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Paula Robinson, Flathead County MT by NC 10/21/2014 10:43 AM

# ORDINANCE NO. 1745

**AN ORDINANCE ESTABLISHING NEW REGULATIONS FOR THE KALISPELL CITY AIRPORT AFFECTED AREA TO PROVIDE AIRSPACE PROTECTION AND LAND USE COMPATIBILITY WITH AIRPORT OPERATIONS AT THE KALISPELL CITY AIRPORT OPERATING AS A GENERAL AVIATION AIRPORT AND REPEALING ORDINANCE NO. 1579 AND DECLARING AN EFFECTIVE DATE.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KALISPELL, MONTANA, AS FOLLOWS:

**SECTION 1.** *TITLE.* This ordinance shall be known as the Kalispell City Airport (KCA) Affected Area Ordinance.

**SECTION 2.** *PURPOSE AND INTENT.* The purpose of this ordinance is to provide both airspace protection and land use compatibility with airport operations at the Kalispell City Airport. This ordinance, through establishment of airport zones and corresponding regulations, provides for independent review of development proposals in order to promote the public interest in safety, health, and general welfare in Flathead County. Therefore, the City of Kalispell and Flathead County deems it necessary to regulate uses of land located within or near the traffic patterns of the airport through regulation of height of structures and objects of natural growth, and through regulation of land uses within the airport property and runway protection zones. There is hereby adopted and established the official airport affected area ordinance pursuant to the authority conferred on the City of Kalispell and Flathead County, Montana, consistent with Title 67, Montana Code Annotated.

**SECTION 3.** *DEFINITIONS.* For the purposes of this ordinance, the following definitions are applicable:

AIRPORT. Kalispell City Airport (KCA).

AIRPORT ELEVATION. The elevation of the highest point on the airport's established runway measured in feet above mean sea level (MSL) and based on the North American Vertical Datum of 1988 (NAVD 88). KCA airport elevation is 2935.7 feet.

AIRPORT HAZARD (Obstruction). Any structure, object of natural growth, or use of land that would exceed the federal obstruction standards as contained in 14 CFR Part 77 and which obstructs the airspace required for flight of aircraft in taking off, maneuvering or landing at an airport or is otherwise hazardous to taking-off, maneuvering or landing of aircraft, and is unpermitted, or for which a variance has not been granted.

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

HEIGHT. For the purpose of determining the height limitations in all zones established by this ordinance and shown on the attached Kalispell City Airport maps, the datum shall be mean sea level elevation (NAVD 88) unless otherwise specified.

NONCONFORMING USE. Any structure, tree, natural growth or use of land, which is inconsistent with the provisions of this ordinance or amendment thereto.

NONPRECISION INSTRUMENT (NPI) RUNWAY. A runway having, or planned to have, an authorized instrument approach procedure without vertical path guidance. No runways are designated to ultimately become a NPI runway for KCA.

VISUAL RUNWAY. A runway without an existing or planned authorized instrument approach procedure. At KCA, Runway 13/31 is designated as a visual runway.

RUNWAY. The defined and prepared surfaces of an airport, suitable for landing or taking off by airplanes. KCA currently has one paved runway designated as Runway 13/31.

STRUCTURE. An object or structure constructed or installed by man, including but not limited to buildings, towers, smoke stacks, and overhead transmission lines.

THRESHOLD. The beginning of that portion of the Runway available for landing.

TREE. Any vegetation or other naturally growing object.

UTILITY RUNWAY. A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.

AIRPORT ZONING DISTRICT. Area as described within this document and shown on attached maps that this zoning ordinance shall apply.

**SECTION 4.** *AIRPORT ZONES.* The City of Kalispell and Flathead County hereby adopts the following zones for the Kalispell City Airport.

Airport Zoning District (See Sheet A),
Airport Airspace Zones (See Sheets B and B-1),
Airport Land Use Zones (See Sheet C), and
Airport Influence Notification Zones (See Sheet D)

The boundaries of these zones shall be established by this ordinance and included in the official City/County zoning maps. All development applications for land within these zones of influence shall comply with this ordinance, as well as complying with applicable underlying zoning district requirements. Where a zone overlays a portion of a property, only that portion within the zone shall be affected by the zone regulations.

A. Airport Airspace Zones, Airport Land Use Zones, and Regulations

1. Establishment

a. Airport Airspace Zones — See **Sheet B and B-1**

(1) Intent. These zones are intended to prevent the creation or establishment of airport hazards by regulating and restricting the height of structures and objects of natural growth in the vicinity of KCA.

(2) Zones. Certain zones are established which include all of the land lying within the primary zones, horizontal zone, conical zone, visual approach zones, transition zones and *Airport Critical Area.* Such areas and zones are shown on attached **Sheet B**, Airport Airspace Zones for the airport, consisting of one sheet prepared by the City of Kalispell, a copy of which is made a part hereof by reference. The various zones are defined and described as follows:

(a) Primary Zone. A *Primary Zone* is hereby established as the area extending equidistantly on either side the runway centerline with total width of 250 feet. The *Primary Zone* extends 200 feet beyond each runway end.

(b) Horizontal Zone. A *Horizontal Zone* is hereby established as the area within a perimeter established by swinging 5000 foot arcs from points 200 feet beyond the existing runways' extended runway centerlines and then connecting the arcs by lines tangent to those arcs. When an arc is encompassed by tangents connecting two adjacent arcs, the arc encompassed must be disregarded in delineating the perimeter of the horizontal surface.

(c) Conical Zone. A *Conical Zone* is hereby established as the area that commences at the periphery of the *Horizontal Zone* and extends outward from there a distance of 4000 feet. The *Conical Zone* does not include the *Visual Approach* and *Transition Zones*.

(d) Visual Approach Zones. A *Visual Approach Zone* is hereby established at each end of the visual runways. The areas enclosed by each trapezoidal shaped *Visual Approach Zone* shall have a width of 250 feet at a distance of 200 feet beyond each end of the runway, widening thereafter uniformly to a width of 1250 feet at a distance of 5200 feet beyond each end of the runway with its center line being the continuation of the center line of the runway. At KCA, Runway 13/31 is designated as a visual runway.

(e) Transition Zones. *Transition Zones* are hereby established adjacent to each *Visual Approach Zone* and symmetrically located on each side of the *Primary Zone.* The widths are variable as shown on **Sheet B**, Airport Airspace Zones.

(f) Airport Critical Area. The *Airport Critical Area* is hereby established as an area encompassing the *Primary Zone*, a portion of the *Visual approach Zones* and *Transition Zones* along an elevation line that is fifty feet above the airport elevation.

(3) Height Restrictions

(a) Height Limitations. Except as otherwise provided in this ordinance, no structure or tree shall be erected, altered, allowed to grow, or maintained in any zone created by this ordinance to a height in excess of the height limitation established for such zone. Such height limitations are established for each of the zones as follows:

i) *Primary Zone.*

a) Objects greater than 3 inches above grade shall be allowed only when constructed on low impact resistant supports with the frangible point no higher than 3 inches above grade.

b) Objects that need to be located in this area because of their function shall be constructed at the lowest practical height.

ii) *Horizontal Zone.* 150 feet above the airport elevation.

iii) *Conical Zone.* 150 feet above the airport elevation plus 1 foot in height for each 20 feet of horizontal distance measured from and normal to the periphery of the *Horizontal Zone.*

iv) *Visual Approach Zones.* For each runway end, the elevation of the threshold at centerline plus 1 foot in height for each 20 feet measured perpendicularly away from the end of the *Primary Zone*, extending 5,000 feet.

v) *Transition Zones.* Begin at an elevation equal to the elevation of the nearest point on the runway centerline, and extend outward and upward at right angles to

the runway centerline or extended runway centerline, increasing 1 foot in height for each 7 feet away from the sides of the *Primary Zone* and from the sides of all *Visual Approach Zones*.

vi) *Airport Critical Area.* The area as called out on the attached **Sheet B and B-1**, Airport Airspace Zones, consisting of an elevation line, on the 14CFR Part 77 surfaces, 50-foot above the airport elevation, on all approach and transition surfaces.

(b) Conflicting Regulations. When an area is covered by more than one height limitation, the more restrictive shall prevail.

(c) Minimum Review Height. Nothing in this ordinance shall be construed as prohibiting the growth, construction or maintenance of any tree or structure to a height:

i) equal to or below the airport elevation.

ii) up to fifty (50) feet above the surface of the land except the area delineated on **Sheet B and B-1**, Airport Airspace Zones as "*Airport Critical Area.*"

b. Airport Land Use Zones — See **Sheets C**

(1) Intent. These zones are intended to overlay any other zoning districts and regulations comprising or pertaining to areas to which it is applicable, so as to prevent undue negative interaction between aviation activities associated with the Airport and the surrounding community. It is intended to protect the lives and property of users of the airport and of occupants of land in its vicinity by restricting "places of public assembly" within these zones. These zones are intended to preserve the utility of the airport and the public investment therein.

(2) Zones. Development zones are hereby established within the Airport Land Use Zones. Such areas and zones are shown on attached **Sheet C**, Airport Land Use Zones, prepared by the City of Kalispell, a copy of which is made a part hereof by reference. The various zones are defined and described as follows:

(a) Airport Runway Protection Zones. *Airport Runway Protection Zones* are hereby established as trapezoidal areas centered about the extended runway centerline. *Runway Protection Zones* are sized based on aircraft expected to be served and approach visibility minimums.

Using FAA Airport Design manual criteria (AC 150/5300-13A), KCA's Runway 13/31 is categorized as Aircraft Approach Category A & B, Design Group I with visual approach visibility minimums. Each runway shall have *Runway Protection Zones* that begin 200 feet beyond the threshold and have a width of 500 feet, widening thereafter uniformly to a width of 700 feet at a distance of 1,200 feet beyond the runway threshold, with its center line being the continuation of the centerline of the runway.

(b) Airport Zone/Airport Property. The *Airport Zone* is hereby established as the land area owned by the City of Kalispell and held as KCA, exclusive of the airport *Runway Protection Zones*.

(3) Use Restrictions

(a) Airport *Runway Protection Zones*.

i) Permitted uses:

a) Agriculture (other than forestry; or livestock if also encompassed by Municipal *Airport Zone*)

ii) Conditional uses:

a) Roadways, automobile parking areas, and railroads that satisfy height restrictions.

iii) Prohibited uses:

a) Residences.

b) Educational centers (including all types of primary and secondary schools, pre-schools, child care facilities).

c) Hospitals, medical inpatient treatment facilities, nursing/convalescent home facilities.

d) Places of Worship.

e) Places of public assembly not previously listed.

f) Fuel handling and storage facilities.

(b) Municipal *Airport Zone*/Airport Property.

i) Permitted uses:

a) Aircraft runways, taxiways, ramps, parking areas and fuel storage facilities.

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.

c) Hangars and buildings which may be used for the storage or maintenance of aircraft; airport snow removal, sweeping and other maintenance equipment, and other aviation-related or ancillary activities.

d) Terminal buildings, which may house offices of airline companies, and other businesses and concessionaires.

e) Offices and facilities for airport management, air charter, air taxi, crop spraying, aircraft sales or rentals, and air cargo processing facilities.

f) Agriculture (other than forestry or livestock), golf courses, tourism information centers and museums.

g) Flight schools, flying clubs and other schools or training facilities relating to aviation or air-related transportation.

h) Offices and facilities for the operation and maintenance of air rescue, emergency and firefighting services.

i) Aircraft maintenance, manufacturing, and testing facilities.

j) Offices and facilities of Federal, State and local government entities.

ii) Conditional Uses. The following uses are conditional uses in this zone and are subject to the restrictions of Section 4.A. 1.a (3), Use Restrictions, and the permit requirements of Section 4.A.3, of this Ordinance.

a) Light commercial development.

b) Industrial development.

c) Residential Airpark.

d) Outdoor baseball/softball facilities and other public or private recreational uses.

e) Driver education test track.

f) Live animal export facilities.

g) Automobile racing facilities.

h) Firearm and sport shooting ranges.

i) Boarding of livestock or other animals by governmental agencies.

j) Municipal water storage tanks or towers.

k) Businesses not located in the terminal building, and those uses, which are sanctioned by the Airport Board, but have not been heretofore mentioned.

l) Under unique, extenuating circumstances, a temporary use, for up to one year, that complies with Uniform Building and Fire Codes.

iii) Prohibited uses:

a) No other use, other than those explicitly allowed above.

(4) Additional Use Restrictions

(a) Notwithstanding any other provision of this ordinance, no use may be made of land within any zone established by this ordinance that creates an electromagnetic effect, makes it difficult for operators or aircraft to distinguish between airport lights and others, results in glare in the eyes of operators of aircraft using the airport, impairs visibility in the vicinity of the airport, attracts flocks of birds or otherwise endangers the landing, taking off, maneuvering, or operating of aircraft.

2. Administrative Entities

a. Permitting Authority.

(1) The City of Kalispell is hereby designated and charged with the duty of administering the permitting process for the City/County.

b. City of Kalispell Board of Adjustment

(1) Pursuant to Title 67 Aeronautics, Chapter 7 — Airports Zoning Act and Title 76 Land Resources and Use, Chapter 2 - Planning and Zoning, MCA, the Kalispell City Board of Adjustment shall possess and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the City of Kalispell in the enforcement of this ordinance.

(b) To hear and decide special exceptions to the provisions of this ordinance upon which the City of Kalispell under such provisions may be required to pass.

(c) To hear and decide specific variances.

3. Administrative Procedures

a. Procedures for Obtaining an Airport Construction Permit.

(1) Construction of any building, structure or object within the Airport Zoning District that is:

(a) within the *Airport Critical Area* and *Airport Runway Protection Zones* (as called out on the attached **Sheet B and B-1**, Airport Airspace Zone

(b) planned to exceed fifty feet (50') in height above the surface of the land

(c) planned to be constructed within the *Conical Zone* above 3,035.7 feet (in the area of surface penetration as called out on attached **Sheet B**, Airport Airspace Zones) will require a permit.

(2) The permit will be obtained from the City of Kalispell Airport Manager.

b. Criteria for Granting Permits.

(1) Permits will not be granted for buildings, structures or objects that violate any Airport Airspace Zones or Land Use Zones requirements.

(2) No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure, or tree to be made or become higher, or become a greater hazard to air navigation, than it was on January 1, 2006, or than it is when the application for a permit is made. No permit shall be granted that would allow the establishment or creation of any use or structure, which does not comply with Montana State Air Pollution Standards. Except as indicated, all applications for such a permit shall be granted.

c. Appeals

(1) Denied Airport Construction Permits may be appealed within 15 days of the decision rendered.

(2) Appeals, in the form of an application for variance, shall be heard by the Kalispell City Board of Adjustment.

(3) Appeals may be filed by the applicant, any person aggrieved, taxpayer affected, or governing body of a political subdivision.

d. Variances.

(1) Procedures for Obtaining an Airport Obstruction Variance.

(a) Any person desiring to erect or increase the height of any structure, or to permit the growth of any tree, or to use his property, in a manner not in accordance with the provisions of this ordinance, may apply to the Board of Adjustment for a variance. The request may be approved, approved with conditions, or denied.

(b) Prior to variance requests being scheduled for consideration by the Kalispell City Board of Adjustment, the applicant shall submit the following:

i) A copy of the notice of proposed construction form submitted to the FAA:

ii) A final Determination issued by the FAA based on its review of the Notice of Proposed Construction submitted in accordance with 14 CFR Part 77;

iii) A valid aeronautical evaluation (may consist of the evaluation performed by the FAA);

iv) Comments from the Aeronautics Division of the Montana Department of Transportation (MAD) or evidence that the MAD has made no comments during its required 45 day comment time frame. Said evidence shall include a return receipt showing that the MAD comment time frame has been exceeded.

(2) Criteria for Granting an Airport Obstruction Variance. Where the FAA has reviewed the proposed development and determined its construction would exceed an Obstruction Standard of 14 CFR Part 77, the Board of Adjustment may grant an Airport Obstruction Variance for a proposed development. Such a variance may be granted if the Board determines that a literal enforcement of the regulations would result in practical difficulty or unnecessary hardship and where the relief panted would not be contrary to the public interest (i.e. the development can be accommodated in navigable airspace without adverse impact to the airport or aviation operations) but would do substantial justice and be in accordance with the spirit of this section provided that:

(a) If such action is deemed advisable to effectuate the purpose of this ordinance and be reasonable in the circumstances, any permit or variance granted may be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to aircraft pilots the presence of an obstruction in accordance with the standards of FAA Advisory Circular Number 70/7460-1K, as it may be amended. Where such marking or lighting is required, such requirement shall be satisfied prior to the issuance of a Certificate of Occupancy (CO) for the affected structure.

(b) FAA determines the aeronautical evaluations submitted are valid.

(c) Consideration is given to all of the following:

i) The nature of the terrain and height of existing structures.

ii) Public and private interests and investments.

iii) The character of flying operations and planned development of airports.

iv) FAA designated federal airways.

v) Whether construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport.

vi) Technological advances.

vii) The safety of persons on the ground and in the air.

viii) Land use density.

ix) The safe and efficient use of navigable airspace.

x) The cumulative effects on navigable airspace of all existing structures, proposed structures identified in the applicable jurisdictions' comprehensive plans, and all other known proposed structures in the area.

xi) FAA determinations and results of aeronautical studies conducted by or for the FAA.

xii) MAD comments and recommendations, including MAD findings relating to MCA chapter 67.

xiii) Comments and recommendations from local airport authorities.

xiv) Other testimony and findings of aviation operations and safety experts.

d. Judicial Review. Any person aggrieved, or any taxpayer affected, by any decision of the Kalispell City Board of Adjustment, may appeal to the District Court as provided in Section 67-6-206 and 76-2-327, MCA.

4. Enforcement

a. Nonconforming Uses.

(1) In the event that a nonconforming structure has been determined by the City to be an Airport Obstruction, the City shall have the option, through the statutory condemnation procedures set forth in MCA Title 70, chapter 30, to require the removal or alteration of the nonconforming structure. Otherwise, nothing herein shall require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to such adoption and was diligently pursued.

(2) Replacement. Whenever a nonconforming structure or tree has been abandoned or has been torn down, physically deteriorated, decayed, damaged or otherwise destroyed, to an extent of more than eighty percent (80%), such structure or tree shall not be reconstructed, repaired or replaced in a manner exceeding any applicable height limitation or otherwise deviating from the provisions of this ordinance, and no permit allowing the same shall be issued hereunder without the prior granting of a variance.

b. Conflicting Regulations. Where an area or location is subject to more than one height limitation under this ordinance, or where a conflict exists between any of the regulations or limitations prescribed by this ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent or restrictive limitation or requirement shall govern.

c. Penalty -- injunction. Each violation of this ordinance or of any regulations, orders, or rulings promulgated or made pursuant to this ordinance shall constitute a misdemeanor and shall be punishable by a fine of not more than $500 or imprisonment for not more than 6 months or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition the political subdivision or agency adopting zoning ordinances under this

ordinance may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this ordinance or of airport zoning ordinances adopted under this ordinance or of any order or ruling made in connection with their administration or enforcement; and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this ordinance and of the regulations adopted and orders and rulings made pursuant thereto.

B. Airport Influence Notification Zones and Regulations

1. Intent. These zones are intended to overlay any other zoning districts and comprising or pertaining to areas to which it is applicable, so as to prevent undue negative interaction between aviation activities associated with KCA and the surrounding community. It is intended to notify potential property purchasers in the vicinity of the existence of the airport, associated noise, and activities. These zones are intended to preserve the utility of the airport and the public investment therein.

2. Airport Influence Notification Zones. In order to effectuate the intent and provisions of this ordinance, there is hereby created and established the *Airport Influence Notification Zones*. These zones are defined as shown on attached **Sheet D**, Airport Influence Notification Zones. The minimum size by state statute is 10,000' from runway ends and 1 mile either side of runway centerline (MCA 67-4-201). A real estate disclosure statement, adhering to the form of the statement below, shall be provided to and signed by each purchaser of property within the *Airport Influence Notification Zones*, with the word "Approach" included for a property that lies in whole or part within the designated *Airport Influence Notification Zone*-Approach. The seller or closing agent shall obtain the buyers' signature upon the following certification at closing:

*"The tract of land situated at _____ in Flathead County, Montana, consisting of approximately acres, which is being conveyed from _____ to _____ lies within Kalispell City Airport Influence Area (or Approach) and as such, may be subjected to noise, vibration, chemicals, odors, hours of operation, and other associated activities.*
*CERTIFICATION*

*The undersigned purchaser(s) of said tract of land certify(ies) that (he/they) (has/have) read and understand(s) the above disclosure statement and acknowledge(s) the pre-existence of the above named airport, as well as the noise and activities associated with the operation of said airport.*

_____ _____
*Seller* *Buyer*

*Sworn to and subscribed before me at:*

_____
*(Notary Public)*
*Date:* _____

**SECTION 5.** Ordinance No. 1579 is hereby repealed.

**SECTION 6.** This Ordinance shall become effective thirty (30) days from and after the date of its final passage and approval.

PASSED AND APPROVED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR OF THE CITY OF KALISPELL THIS 20TH DAY OF OCTOBER, 2014.

Mark Johnson
Mayor

ATTEST:

Theresa White
City Clerk

CITY OF KALISPELL
CORPORATE SEAL
MONTANA
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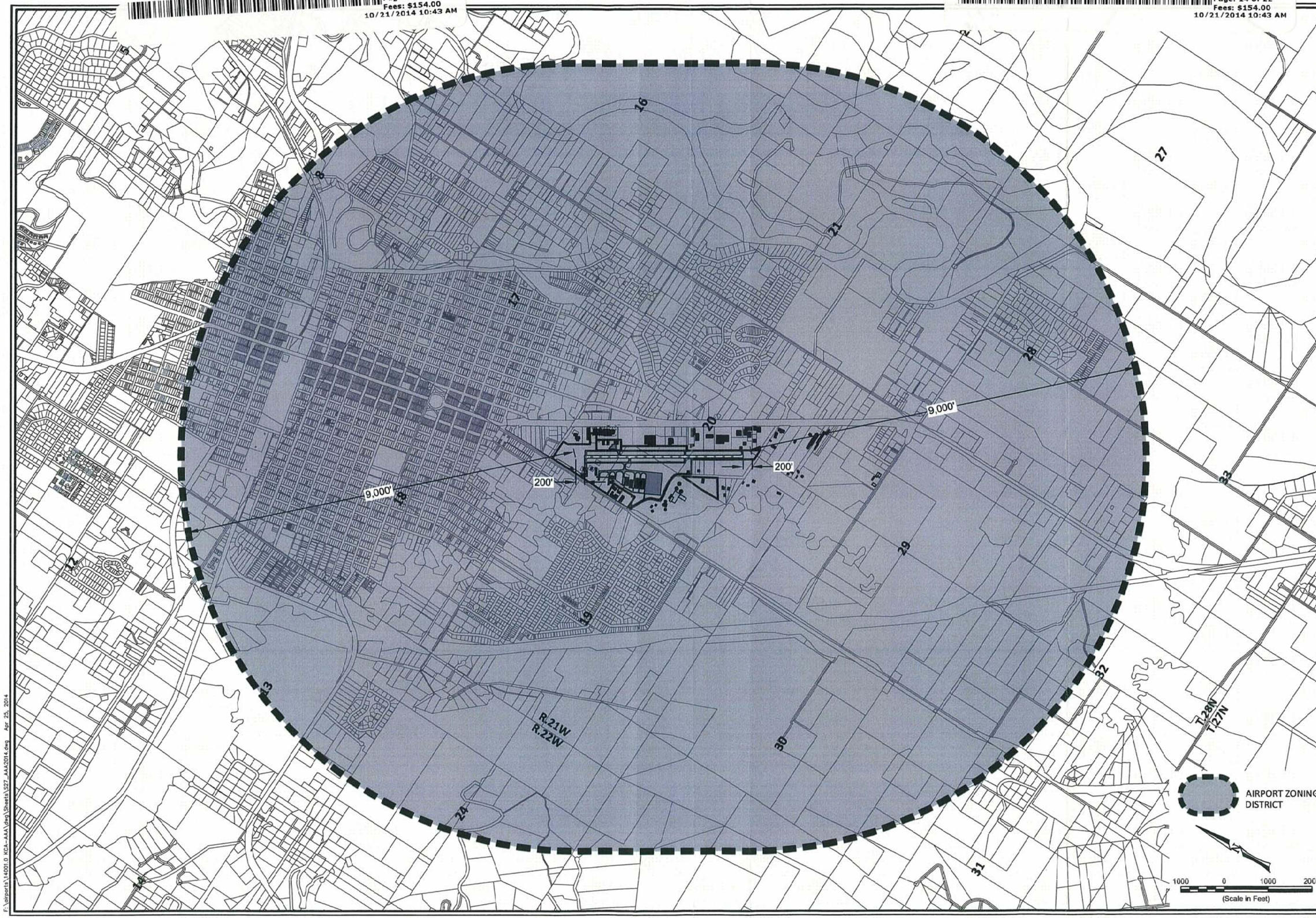


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N. GEARY — DRAWN BY
R. MITCHELL — CHECKED BY
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PROJECT TITLE
**KALISPELL CITY AIRPORT**
*Airport Affected Area*

SHEET TITLE
**AIRPORT ZONING DISTRICT**

SHEET
**A**

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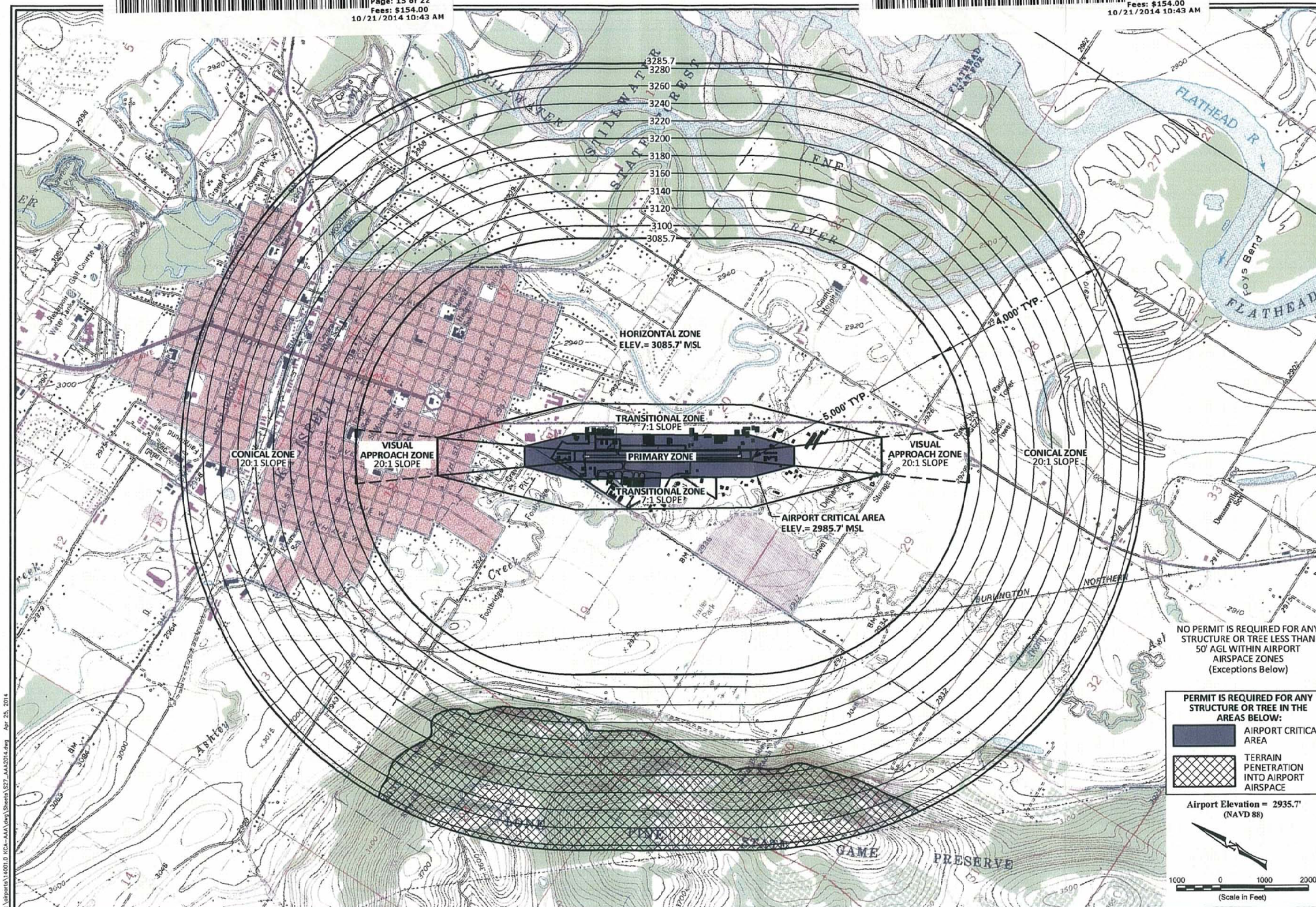


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PROJECT TITLE
**KALISPELL CITY AIRPORT**
*Airport Affected Area*

SHEET TITLE
**AIRPORT AIRSPACE ZONES**

SHEET
**B**

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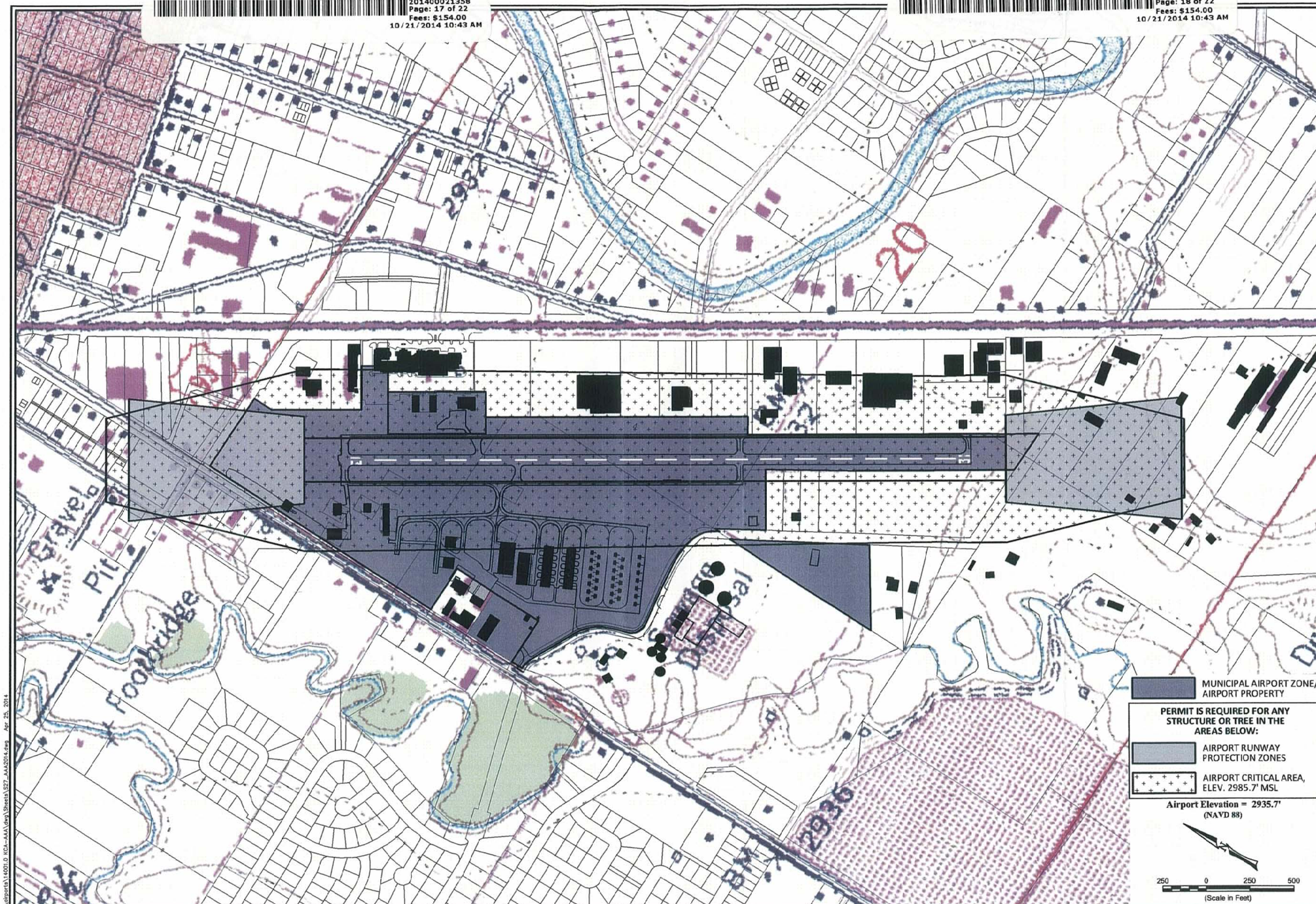


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PROJECT TITLE
**KALISPELL CITY AIRPORT**
*Airport Affected Area*

SHEET TITLE
**AIRPORT AIRSPACE ZONES**

SHEET
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DESIGNED BY

MAY 2014
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PROJECT TITLE
**KALISPELL CITY AIRPORT**
*Airport Affected Area*

SHEET TITLE
**AIRPORT LAND USE ZONES**

SHEET
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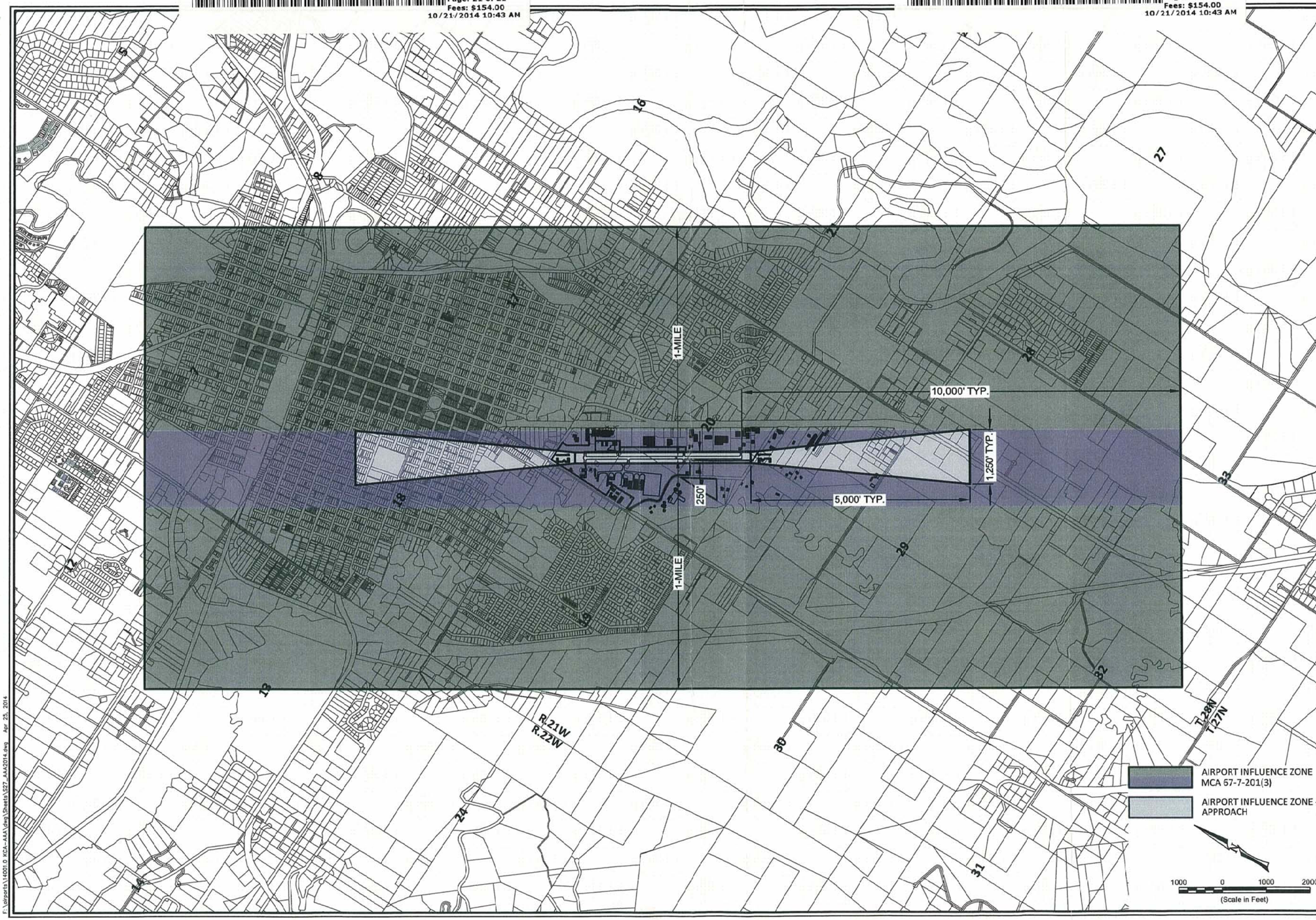


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PROJECT TITLE
**KALISPELL CITY AIRPORT**
*Airport Affected Area*

SHEET TITLE
**AIRPORT INFLUENCE NOTIFICATION ZONES**

SHEET
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