforming use despite its existence on the date the AAA was designated and these regulations were adopted<sup>30</sup>.

#### **D. Variances**

##### **1. When Necessary**

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,

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<sup>27</sup> It is recommended that requested permits for conditional uses be discussed at a public meeting.

<sup>28</sup> This provision applies if the consultation with the airport board or airport authority is mandatory; can be revised if the consultation is permissive.

<sup>29</sup> See 67-7-212 (3), MCA.

<sup>30</sup> See 67-7-212 (2), MCA.

or use property in a manner which is not a permitted or is conditional use, must seek a variance from these regulations.

## **2. Circumstances for Granting a Variance**

### **a. Considerations<sup>31</sup>**

Both considerations must be met before a variance is granted. If both considerations are met, then a variance must be granted.

#### **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, after review by the County and after consultation with the FAA, that there is no 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 also include, but are not limited to, the annoyance by the airport operations and hours on the intended users of the structures; long term impacts on airport viability; and compatibility with airport operations.<sup>32</sup>

### **b. Conditions for a variance**

Conditions may be imposed for granting the variance, including, but not limited to, a requirement 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 an AAA obstruction. The County may install the lights or markers.<sup>33</sup> If it is impractical to mark a tree, the marking will not be required.

## **3. Notice to Applicant**

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,

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<sup>31</sup> See 67-7-303 (3), MCA. Note that these are conjunctive—both have to be satisfied.

<sup>32</sup> The local jurisdictions may wish to expand upon what is and is not in the public interest. This last sentence is not part of 67-7-303, MCA.

<sup>33</sup> See 67-7-303 (5), MCA.

fumes, vibrations, light, or any other effects from normal and anticipated normal airport operations may occur.

#### **4. AAA Obstruction Variance**

##### **a. Procedure to request an AAA Obstruction Variance**

- i.** Obtain an application for a variance from the Administration Officer and Form 7460-1 from the FAA.
- ii.** Submit to the Administration Officer the fee, the completed application, a drawing with enough detail to determine the overall height of the structure or tree above ground level and a vicinity sketch which shows the location of the structure or tree within the AAA, in relation to property or section lines. 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). The completed Form 7460-1 must be submitted to the FAA and a copy provided to the Administration Officer.
- iii.** The requested variance must be addressed by the Airport Board prior to the Administration Officer 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 first-class mail and post a notice on the property at least 10 days before the Airport Board meeting; this notice must include the requested variance, date, time and place of the meeting. The requested variance 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 Board.
- iv.** After consulting with the Airport Board and taking into consideration any public comment and the FAA determination, the Administration Officer shall grant, grant with conditions or deny the requested variance in writing, explaining the decision<sup>34</sup>.
- v.** The decision of the Administration Office may be appealed to the Airport Appeals Board pursuant to Section 67-7-303 (2), MCA.

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<sup>34</sup> See 67-7-303 (2), MCA

**b. Criteria for granting an AAA Obstruction Variance**

- i. The requested variance will not be scheduled for discussion by the Airport Board until the FAA has made a determination, pursuant to Form 7460-1, whether or not there is a hazard to air navigation.
- ii. 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<sup>35</sup> 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)<sup>36</sup>. Whether or not the FAA determines there is a hazard to air navigation, FAA recommended mitigation must be a condition of granting the variance.

**5. AAA Use Variance**

**a. Procedure to request an AAA Use Variance**

- i. Obtain an application for a variance from the Administration Officer.
- ii. Submit to the Administration Officer the fee and the completed application with a description of the existing use and proposed use of the land or structure, and explain in detail why that proposed use should be allowed by variance. In addition, submit 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 a 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), as well as steps which will be taken to mitigate the effects of normal airport operations.
- iii. The requested variance must be addressed by the Airport Board prior to the Administration Officer 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

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<sup>35</sup> See 67-7-303 (3), MCA.

<sup>36</sup> See 67-7-303 (4), MCA. Only the FAA has the ability to determine whether an obstruction is a hazard to air navigation, based on an evaluation described in FAA AC 70/7460-2k.

first-class mail, and post the property at least 10 days before the Airport Board meeting; this notice must include the requested variance, date, time and place of the meeting. The requested variance 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 Board.

- iv. After consulting with the Airport Board and taking into consideration any public comment, the Administration Officer shall grant, grant with conditions or deny the requested variance in writing, explaining the decision.<sup>37</sup>
- v. The decision of the Administration Office may be appealed to the Airport Appeals Board pursuant to Section 67-7-303 (2), MCA (2005).

**b. Criteria for granting an AAA Use Variance**

- i. 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<sup>38</sup> 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).<sup>39</sup>
- ii. If noise, fumes, vibrations, lights or other effects from normal airport operations 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, fumes, vibrations, lights or other effects.

**E. Appeals<sup>40</sup>**

- 1. An appeal from a decision by the Administration Office must be submitted, in writing, to the Airport Appeals Board, within thirty (30) days of the written decision by the Administration 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.

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<sup>37</sup> See 67-7-303 (2), MCA.

<sup>38</sup> See 67-7-303 (3), MCA.

<sup>39</sup> See 67-7-303 (4), MCA.

<sup>40</sup> See 67-7-302, MCA.

2. This appeal process does not apply to a determination by the FAA that a requested obstruction would create a hazard to air navigation.

**F. Enforcement<sup>41</sup>**

The Administration Officer is the agent designated by the County Commission to enforce these regulations.<sup>42</sup> Written notice of a violation must be given by the Administration 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<sup>43</sup>**

If a person who violates the provisions of these regulations does not correct a violation, after notification pursuant to Section III.F, 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 County Commission 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 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<sup>44</sup>**

The County Commission may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of Title 67, Chapter 7 or of these regulations.

**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.<sup>45</sup>

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<sup>41</sup> See 67-7-301, MCA.

<sup>42</sup> Note that 67-7-301, MCA, allows the governing body to perform this function.

<sup>43</sup> See 67-7-304, MCA.

<sup>44</sup> See 67-7-305, MCA.

<sup>45</sup> See 67-7-201 (6), MCA.

## 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.<sup>46</sup>

## Section IV. Airport Affected Area (AAA)

### A. Introduction

Utilizing its police power, the Madison County Commission designated an AAA for the Big Sky (Ennis) and Twin Bridges Airports in accordance with Section 67-7-201, MCA. The AAA includes the land surrounding the runways and the space or surfaces above that land.

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.<sup>47</sup> 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. Zones<sup>48</sup>

#### 1. Explanation of Zones

Zones are established by these regulations to reasonably regulate the height of structures and trees around the airport. The term “zones” as used in these regulations and as shown on the AAA Drawing refers to those areas on the ground and above the ground in which the height of structures and trees is regulated to protect the public health, safety and general welfare. The zones are based on the FAA aeronautical surfaces. The zones for the Big Sky (Ennis) and Twin Bridges Airports are shown on the AAA Drawings and described in Table 1 - Height Restriction Zones.

**Comment [CF1]:** Combine zones (Approach, primary, etc.) for both NPI and Turf. The descriptions for each of these areas could be different, but it would be less confusing. Distinguish between the “zone” and the “surface.”

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<sup>46</sup> See 67-7-303 (6), MCA.

<sup>47</sup> See 67-7-203 (1)(a)(b)(c)(d) and (e), MCA.

<sup>48</sup> See 67-7-203 (2)(d), MCA.

**Table 1 - Height Restriction Zones**

<b>ZONE</b>	<b>IMAGINARY SURFACE DESCRIPTION</b>	<b>ZONE DESCRIPTION</b>	<b>HEIGHT RESTRICTION</b>
Approach	<p>NPI Runway</p> <p>The NPI approach zone exists at each end of the runway, beginning at 200 feet from the end of each runway, centered on the extended runway centerline, with an initial width of 500 feet, widening thereafter uniformly to a width of 3,500 feet at a distance of 10,000 feet beyond the end of the primary surface. The approach surface slopes 34 feet outward for each foot upward for a horizontal distance of 10,000 feet.<sup>49</sup></p>	<p>1. Nonprecision Instrument Runway [greater than 3/4 mile approach visibility minimums]</p> <p>This zone is shown on the AAA Drawing. It extends outward and upward beginning 200 feet from the end of the runway, in accordance with the description of this zone in Section I.</p>	<p>Trees or structures in this zone shall not exceed the height limitation set forth for the following runway(s) unless a variance has been obtained pursuant to these regulations.</p>
	<p>TVR</p> <p>The TVR approach zone exists at each end of the runway, beginning at the end of the runway, centered on the extended runway centerline, with an initial width of 250 feet, widening thereafter uniformly to a width of 1,500 feet at a distance of 5,000 feet beyond the end of the primary surface. The</p>	<p>2. Turf Visual Runway</p> <p>This zone is shown on the AAA Drawing. It extends outward and upward beginning at the end of the runway, in accordance with the description of this zone in Section I.</p>	

<sup>49</sup> See 14 CFR, Part 77.25 (d)(1)(iv) and (2)(ii).

<b>ZONE</b>	<b>IMAGINARY SURFACE DESCRIPTION</b>	<b>ZONE DESCRIPTION</b>	<b>HEIGHT RESTRICTION</b>
	approach surface extends for a horizontal distance of 5,000 feet at a slope of 20 to 1 for all utility and visual runways.		
Primary	NPI Runway The NPI primary zone is 500 feet wide, centered on the runway, extending 200 feet from each end of each [paved] (see Footnote 3) runway. <sup>50</sup> The primary surface is immediately above the primary zone	1.Paved Runway The primary zone includes the runway and extends 200 feet out from the end of each runway.	The height limitation in this zone is very restrictive.
	TVR The TVR primary zone is 500 feet wide, centered on the runway, ending at the end of the runway (see Footnote 3) <sup>51</sup> . The primary surface is immediately above the primary zone.	2.Unpaved Runway The primary zone for an unpaved runway is the runway itself	
Transitional	NPI Runway The transitional surface is perpendicular to the runway centerline and its extension. It begins at the outer periphery of the approach surface and the primary surface and extends upward at	The transitional zone is immediately below the transitional surface.	Unless a structure or tree is a nonconforming use, or is allowed as a variance obtained through these regulations, it shall not penetrate the surface above this zone described in

<sup>50</sup> See 14 CFR, Part 77.25 (c)(3)(ii).

<sup>51</sup> See 14 CFR, Part 77.25 (c)(3)(i).

<b>ZONE</b>	<b>IMAGINARY SURFACE DESCRIPTION</b>	<b>ZONE DESCRIPTION</b>	<b>HEIGHT RESTRICTION</b>
	<p>a slope of 7 feet horizontally for each foot vertically from the sides of these two surfaces until it intersects the horizontal and conical surfaces<sup>52</sup>.</p> <p>TVR</p> <p>The transitional surface is perpendicular to the runway centerline and its extension. It begins at the outer periphery of the approach surface and the primary surface and extends upward at a slope of 7 feet horizontally for each foot vertically from the sides of these two surfaces until it intersects the horizontal and conical surfaces<sup>53</sup>.</p>		<p>Section I and shown on the AAA Drawing.</p>
Horizontal	<p>The horizontal zone lies beneath the horizontal surface, which is a horizontal plane 150 feet above the established airport elevation, the perimeter of which coincides with the perimeter of the horizontal zones shown on the AAA Drawing and as</p>	<p>The horizontal zone lies beneath the horizontal surface</p>	<p>Unless a structure or tree is a nonconforming use, or allowed as a variance obtained through these regulations, it shall not penetrate the surface of a plane 150 feet above the airport elevation within this zone as</p>

<sup>52</sup> See FN 5.

<sup>53</sup> See FN 5.

ZONE	IMAGINARY SURFACE DESCRIPTION	ZONE DESCRIPTION	HEIGHT RESTRICTION
	established by 14 CFR, Part 77.25 (a). The horizontal zone does not include the approach and transitional zones		shown on the AAA.
Conical	The conical zone commences at the periphery of the horizontal zone and lies below the conical surface. A conical surface slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone, for a horizontal distance of 4,000 feet. The surface begins at 150 feet above the airport elevation <sup>54</sup> .	The conical zone commences at the periphery of the horizontal zone and lies below the conical surface.	

**C. Areas**

Areas are designated in the AAA to address the concern the FAA and the Airport have about compatible uses or land around the Airport<sup>55</sup>.

**1. Explanation of Areas within the AAA**

These regulations describe both zones and areas, which overlap. If there is a conflict between allowable heights and allowable uses, the more stringent interpretation applies.

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<sup>54</sup> See FN 7.

<sup>55</sup> One of the paragraphs in the Airport Improvement Plan grant assurances reads as follows:

**Compatible Land Use.** It (airport owner) will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

**a. Airport Property Area**

This area, as shown on the AAA Drawing, encompasses that land owned, under easement, or right-of-way deed by Madison County and designated for airport use. The Airport is required to comply with FAA regulations and grant assurances within its own boundaries to remain eligible for federal funding assistance, including maximizing the use of non-aeronautical areas in order to provide revenue to the Airport.<sup>56</sup>

The airport property at the Big Sky (Ennis) and Twin Bridges Airports are designated on the AAA Drawings as such<sup>57</sup>. To the extent it has been acquired with Federal grant funds it is subject to any use restrictions required by the grant assurances.

**b. Runway Protection Area**

This area is the land delineated on the ground below the runway protection zones as defined by FAA Advisory Circular 150/5300-13, "Airport Design"<sup>58</sup>. The Runway Protection Areas for the runways at the Big Sky (Ennis) and Twin Bridges Airports are shown on the AAA Drawings.

**c. Limited Development Area (s)<sup>59</sup>**

These are areas surrounding the airport property but within the AAA.

**2. Land Use in Areas<sup>60</sup>**

The term "area" or "areas" as used in these regulations and as shown on sheets which are part of the AAA maps or drawings may differ from the zones set forth in Section IV.B. Regulation of land uses in these areas around the airport serves to protect the health and safety of the users of the airport. Well-established accident data indicate land uses which concentrate people should be avoided. Land use regulations protect persons and property in the vicinity of the airport from airport-related effects such as

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<sup>56</sup> All structures proposed on airport property shall be in full compliance with the ALP for the airport or shall be coordinated with the FAA.

<sup>57</sup> The boundaries of the airport property are fact specific and land use in this area depends upon the size of the property. To the extent the airport property includes the Airport Critical Area, the Runway Protection Area or the Limited Development Area, those land use restrictions must apply.

<sup>58</sup> The dimensions and height restrictions in this area depend upon the type of the runway.

<sup>59</sup> These areas are specific to a particular airport and should be decided upon by the governing body and the airport engineer. Land use in this limited area should be restricted to uses that are not noise sensitive; those that do not promote public assembly; those that do not have distracting lights, glare, smoke, provide electronic interference and those that are not bird attractants. The height restrictions depend upon the overlap of the zones.

<sup>60</sup> See 67-7-203 (2)(f), MCA.

high-probability accident areas, noise, fumes, vibrations, light or any other effects from normal and anticipated normal airport operations.<sup>61</sup>

Permitted uses are those uses which are allowed, and obtaining a permit for these uses pursuant to these regulations serves as notification to the Administration 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, and lights other than navigational aids that glare upward or shine on or in the direction of the airport and bird attractants such as solid waste disposal sites, lagoons and certain types of agriculture.<sup>62</sup> 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.

The uses permitted and conditionally permitted are shown in . Where conflicts exist, the more restrictive uses apply.

**a. Airport Property Area**

The airport property at the Big Sky (Ennis) and Twin Bridges Airports are designated on the AAA Drawings as such.<sup>63</sup> To the extent it has been acquired with Federal grant funds it is subject to any use restrictions required by the grant assurances. Residential use on airport property will not be allowed. However, exceptions may be considered by the Administration Officer, Airport Board and County Commissioners for residential use by airport managers or similar positions on a case by case basis in the interest of particular airport served.

**b. Runway Protection Area – Define area**

**c. Limited Development Areas<sup>64</sup> - Define area**

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<sup>61</sup> See 67-7-201 (6), MCA. High-probability accident areas are shown on page 38 and 39 of a 1999 Washington State Department of Transportation publication entitled Airports and Compatible Land Use.

<sup>62</sup> See 67-7-203 (2)(f)(iii)(iv)(v), MCA.

<sup>63</sup> The boundaries of the airport property are fact specific and land use in this area depends upon the size of the property. To the extent the airport property includes the Airport Critical Area, the Runway Protection Area or the Limited Development Area, those land use restrictions must apply.

<sup>64</sup> These areas are specific to certain airports and need to be delineated with the help of the airport engineer. The permitted and conditional uses are suggestions, only. Mobile homes, churches, schools, hospitals, nursing homes, daycare centers or other concentrations of people indoors or outdoors are considered incompatible land uses.

**Table 2 - Use Table by Area**

<b>USE TABLE BY AREA</b>			
<b>P = Use permitted outright C = Conditional use permit required</b>			
	Airport Protection Area	Runway Protection Area	Limited Development Area
General residential use on airport property will not be allowed. However, exceptions may be considered by the Administration Officer, Airport Board and County Commissioners for residential use by airport managers or similar positions on a case by case basis in the interest of particular airport served, subject to approval by the Administration Officer, Airport Board and County Commissioners.	C		
<b>aa).</b> Aircraft runways, taxiways, ramps and parking areas and fuel storage facilities	P		
<b>bb).</b> Aircraft operational facilities including, but not limited to, instrument landing systems, visual navigational aids and related equipment, communication facilities, weather service offices and equipment	P		P

**USE TABLE BY AREA**

**P = Use permitted outright    C = Conditional use permit required**

<p><b>cc).</b> Hangars and building which may be used for the storage or maintenance of aircraft, for airport snow removal, sweeping and other maintenance equipment and other aviation-related or ancillary activities</p>	<p>P</p>		
<p><b>dd).</b> Terminal buildings that may house offices of airline companies and other businesses and concessionaires</p>	<p>P</p>		
<p><b>ee).</b> 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</p>	<p>P</p>		
<p><b>ff).</b> Agriculture (other than forestry, livestock farms or other use which might create a wildlife attractant on or near the Airport), golf courses (excluding club houses), tourism information centers and museums</p>	<p>P</p>		<p>P</p>
<p><b>gg).</b> Flight schools, flying clubs and other schools or training facilities relating to</p>	<p>P</p>		

**USE TABLE BY AREA**

**P = Use permitted outright    C = Conditional use permit required**

aviation or air-related transportation			
<b>hh).</b> Offices and facilities for the operation and maintenance or air rescue, emergency and firefighting services	P		
<b>ii).</b> Aircraft maintenance, manufacturing and testing facilities	P		
<b>jj).</b> Offices and facilities of federal, state and local government entities	P		C
<b>aa).</b> Light commercial development	C		P
<b>bb).</b> Industrial development provided it does not create large areas of standing water, or generate smoke or steam which may reduce visibility at the airport	C		C
<b>cc).</b> 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	C		P
<b>dd).</b> Driver education		C	P

**USE TABLE BY AREA**

**P = Use permitted outright    C = Conditional use permit required**

test track			
<b>(ee).</b> Export facilities	C		P
<b>(ff).</b> Automobile racing facilities	C		P
<b>(gg).</b> Firearm and sport shooting ranges	C		C
<b>(hh).</b> Water storage tanks or towers that comply with height restrictions of an overlapping zone	C		P
<b>(ii).</b> 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	C		P
<b>(aa).</b> Agriculture consisting of grazing and growing of crops other than trees and those crops which might serve as a wildlife attractant		P	P
<b>(bb).</b> Below-ground utilities		P	P
<b>(aa).</b> Highways and roadways		C	P
<b>(aa).</b> Agriculture-related buildings within the height restrictions for an overlapping			P

**USE TABLE BY AREA**

**P = Use permitted outright    C = Conditional use permit required**

zone, provided those buildings do not house a concentration of people			
<b>(bb).</b> 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			P
<b>(cc).</b> Golf course with limited water hazards			P
<b>(dd).</b> 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			P
<b>(ee).</b> Veterinary clinic, animal pound or kennel provided steps are taken to guarantee the facility will not be a			P

**USE TABLE BY AREA**

**P = Use permitted outright    C = Conditional use permit required**

bird attractant			
(ff). 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			P
(gg). Water supply and treatment facility, provided the facility is not a bird attractant			P
(hh). Manufacturing and warehousing			P
(ii). Travelers' accommodation facilities [depending upon the boundaries of the area]			P
(jj). Retail and wholesale trade facilities			P
(kk). Roadways, automobile parking areas and railroads that comply with height restrictions of an overlapping zone			P
(aa). Power lines, provided their height does not exceed the height limitations for the overlapping zone			C

**USE TABLE BY AREA**

**P = Use permitted outright    C = Conditional use permit required**

(bb). Residential use if the residences are clustered with unbuilt 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.			C
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**Section V. Nonconforming Uses** <sup>65</sup>

It is not the purpose or 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 assumed nonconforming uses will not continue forever.<sup>66</sup> The following provisions are designed to reasonably address nonconforming uses or structures or trees.

**A. Documentation of uses and structures and trees**

The Administration Officer shall document, to the best of the Officer's ability and within a reasonable time after adoption of these regulations, those existing uses of land and the existence of structures or trees found in the AAA, with an estimate of the height of structures or trees.<sup>67</sup>

**1. Nonconforming uses of land**

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 requires a variance under these regulations.

**2. Nonconforming structures or trees**

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<sup>65</sup> See 67-7-209, MCA.

<sup>66</sup> See 67-7-203 (2)(g), MCA.

<sup>67</sup> See 67-7-203 (2)(h), MCA. Ideally this information would be provided to the airport engineer for incorporation into an Airport Layout Plan airspace drawing.

Existing structures or trees may continue to exist but their expansion or additional growth is prohibited unless a variance is obtained under the provisions of these regulations.

**B. Substantial damage to a nonconforming use**

“Substantial damage” occurs when 80% or more of a structure or tree is deteriorated or decayed or when that structure or tree has been torn down or destroyed.<sup>68</sup> The Administration Officer has the authority to determine substantial damage. A substantially damaged structure or tree, which is nonconforming, may not be reconstructed or replaced without first obtaining variance under the provisions of these regulations and then obtaining a permit.

**C. Maintaining nonconforming trees**

After identification of trees in place at the time these regulations become effective, the County may trim those trees, at its expense, to maintain their heights at the time of identification.<sup>69</sup>

**D. Marking nonconforming trees or structures**

If the County elects to install, operate and maintain, at its own expense, lights and markers necessary to warn pilots of a nonconforming use. The owners of those structures or trees shall allow this activity.<sup>70</sup>

**E. Residential land uses**

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 Administration Officer that the lots are within an adopted AAA within a reasonable time after its designation.<sup>71</sup> 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 VI. Amendment of Regulations**

These regulations may be amended by following the same procedure for adoption as set forth in Section 67-7-201 (5), MCA. If appropriate, other boards or commissions may be involved.<sup>72</sup>

**Section VII. Additional Provisions**

**A. Acquisition of property rights**

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<sup>68</sup> See 67-7-209 (1), MCA.

<sup>69</sup> See 67-7-209 (2), MCA.

<sup>70</sup> See 67-7-209 (3), MCA.

<sup>71</sup> See 67-7-209 (4), MCA.

<sup>72</sup> See 67-7-208, MCA.

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 Section 67-7-210, MCA, eminent domain and other sections found in Title 67.<sup>73</sup>

**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.<sup>74</sup>

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<sup>73</sup> This provision may be customized to name the applicable political subdivisions(s).

<sup>74</sup> See 67-7-211, MCA.

APPENDIX A – Madison County Airport Reference

Airport Affected Areas

The AAA perimeter for the Big Sky (Ennis) Airport is described by swinging 9,000-foot radius arcs from points on the extended Runway 16-34 centerline, 200 feet beyond each runway threshold, and connecting the adjacent arcs by lines tangent to those arcs. The state plan grid coordinates for these two centerpoints are N-384,615.953, E-1,415,328.524 and N-377,619.007, E-1,415,550.565.

The AAA for the Ennis Airport also includes the area outside the above described area but contained within a rectangle centered on the ultimate runway its perimeter being 10,200-feet from each runway end and 1-mile on either side of the centerline.

The AAA perimeter for the Twin Bridges Airport is described by swinging 14,000 radius arcs from points on the extended Runway 17-35 centerline, 200 feet beyond each runway threshold, and connecting the adjacent arcs by lines tangent to those arcs. The state plan grid coordinates for these two centerpoints are N-485,090.083, E-1,251,558.642 and N-478,709.673, E-1,251,058.272.

The AAA for Twin Bridges will omit those areas in sections 15, 21, 22, 27, 28 as they are outside the transitional surface area and more than 150-feet below the airport elevation. (300-feet below the overlying horizontal surface.) Structures exceeding 200-feet are still required to be evaluated through FAA Form 7460.????????????????????

Airport Elevations

The elevation of the Big Sky (Ennis) Airport is 5,404.0 feet.). The elevation of the Twin Bridges Airport is 4,792.0 feet.

Runways

The Big Sky (Ennis) Airport runway is 6,600-foot by 75-foot paved and oriented N03°23'25.4" E True:<sup>75</sup> The Twin Bridges Airport runways are 6,000-foot by 75-foot paved - oriented at N 02°26'09" E (True) and 3,400-foot by 110-foot turf oriented at N 83°35'09" E (True).

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<sup>75</sup> The local jurisdiction, with the help of the airport engineer, should customize the description of the particular runways.

APPENDIX B – Civil Airport Imaginary Surfaces