

May 29, 2026

**SENT VIA EMAIL**

The Board of County Commissioners  
Yellowstone County, Montana  
2825 3rd Avenue North, Room 309  
Billings, MT 59101

**RE: County Zone Change 735 (1232 Johnson Lane from A to I2)  
Applicant's Response to Comments**

Dear County Commissioners:

Please accept this letter on behalf of Par Montana, LLC (“Par Montana”), the applicant for County Zone Change 735, for your consideration prior to and during the final public hearing scheduled for Tuesday, June 2, 2026. We appreciate the professionalism and efficiency of the Planning Staff throughout this process. During the public meeting on April 9, 2026 and in letters received by the Planning Department on April 9 and May 14, 2026, concerns were raised regarding rail traffic, transportation routes, and constitutional rights. Those concerns are both factually and legally erroneous and do not provide a basis for denial of the requested zoning change. A decision to approve or deny any zoning change must be based on the eleven decision criteria specified in section 27-1627 of the Yellowstone County Zoning Code. Evaluation of each of those eleven criteria supports approval of the requested zone change.

As noted by the Planning Staff, the concerns raised “are not directly applicable to the zone change request under consideration.”<sup>1</sup> The Planning Staff is correct that “[c]onsiderations related to specific site design, layout, or operational characteristics of potential future

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<sup>1</sup> See page 1 of the Staff Recommendation prepared for the Consolidated Yellowstone County Zoning Commission, May 14, 2026 meeting, presented by Mr. Ben Jackson, Planner I.

development are outside the scope of the current zoning decision.”<sup>2</sup> As explained more fully below, the record before you addresses the concerns and supports approval of the application for County Zoning Change 735 (1232 Johnson Land from A to I2).

### **I. Professional Planning Staff Find No Violations of Yellowstone County Zoning Code, No Undue Burden, and No Additional Infrastructure is Required to Support I2 Designation.**

Commenters speculated that the zoning change would increase railroad traffic to extreme levels, hinder traffic, and create a safety risk due to blocked property access. Although portrayed as violations of zoning codes, the speculations are not true and provide no basis for finding any violation of the Yellowstone County Zoning Code. The official record and the Planning Staff recommendation directly contradict the commenter's position.

Following an exhaustive review of the proposal, the Planning Staff issued an unconditional recommendation of approval for County Zone Change 735, concluding that the application satisfies all eleven regulatory decision criteria required by the Yellowstone County Zoning Code. Importantly, Planning Staff concluded that traffic and access impacts under the Heavy Industrial (I2) designation will be minimal or negligible:

- **Criterion 3 (Public Health, Safety, and General Welfare):** Planning Staff verified that the subject property is directly accessed via existing public roadways and that “no additional transportation infrastructure is required”<sup>3</sup> to change the zoning to Heavy Industrial.
- **Criterion 4 (Adequate Infrastructure):** The staff report explicitly confirms that the property is situated within a corridor already well-served by infrastructure perfectly scaled for heavy industrial utility, ensuring that the development will place no undue burden on public facilities or regional services. One commenter erroneously interprets Section 27-601(B) as requiring two or more major transportation routes directly connected to each parcel zoned as Heavy Industrial. In reality, Section 27-601(B) requires that “[h]eavy industrial sites will have ready access to necessary utilities and at least two or more major transportation routes.” The regulation does not say access from the edge of the parcel directly onto the major transportation route. The phrase “ready access” is reasonably interpreted to mean convenient access, such as from Johnson Lane to Interstate 90 and the Frontage Road—which this parcel clearly has, as shown on the maps submitted with the application.
- **Criterion 6 (Motorized and Non-Motorized Transportation):** Staff formally observed that the site is located in a district historically and structurally designed to accommodate heavy industrial traffic flow. Furthermore, any future build-out remains speculative at

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*, p. 3.

this point and strictly bound to Yellowstone County Public Works access standards. One commenter alleges issues related to a potential additional railroad crossing north of the current crossing on Johnson Lane. But railroad crossings of public roadways are separately regulated and are not subject to regulation in the course of approving this zoning change. Railroad traffic is also separately regulated at both the federal and state levels. The law does not support the commenter's contention that the requested zoning change be denied based on speculative harm to motorized travel.

## II. Approval of the Requested Zoning Change is NOT a "Taking".

A commenter also claimed that approval of the zoning change would equate to a constitutional "taking," based on speculations about traffic flow, but such a claim is not defensible.

- **The Absence of Government Action for Public Use**

A constitutional taking requires that private property be taken or damaged by a state actor *for public use* without just compensation. A standard map amendment (zoning change) requested by a private entity for private commercial operations does not constitute a state-initiated exercise of eminent domain, nor does it convert private property to public infrastructure.

- **Negligible and Incidental Access Restrictions Do Not Constitute a Taking**

Under Montana law, an unconstitutional impairment of access only arises if a landowner suffers a total, permanent, or highly substantial destruction of their property's physical ingress and egress. The county's professional planning staff established that traffic and access impacts from this change will be negligible and compliant with county road standards. Periodic, temporary traffic stops associated with standard rail car logistics are a common, incidental inconvenience shared by all industrial operators in a rail-corridor. This does not constitute a compensable taking of a property right.

- **Zoning Changes Do Not Deprive Neighbors of Economically Viable Land Use**

A regulatory taking occurs when a government regulation deprives a property owner of all economically beneficial or productive use of *their own* land. Approving CZC 735 modifies the zoning classification of Par Montana's property alone. It does not impose any new regulatory restrictions, physical invasions, or legal prohibitions on PC Land's property or its current commercial activities.

### III. Regulatory and Geographical Compatibility of the District

The record in this matter establishes that the site is uniquely situated for an I2 designation:

**To the West**, the property immediately abuts the existing Par Montana Oil Refinery, which is already zoned Heavy Industrial (I2) and constitutes a more intensive land use than a logistics facility.

**To the East**, the land borders an active asphalt manufacturing plant and miscellaneous heavy industrial operations, also zoned I2.

**To the South**, the property sits adjacent to an established, active rail yard facility.

The subject parcel represents an agricultural island completely surrounded by pre-existing heavy industrial operations, which looks like and functions as illegal spot zoning. Granting this change creates a uniform regulatory framework that matches the established industrial character and growth patterns designated in the Lockwood Growth Policy.

### IV. Conclusion

Par Montana has undertaken open communication and technical coordination with Yellowstone County Public Works, local emergency services, and our commercial neighbors to ensure that eventual site operations maintain the safety and integrity of Johnson Lane. The question before the Board is strictly whether a Heavy Industrial (I2) designation is the most appropriate, orderly, and policy-compliant use of this specific tract. Given that the county's professional planning staff has formally validated the project's adherence to all eleven regulatory decision criteria and issued a recommendation for approval, we respectfully request that the Board of County Commissioners adopt the staff's findings and formally approve County Zone Change 735.

Thank you for your time, leadership, and careful consideration of this matter.

Sincerely,

CROWLEY FLECK PLLP

*/s/ Victoria A. Marquis*

Victoria A. Marquis

cc: Karen Husman, Zoning Coordinator  
Peter B. Taylor, Lund Law, PLLC