



Community Development and Planning

Lewis and Clark County

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STAFF REPORT

Date: October 15, 2018
To: Board of County Commissioners
From: Lindsay A. Morgan, Planner III

RE: Proposed Military Affected Area (File No. ZONE 2018-0011), Fort Harrison Rural Growth Area Zone District (File No. ZONE 2018-0012), and Fort Harrison Urban Growth Area Zone District (File No. ZONE 2018-0013)

County Commission Hearing: October 18, 2018 --- 9:00 a.m.

I. EXECUTIVE SUMMARY.

The requests before you are the culmination of much work completed by many during the past 6 years. In 2012, grant monies were awarded for the purpose of studying the impacts of development to both Fort Harrison and the Limestone Hills Training Area. These study efforts, known as the Fort Harrison and Limestone Hills Training Area Joint Land Use Study (JLUS), set the stage for a myriad of meetings with the public, our military partners, and other public jurisdictions. After many public meetings and listening sessions, the three above-referenced proposed documents (specific to Fort Harrison) were drafted and brought forward to the Helena-Lewis and Clark County Consolidated Planning Board (PB) this past summer. The PB recommended that the three drafts be conditionally approved. The drafts before you have been revised to satisfy the approval condition by the PB.

II. REQUEST.

Approval of the following:

1. Fort Harrison Compatibility Area (FHCA), also known as the Military Affected Area (MAA), Regulations; and
2. Fort Harrison Rural Growth Area (FHRGA) Zone District Regulations; and
3. Fort Harrison Urban Growth Area (FHUGA) Zone District Regulations.

III. STAFF RECOMMENDATION.

Approval.

IV. LOCATION:

The proposed FHCA boundary, as heard by the PB (Exhibit D), consisted of approximately 20,722 acres or 32.38 square miles located around Fort Harrison. The boundary was drafted at approximately one mile from the boundary of the Fort. Included wholly within the FHCA boundary are the proposed FHRGA and FHUGA (Part 2) Zone Districts.

V. STAFF ANALYSIS / BACKGROUND.

The JLUS was a cooperative land use planning effort between Lewis and Clark County, Broadwater County, the City of Helena, the City of Townsend, and the Montana National Guard/Fort Harrison to develop a set of recommendations that would prevent or mitigate encroachment in areas surrounding Fort Harrison and the Limestone Hills Training Area. This JLUS was completed in December of 2014, and one of the recommendations was to establish an MAA around Fort Harrison. This new area would create a broader framework for making sound planning decisions around military installations; more accurately identify areas that can affect or be affected by military missions; protect public health, safety, and welfare; protect military missions; create a compatible mix of land uses; and promote an orderly transition and rational organization of land use around military installations.

In March of 2017, Lewis and Clark County updated the Lewis and Clark County Growth Policy – Helena Valley Area Plan to include a Chapter 7 regarding the JLUS. The next step in implementing the recommendations of the JLUS is to establish regulations in compliance with the Growth Policy.

In August of 2017, Staff presented DRAFT MAA and Zone District Regulations to the PB. At the end of this meeting, the PB recommended approval of the document as presented by Staff.

In September of 2017, a Staff Report (Exhibit G) was distributed to the Board of County Commissioners (BoCC) outlining the criteria for establishing proposed MAA and Zone District Regulations. Five public hearings regarding those DRAFT Regulations were held by the BoCC between September and December of 2017. At the conclusion of the final hearing on December 7, 2017, the BoCC directed Staff to separate the MAA regulations from the Zone District regulations to alleviate confusion expressed by the public regarding the combined set of regulations. Staff has since completed this task by preparing the following three documents for BoCC review: DRAFT FHCA Regulations (a.k.a. MAA Regulations), FHRGA Zone District Regulations, and FHUGA Zone District Regulations (See Exhibits A, B, and C).

VI. PLANNING BOARD MEETING.

The DRAFT FHCA Regulations, FHRGA Zone District Regulations, FHUGA Zone District Regulations, and related map were presented to the PB on August 21, 2018. During this public hearing, area residents asked the following questions:

1. How will these regulations be enforced?
2. Why are the enforcement provisions different between the FHCA and zone district regulations?
3. Will the regulations reduce property values?
4. Will we be able to operate our business as we have in the past?
5. Is this a land grab by Fort Harrison?
6. Will these regulations affect the status of a road?

Residents also made the following statements:

1. Three regulatory documents are more confusing than one.
2. Properties are bi-sected by the proposed boundaries and regulations.
3. The definition for home occupation is ambiguous.
4. The proposed regulations are punishment to all area residents due to the complaints made by a few.
5. Roads within the proposed boundaries have degraded over time due to a lack of maintenance.
6. I am against any regulations and/or restrictions in this area.

In addition, testimony in support of the proposal was received by two people in attendance; and one stated full support of the draft regulations based on changes that were made to the documents since the start of the public hearing process in September of 2017.

Following public comment, the PB discussed the proposed sets of regulations/map and made the following recommendations:

1. Approval of the DRAFT FHCA Regulations with amendments to the map such that no properties are bisected by the boundaries of the FHCA (6-1)
2. Approval of the DRAFT FHRGA Regulations with amendments to the map such that no properties are bisected by the boundaries of the FHRGA Zone District (6-1)
3. Approval of the DRAFT FHUGA Regulations with amendments to the map such that no properties are bisected by the boundaries of the FHUGA Zone District (6-1)

See Exhibit E (Map as amended by Staff based on PB recommendation).

VII. PUBLIC COMMENT.

Thirteen written comments have been received from members of the public since August 21, 2018 (See Exhibit F).

VIII. NOTICE OF PUBLIC HEARING.

On August 29, 2018, Staff posted five signs within the proposed FHRGA Zone District and five signs within the proposed FHUGA Zone District which provided legal notice of this BoCC public hearing. In addition, Staff mailed notice to all property owners of record within the proposed FHCA boundaries on August 30, 2018; published notice in the Independent Record on September 23 and 30, 2018; placed copies of the proposed regulations at the Clerk and Recorder's Office and the Community Development and Planning Department; and posted copies of the proposal on the County's website.

IX. ATTACHMENTS.

- Exhibit A** - DRAFT FHCA Regulations: Pages 4-22
- Exhibit B** - DRAFT FHRGA Zone District Regulations: Pages 23-36
- Exhibit C** - DRAFT FHUGA Zone District Regulations: Pages 37-50
- Exhibit D** - Map (as heard by the PB on August 21, 2018): Page 51
- Exhibit E** - Map (as amended by Staff based on PB recommendation): Page 52
- Exhibit F** - Public Comments: Pages 53-78
- Exhibit G** - BoCC Staff Report (September 11, 2017): Page 79-94
- Exhibit H** - Map (as amended by Staff based on PB recommendation, with existing Part 1 zone districts shown): Page 95

Exhibit "A"

MILITARY AFFECTED AREA REGULATIONS

DRAFT: August 10, 2018

1. GENERAL PROVISIONS

1.1 Title

The common title of these Military Affected Area (MAA) regulations shall hereinafter be known as the Lewis and Clark County Fort Harrison Compatibility Area (FHCA); and shall be consistent with the Military Area Compatibility Act for MAAs.

1.2 Authority

These regulations (FHCA) are adopted under the authority of Sections 10-1-1501 through 10-1-1517 of the Montana Code Annotated (MCA).

1.3 Purpose

The purpose of these regulations is to promote public health, safety, and general welfare by reducing conflicts with adjoining land uses and increasing compatibility with the military operations occurring at Fort Harrison. These regulations encompass land uses within the safety, noise and land buffer areas as identified in the Fort Harrison – Limestone Hills Joint Land Use Study, December 2014.

1.4 Applicability

These regulations apply to the development activity on all parcels of land located entirely within, and those portions of a parcel located partially within, the designated FHCA as established on the official FHCA map and legal description attached as Exhibit A.

1.5 Compliance Required

All development activity within the FHCA shall be in conformance with these regulations.

1.6 Conflict with Other Laws & Severability

Whenever the requirements of these regulations are in conflict with the requirements of other lawfully adopted rules, regulations, or resolutions, the most restrictive, or that imposing higher standards, shall govern. If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, the remaining regulations will remain in effect, and be construed as if the invalid portion was never a part of these regulations.

1.7 Continuation of Non-conforming Uses

If, at the time of adoption of these regulations or of any amendments to these regulations, or at the time an FHCA is created or of any amendments to the boundaries of this FHCA to which these

regulations are applied, any structure located or erected in an otherwise lawful manner that does not conform to the provisions of these regulations shall be deemed a legal, non-conforming structure, and any lot or structure being used in an otherwise lawful manner that does not conform to the use provisions of these regulations shall be deemed a legal, non-conforming use. Both legal non-conforming structures and/or uses may continue in the manner and to the extent that each existed or was being used at the time of the adoption of these regulations. Such non-conforming status will run with the lot and shall not be affected by changes in ownership.

Any structure in which on-site construction has begun prior to the adoption or amendment of these regulations, or creation or amendment of the FHCA to which these regulations apply, and the erection of which is in conformity with all current regulations in effect, but does not conform to the provisions of these regulations, shall be a non-conforming structure.

Any non-conforming structure and/or use may be continued, except if the non-conforming structure and/or use is abandoned or deserted, or voluntarily or by legal action caused to be discontinued for a period of 180 days. If the non-conforming structure and/or use is abandoned, deserted, or caused to be discontinued for a period of 180 days or longer, any subsequent use of the lot or structure shall be required to conform to the provisions of these regulations.

The following are the only changes permitted to non-conforming structures and/or uses:

- a. Routine maintenance and repair, or those modifications required by applicable health and safety codes.
- b. Enlarging, extending, reconstructing, or structurally altering a non-conforming structure if said structure is changed to completely conform to these regulations.
- c. Altering or extending a structure conforming with respect to use, but non-conforming with respect to location, height, or type if the alteration or extension does not further deviate from these regulations.

A non-conforming structure or use that is destroyed or substantially damaged by fire, flood, or other natural disaster may not be restored as a non-conforming structure or use unless a variance is issued or unless initiation of the restoration process occurs within 24 months of the damage having occurred and the resulting structure or use occupies the same physical footprint and is used for the same purpose(s) as the original non-conforming structure or use. Completion of this restoration must occur within 60 months of the damage. A non-conforming structure or use is considered to be substantially damaged when 80% or more of a structure is damaged or destroyed.

1.8 Private Agreements

Adoption of these regulations does not nullify easements, covenants, and/or similar private agreements, but where any such easement, covenant, and/or agreement imposes requirements less restrictive than those adopted herein, the requirements of these regulations apply.

1.9 Interpretation

The language of these regulations must be read literally. These regulations are no more or less strict than stated. In the event a question arises concerning any provision or its application under these regulations, the Enforcement Officer shall be responsible for such interpretation and will

look to the overall purpose of these regulations, and the Lewis and Clark County Growth Policy, as amended by its complimentary Helena Valley Area Plan, for guidance. Any person who disputes the interpretation of the Officer may appeal the Officer's decision using the procedure in Section 3.4.a, Administrative Appeals.

1.10 Minimum Requirements

All requirements of these regulations shall be interpreted as the minimum necessary to protect public health, safety and general welfare. These regulations are designed for consistency with the Lewis and Clark County Growth Policy, as amended by its complimentary Helena Valley Area Plan, and should be interpreted to achieve its goals, objectives, policies and strategies.

1.11 Exemptions

The following uses, structures or operations are exempt from these regulations:

- a. Land uses, structures and operations located within the Fort Harrison boundary that are under the jurisdiction of the Montana National Guard, Montana Department of Military Affairs and the U.S. Department of Veterans Affairs.
- b. Land uses, structures and operations that are annexed into the City of Helena.
- c. Temporary emergency operations to protect the public health, safety and welfare.
- d. Agricultural uses or structures related to such uses, except that performance standards for outdoor lighting, communication towers, antennas, wind turbines and other similar structures shall apply.

2. Designation of the Fort Harrison Compatibility Area

2.1 Establishment of FHCA

The Lewis and Clark County FHCA shall be as shown on the official map attached hereto and incorporated herein as Exhibit A in accordance with Section 10-1-1504 of the MCA. The boundaries of the FHCA shall correspond to the area depicted on the attached map; and the legal description of the FHCA shall also be as identified on Exhibit A.

These are adopted for reference and the most recently adopted, official map and legal description shall be recorded at the office of the Lewis and Clark County Clerk and Recorder with a copy of this map and legal description maintained for public inspection at the office of the Enforcement Officer.

2.2 FHCA Boundaries

When definite distances or boundaries are not shown on the map, the following rules apply:

- a. Boundaries indicated as approximately following the Township, Range, Section, or Quarter-Section lines, right-of-way or centerlines of roads, highways, trails, pathways or alleys shall be construed to follow such section lines, rights-of-way or centerlines.
- b. Boundaries indicated as approximately following municipal limits shall be construed as following those boundaries.
- c. Boundaries indicated as approximately following platted lots lines shall be construed as

following such lot lines.

- d. Boundaries indicated as approximately following centerlines of lakes, streams, rivers, canals, irrigation ditches or other bodies of water or other physical features shall be construed as following such centerlines.

Any person who disputes the location of the FHCA boundary, as interpreted by the Enforcement Officer, may appeal the Officer's decision using the procedure in Section 3.4.a, Administrative Appeals.

2.3 FHCA Land Use Regulations

A structure or parcel of land may not be used for any purpose unless that use is allowable in the FHCA.

a. Allowable Land Uses

All land uses that are not otherwise prohibited, are allowable in the FHCA, provided that such use(s) are in compliance with the performance standards in these regulations and with all other local, State and Federal laws and regulations.

b. Prohibited Land Uses

1. Landfills;
2. Multi-family dwelling units;
3. Congregate living facilities;
4. All structures within the Fort Harrison Aircraft Imaginary Surface Area as defined herein; and/or
5. Notwithstanding any other provision of these regulations, no use may be made of lands within the FHCA in such a manner that may result in glare in the eyes of operators of aircraft, or otherwise endanger the landing, taking off, maneuvering, or operating of aircraft.

3. ADMINISTRATION

3.1 Administration and Permits

- a. The Director of the Community Development and Planning Department or his designee is hereby designated as the Enforcement Officer to administer and interpret these regulations.
- b. A development permit is required within the FHCA for: 1) Erecting a new, non-agricultural, principal structure; 2) for replacing an existing principal structure; 3) erecting a new tower, antenna, wind turbine, or other similar structure; 4) for replacing an existing tower, antenna, wind turbine, or other similar structure; 5) implementing a solar farm; 6) establishing an arena or other similar event venue that involves a concentration of people; and/or 7) for re-establishing a non-conforming use that has been destroyed or substantially damaged by fire, flood, or other natural disaster if that use has not already been re-established within 24 months of the disaster.
- c. Development permits are not required for site preparation (see Site Preparation

definition) or for allowable accessory uses (including, but not limited to, accessory dwelling units, garages, sheds, barns, agricultural buildings and structures, and the installation of a photovoltaic solar panel(s) [excluding solar farms]).

- d. No development permit shall be issued by the Enforcement Officer except in compliance with all provisions of these regulations or any variance provisions.
- e. An application for a development permit shall include: 1) a completed application form to be provided by the Enforcement Officer, 2) a legal description of the property, as filed on record, and 3) if the property was granted a variance, the application shall include the final determination letter for such variance.
- f. All development permits shall include the following statement: "A person constructing a structure built pursuant to this permit may not seek damages from a governing body, a local government, or the Federal government for interference with the enjoyment of that structure caused by noise, vibrations, and fumes from normal and anticipated normal military operations" [Per Section 10-1-1515(6), MCA].
- g. All development permits shall include an attachment with the text of the performance standards for outdoor lighting.
- h. The fee to be paid for a development permit, and applications for a variance or administrative appeal, shall be established by the BoCC.

3.2 Variances

Variances (as specifically provided for in the Military Area Compatibility Act) provide relief for landowners who, due to some unique characteristic of their property, would suffer unnecessary hardship if these regulations were strictly enforced. A person intending to erect or increase the height of a structure, or use property in a manner that is not in accordance with the requirements of the regulations adopted pursuant to this part, may apply to the Enforcement Officer for a variance. Variances may be granted, but only in accordance with the following procedures:

a. Administrative Review

1. The applicant shall submit a properly completed application form, the required supporting materials, including a narrative evaluating the variance request under the review criteria, and the required application fee with the Enforcement Officer.
2. When an application is submitted, the Enforcement Officer shall determine whether the application form and supporting materials are complete and sufficient. When an application is determined to be incomplete or insufficient, the Officer shall provide written notice to the applicant indicating what information must be submitted for the review to proceed.
3. When an application is deemed complete and sufficient, the Enforcement Officer shall mail notice to all adjacent landowners, the Fort Harrison Office of Military Affairs, Montana Army National Guard, Montana Department of Military Affairs, City of Helena and U.S. Department of Veteran's Affairs at Fort Harrison providing at least fifteen (15) calendar days for comments regarding the variance request. Notice shall, at a minimum, include the nature of the request.
4. The Enforcement Officer shall prepare a report that describes the proposed variance, its site, its context, and an evaluation of the request under the variance criteria in Section 3.2.c, Review Criteria.

5. If there is no written opposition to the variance request, the Enforcement Officer shall make a decision regarding the request. The decision of the Enforcement Officer is final unless it is appealed to the BoCC.

b. Board of County Commissioners Review

1. If there is written opposition to a variance request prior to the written decision of the Enforcement Officer, or an appeal of the Enforcement Officer's decision by the applicant within 30 calendar days of the Enforcement Officer's decision, the Enforcement Officer shall schedule a public hearing on the agenda of the next available meeting of the Board of County Commissioners (BoCC) for which notice requirements can be met while providing fifty (50) calendar days for processing of the application materials.
2. Notice shall be published at least once in a newspaper of general circulation within Lewis and Clark County and mailed to all adjacent landowners, the Fort Harrison Office of Military Affairs, Montana Army National Guard, Montana Department of Military Affairs, City of Helena and U.S. Department of Veteran's Affairs at Fort Harrison at least fifteen (15) calendar days prior to the public hearing. Notice shall, at a minimum, include the nature of the request and the time and place of the public hearing.
3. The BoCC shall conduct a public hearing on the proposed variance. Following the public hearing, the BoCC may review the particular facts and circumstances of the proposed variance under the variance criteria in Section 3.2.c, Review Criteria and develop findings and conclusions in support of its decision or continue the meeting to a new date prior to making its decision.
4. The decision of the BoCC is final unless it is appealed to the court of record in accordance with Section 3.4.b, Appeals to Court of Record.

c. Review Criteria. A variance shall be approved only upon finding that:

1. The need for a variance results from physical limitations or unique circumstances related to the lot or parcel on which the variance is requested;
2. The failure to approve the variance will result in an undue hardship, because without a variance, strict compliance with the terms of these regulations will limit the reasonable use of the property and deprive the applicant of the rights enjoyed by other properties similarly situated in the FHCA;
3. The alleged hardship has not been created by action of the owner(s) or occupant(s);
4. Approval of the variance will not have a substantial adverse impact on neighboring properties or the public;
5. The variance would not be contrary to military missions; and
6. There is no immediate hazard to safe flying operations or to persons and property in the vicinity of the MAA, and noise or vibrations from normal and anticipated normal military operations would not be likely to cause damage to structures.

d. Conditions may be attached to the approval of the variance in accordance with the following:

1. Conditions shall be designed to ensure compliance with one or more specific requirements of these or other adopted regulations.
2. Conditions shall be directly related to the anticipated impacts of the applicant's

proposal.

3. Conditions shall be roughly proportional to the anticipated impacts of the applicant's proposal:
4. A condition may require the owner of a structure to allow the political subdivision, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of a hazard.
5. All variances shall include a condition that states, "A person using a structure built pursuant to a variance may not seek damages from a governing body, a local government, or the Federal government for interference with the enjoyment of that structure caused by noise, vibrations, and fumes from normal and anticipated normal military operations" [Per Section 10-1-1515(6), MCA].
6. Any decision to approve a variance is conditioned on compliance with the site plan or other supporting materials submitted with the application, unless the approval specifically notes modifications to be made to these documents. The variance must be acted upon within 1 year of issuance.

e. The Enforcement Officer shall notify the applicant of the decision within 30 calendar days. Such notification shall include the following:

1. The decision of the Enforcement Officer and/or BoCC;
2. The findings that support the decision;
3. Any conditions of approval;
4. A statement regarding the appeal process for the decision; and
5. A statement that, "A person who builds a structure pursuant to a variance from these FHCA regulations, or who takes or buys property in the FHCA for which a variance has been granted, is considered to be aware that the FHCA existed before the variance was granted and that normal and anticipated normal military operations may result in noise, vibrations, and fumes being projected over the property" [Per Section 10-1-1515(6), MCA].

3.3 Amendments

Any person may petition for the amendment of the map and/or text of these regulations. The amendment procedure shall be as provided here and in Sections 10-1-1501 through 10-1-1517, MCA. Amendments may also be initiated by the City-County Consolidated Planning Board (Planning Board) or the Enforcement Officer, in which case steps 3.3.a.1 and 2 are not required.

a. Amendment Process

1. The applicant shall submit a properly completed application form, the required supporting materials, including a narrative evaluating the request under Section 3.3.b, Amendment Criteria, and the required application fee with the Enforcement Officer.
2. The Enforcement Officer shall determine whether the application and supporting materials are complete and sufficient. When an application is determined to be incomplete or insufficient, the Officer shall provide written notice to the applicant indicating what information must be submitted for the review to proceed.
3. When the application is determined to be complete and sufficient, the Enforcement Officer shall schedule a public hearing on the application for an amendment on an agenda of the

BoCC meeting for which notice requirements can be met, and providing fifty (50) calendar days for processing of the application materials.

4. The Enforcement Officer shall publish notice of the public hearing in a newspaper of general circulation in Lewis and Clark County at least fifteen (15) calendar days prior to the BoCC's public hearing and shall send a written notice to the Fort Harrison Office of Military Affairs, Montana Army National Guard, Montana Department of Military Affairs, City of Helena and U.S. Department of Veteran's Affairs at Fort Harrison.
5. The Enforcement Officer shall prepare a report that describes the proposed amendment and how it complies, or fails to comply, with the amendment criteria contained in Section 3.3.b, Amendment Criteria.
6. The BoCC shall conduct a public hearing on the proposed amendment. After the public hearing, the BoCC shall review the particular facts and circumstances of the proposed amendment and develop findings and conclusions that support its decision for approval, approval with modifications, or denial.
7. At the conclusion of the amendment process, the Enforcement Officer shall notify the applicant of the decision within thirty (30) calendar days.

b. Amendment Criteria

FHCA amendments shall be made:

1. In accordance with the Lewis and Clark County Growth Policy, as amended by its complimentary Helena Valley Area Plan;
2. To secure safety from fire and other danger; and
3. To promote public health, safety, and general welfare.

3.4 Appeals

a. Administrative Appeals

A determination of the Enforcement Officer may be appealed to the MAA Appeals Board as per Section 10-1-1514, MCA using the following procedure:

1. The appellant shall submit a properly completed notice of appeal and supporting materials to the Enforcement Officer within thirty (30) calendar days after the date of the determination.
2. The Enforcement Officer shall schedule a hearing on the agenda of the next available meeting of the MAA Appeals Board for which notice requirements can be met and providing fifty (50) calendar days for processing of the application materials. Notice shall be published at least once in a newspaper of general circulation in Lewis and Clark County and mailed to all adjacent landowners at least fifteen (15) calendar days prior to the public hearing. Notice shall, at a minimum, include the nature of the request and the time and place of the hearing.
3. The Enforcement Officer shall prepare a summary report that includes the determination and surrounding circumstances, and forward it to the MAA Appeals Board.
4. The MAA Appeals Board shall conduct a hearing on the appeal following the procedure established in the Board's bylaws. At the hearing, the Board shall decide whether the determination being appealed is in compliance with these regulations, and affirm, modify,

or overturn that determination accordingly. The Board's decision shall be in writing and contain a summary of the facts relied on as the basis for its decision.

5. The Enforcement Officer shall notify the applicant of the Board's decision within 30 calendar days.

b. Appeals to Court of Record

Any person or persons, jointly or severally, aggrieved by a decision of the BoCC or the MAA Appeals Board may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within thirty (30) calendar days of the BoCC or MAA Appeals Board's decision.

3.5 Enforcement

- a. The Enforcement Officer is charged with enforcing these regulations.
- b. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of these regulations, the County may institute any appropriate action or proceedings to:
 1. prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
 2. restrain, correct, or abate the violation;
 3. prevent the occupancy of the building, structure, or land; and/or
 4. prevent any illegal act, conduct, business, or use in or near the premises.
- c. For the purposes of enforcing this section, the County shall attempt to obtain voluntary compliance at least 30 calendar days before filing a complaint for a violation of this part that is subject to the penalties under Section 10-1-1505, MCA.
- d. A person who violates the provisions of this part or the regulations adopted under Section 10-1-1505, MCA 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 governing body has given notification of the violation and held a hearing on the violation. The criminal penalty is a fine of \$500 pursuant to Section 45-2-104, MCA.

4. PERFORMANCE STANDARDS

All land uses within the FHCA shall comply with the following standards.

4.1 Communication Towers, Antennas, Wind Turbines and Other Similar Structures

- a. No tower, antenna, wind turbine or structure shall exceed a height of 200 feet above ground level.
- b. All towers, antennas, wind turbines or similar structures must be properly licensed and comply with regulation of the Federal Aviation Administration and all other State and Federal agencies with jurisdiction over such structures.
- c. All towers, antennas, wind turbines or similar structures shall be located and constructed so that there is no immediate hazard to safe flying operations. As a condition of the

development permit, the owner may be required to allow the political subdivision, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an MAA hazard.

- d. A copy of the development permit application will be sent to the State of Montana Department of Military Affairs for review and comments. Any comments or recommended mitigations will be forwarded to the Enforcement Officer to be considered as part of the issuance of the permit. If no comments are received within 15 calendar days, it will be determined that the Department of Military Affairs reviewing staff had no objections. A development permit may only be denied due to a concern expressed by the Department of Military Affairs that the height or location of the structure cannot be mitigated to the Military's satisfaction.

4.2 Arenas or Other Similar Event Venues that Involve a Concentration of People

- a. A copy of the development permit application will be sent to State of Montana Department of Military Affairs for review and comments. Any comments or recommended mitigations will be forwarded to the Enforcement Officer to be considered as part of the issuance of the permit. If no comments are received within 15 calendar days, it will be determined that the Department of Military Affairs reviewing staff had no objections. A development permit may only be denied due to a concern expressed by the Department of Military Affairs that the design and operation of the use cannot be mitigated to the Military's satisfaction.
- b. An outdoor lighting plan indicating the location of lights, height of poles and types of lighting fixtures shall be submitted with the development permit application.

4.3 Outdoor Lighting Standards

- a. Purpose. It is the purpose and intent of these regulations to encourage lighting practices and systems that will minimize light pollution, glare, and light trespass, while maintaining nighttime safety, utility, and security.
- b. Applicability. All outdoor lighting systems shall conform to the provisions of this title, the latest adopted versions of the State building code, national and State electrical codes, and all other applicable laws. If there are conflicts between any code requirements, the more restrictive requirements will apply.
- c. Outdoor Residential Lighting. All exterior light fixtures shall be of a full-cutoff design.
- d. Outdoor Commercial Lighting. All light fixtures shall be of a full-cutoff design. Light fixtures attached to a pole may not exceed a height of thirty-four (34) feet from the ground to the bottom of the fixture. Any existing fixtures out of compliance with this regulation shall be brought into conformance at the time of the replacement of the pole.
- e. Feature Lighting. Monuments, natural terrestrial features, and buildings may be illuminated by upward directed light, providing that the light beam is narrowly focused so as not to exceed the width and height upon the object being illuminated; and the light is directed on the feature being lit and not directly upwards.
- f. Signs. Illuminated signs shall be illuminated in such a manner that the light therefrom shall shine only on the sign or on the property on which it is located and shall not shine onto any other property, in any direction, except by indirect reflection.
- g. Communication Towers. Lighting for towers and structures shall comply with the minimum mandates contained in the appropriate Federal Communications Commission (FCC) or Federal Aviation Administration (FAA) regulations or other State requirements. The more

restrictive requirements shall apply in the event of a conflict between the regulations.

h. Exemptions:

1. Fixtures producing two thousand eight hundred fifty (2,850) average lumens (equivalent of a 150-watt incandescent bulb) or less.
2. American Flag illumination.
3. Temporary Construction Sites. Lighting for nighttime security, provided the owner submits a lighting mitigation plan for approval that includes the duration, number, location, and height of each light source, and hours of operation.
4. Seasonal Lighting. Seasonal lighting used for the celebration of commonly acknowledged holidays and special events.
5. Emergency Lighting. Lights used during emergencies or by police, fire, public works and/or public utility personnel in their official duties are exempt from these regulations.

i. Prohibited Lighting. The following types of lights are prohibited within the FHCA:

1. The installation of any mercury vapor light fixture, lamp or replacement bulb for use as an outdoor light.
2. Lighting that could be confused for a traffic control device.
3. Other outdoor lighting or glare that can cause distraction, flash blindness, vision impairment, or visual interference while piloting or navigating an aircraft or using night vision devices. This includes, but is not limited to, series, lines, rows, or patterns of lights, whether supported by cables or other physical means, or laid upon a ground or building that may resemble navigational or flight safety aids, landing pads, or lighting common to general or military aviation.
4. Lighting designed for the creation of sky glow to attract attention, in excess of the lighting used to provide safety, security, and utility.
5. When projected above a horizontal plane, beacons, laser source lights, strobe lights, or any similar high intensity light used for promotional or entertainment purposes.
6. Any lamp or bulb when not within a luminaire and which is visible from the property boundary line of the parcel on which it is located, except for landscape ornamental lighting.

4.4 Solar Farms

A copy of the development permit application for any solar farm will be sent to the State of Montana Department of Military Affairs for review and comments. Any comments or recommended mitigations will be forwarded to the Enforcement Officer to be considered as part of the issuance of the permit. If no comments are received within 15 calendar days, it will be determined that the Department of Military Affairs reviewing staff had no objections. A development permit may only be denied due to a concern expressed by the Department of Military Affairs that the location or design of the solar farm cannot be mitigated to the Military's satisfaction.

5. DEFINITIONS

5.1 Abandoned

The relinquishment of property, or a cessation of the use of the property, by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property.

5.2 Accessory Dwelling

A separate, complete housekeeping unit with a separate entrance, kitchen, sleeping area, and bathroom facilities, which is an attached or detached extension of a principal use.

5.3 Accessory Use

A use, building, or structure that is incidental and subordinate to and customarily found with the principal use.

5.4 Agriculture

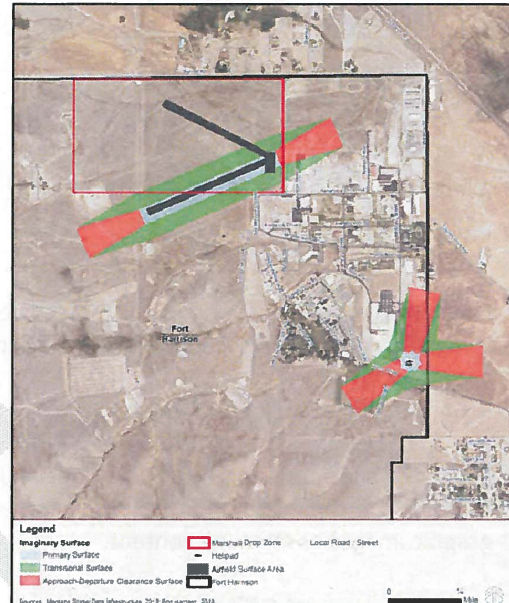
Montana Code Annotated contains definitions for the words “agriculture” and “agricultural” as follows:

Section 41-2-103, M.C.A. Definitions. As used in this part, the following definitions apply: (1) “Agriculture” means: (a) all aspects of farming, including the cultivation and tillage of the soil; (b)(i) dairying; and (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the Federal Agricultural Marketing Act [12 U.S.C. 1141j(g)]; (c) the raising of livestock, bees, fur-bearing animals, or poultry; and (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

Section 81-8-701, M.C.A. Definitions. Unless the context requires otherwise, in this part the following definitions apply: (1) “Agricultural and food product” includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

5.5 Aircraft Imaginary Surface Area

The imaginary surface around the runway and heliport where structures have been determined to pose a vertical obstruction in relation to operations in the airspace of such runway or heliport. The imaginary surface for Fort Harrison is depicted in the illustration at right. (Figure 6 - Fort Harrison Imaginary Surfaces from Fort William H. Harrison and Limestone Hills Training Area Joint Land Use Study, December 2014).



5.6 Arena

A large open or enclosed space used for athletic or entertainment events and designed to accommodate a concentration of people for viewing of such events.

5.7 Changeable Copy or Animated Sign

See "Electronic or Digital Sign."

5.8 Commercial

A commercial use is any business, retail trade, or service activity. Also considered a non-residential use.

5.9 Congregate Living Facility

Apartments, dwellings or licensed facilities providing communal dining, housekeeping, transportation and other support services for residents.

5.10 Develop or Development

Non-residential use (commercial, industrial, or other non-residential use) or residential use or any combination thereof. This term does not include land to be used for agricultural purposes or open space.

5.11 Direct Glare Source

Light that originates in a direct line of sight from a light source that results in objectionable glare.

5.12 Dwelling Unit

A building, or portion thereof, providing complete housekeeping facilities, constituting living quarters with bathroom and kitchen facilities for one household.

5.13 Dwelling Unit, Multi-Family

A building containing three (3) or more dwelling units for occupancy by three (3) or more groups living separately from each other, including condominiums.

5.14 Electronic or Digital Sign

A class of signs, utilizing electronic, mechanical, or computer technology (and/or any combination thereof) and capable of multi-color display, and with the capability of rapid change in the display of graphic images or message content.

5.15 Enforcement Officer

The Director of the Lewis and Clark County Community Development and Planning Department or designee, who is responsible for interpreting and carrying out the provisions of these regulations.

5.16 Fixture

The assembly that holds the lamp in a lighting system. It includes the elements designed to give light output control, including, but not necessarily limited to, such items as a reflector (mirror) or refractor (lens), the ballast housing, and the attachment parts.

5.17 Fort Harrison Compatibility Area

The common name of these regulations; and as further defined under the term noted in 10-1-1503, MCA for lands used for military purposes or in close proximity to military facilities that is directly affected by or that will be directly affected by military uses.

5.18 Full-Cutoff Light Fixture

Fixture with shielding that is directed and angled so that no light is visible above a 90-degree angle measured from a vertical line from the center of the lamp.

5.19 Glare

The sensation produced by a light source that is sufficiently brighter than the level to which the eyes are adapted causing annoyance, discomfort, or loss in visual performance and visibility. The magnitude of glare depends on such factors as the size, position, brightness of the source and on the brightness level to which the eyes are adapted.

5.20 Light Emitting Diode (LED)

A diode of semiconductor material, such as gallium arsenide, that emits light when a forward bias is applied, the color of which will depend upon the semiconductor material.

5.21 Light Pollution

Any adverse effect of manmade light including, but not limited to, light trespass, uplighting, the distraction to the eye, or any manmade light that diminishes the ability to view the night sky.

5.22 Light Source

Artificial light emitted directly from a fixture lamp, lens, or mirror. Light which is reflected after leaving the fixture does not constitute a light source.

5.23 Light Trespass

Any form of artificial illumination emanating from a light fixture that penetrates other property and creates a direct glare source that exceeds 0.5-foot-candles in a vertical plane at the subject property line.

5.24 Lot

See Definition for Parcel of Land.

5.25 MCA

Montana Code Annotated; the laws of the State of Montana.

5.26 Military Affected Area (MAA)

Land used for military purposes or in close proximity to military facilities that is directly affected by or that will be directly affected by military uses.

5.27 Military Affected Area Appeals Board

An appointed board authorized under Section 10-1-1514, MCA with the authority to hear and decide administrative appeals from the requirements of these regulations.

5.28 Military Facilities and Military Uses

Include, but are not limited to, military airports, military installations, intercontinental ballistic missile alert facilities or control centers, missile locations, access roads to missiles or missile related facilities and sites used for military training or formerly used for military training that may be contaminated with hazardous wastes or explosive ordnance.

5.29 Non-conforming Use

An existing use that was lawful prior to the adoption or amendment of these regulations, but is no longer considered an allowed use.

5.30 Parcel of Land

An individual tract of record, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the Lewis and Clark County Clerk and Recorder's office. The terms Parcel and Lot are used interchangeably in these regulations.

5.31 Person

Any individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

5.32 Photovoltaic Solar Panel

A collection of solar (or photovoltaic) cells that are used to absorb the sun's rays and convert them into electricity or heat.

5.33 Principal Use

The dominant, main, or primary use of a parcel of land.

5.34 Residential

A property or structure dwelling unit(s) that is used primarily as a dwelling place.

5.35 Shielded

See definition for Full Cut-Off Light Fixture.

5.36 Site Preparation

Improvements on a site that are preparatory to construction, which include, but are not limited to, staging construction equipment, leveling terrain, establishing internal roads/streets, placement of temporary construction trailers, security fencing, signs, landscaping, parking, and impervious surface coverage. Such on-site improvements do not require a development permit.

5.37 Solar Farm

A collection of photovoltaic solar panels that can be categorized as a utility-scale solar application. (NOTE: If a solar application primarily powers a residence or business, then it is not a utility-scale application, even if it sells back any excess electricity through net metering.)

5.38 Structure

An object or building constructed or installed by man, including, but not limited to, buildings, towers, antennas, wind turbines, smoke stacks, and overhead transmission lines.

5.39 Tower, Communication

A mast, pole, monopole, guyed tower, lattice tower, free-standing tower or other structure designed and primarily used to support antennas. A ground or building mounted mast greater than ten (10) feet tall and six (6) inches in diameter supporting one or more antenna, dish arrays, etc., shall be considered a communication tower.

5.40 Utility-Scale Solar Application

Generates solar power and feeds it into the grid, supplying a utility with energy.

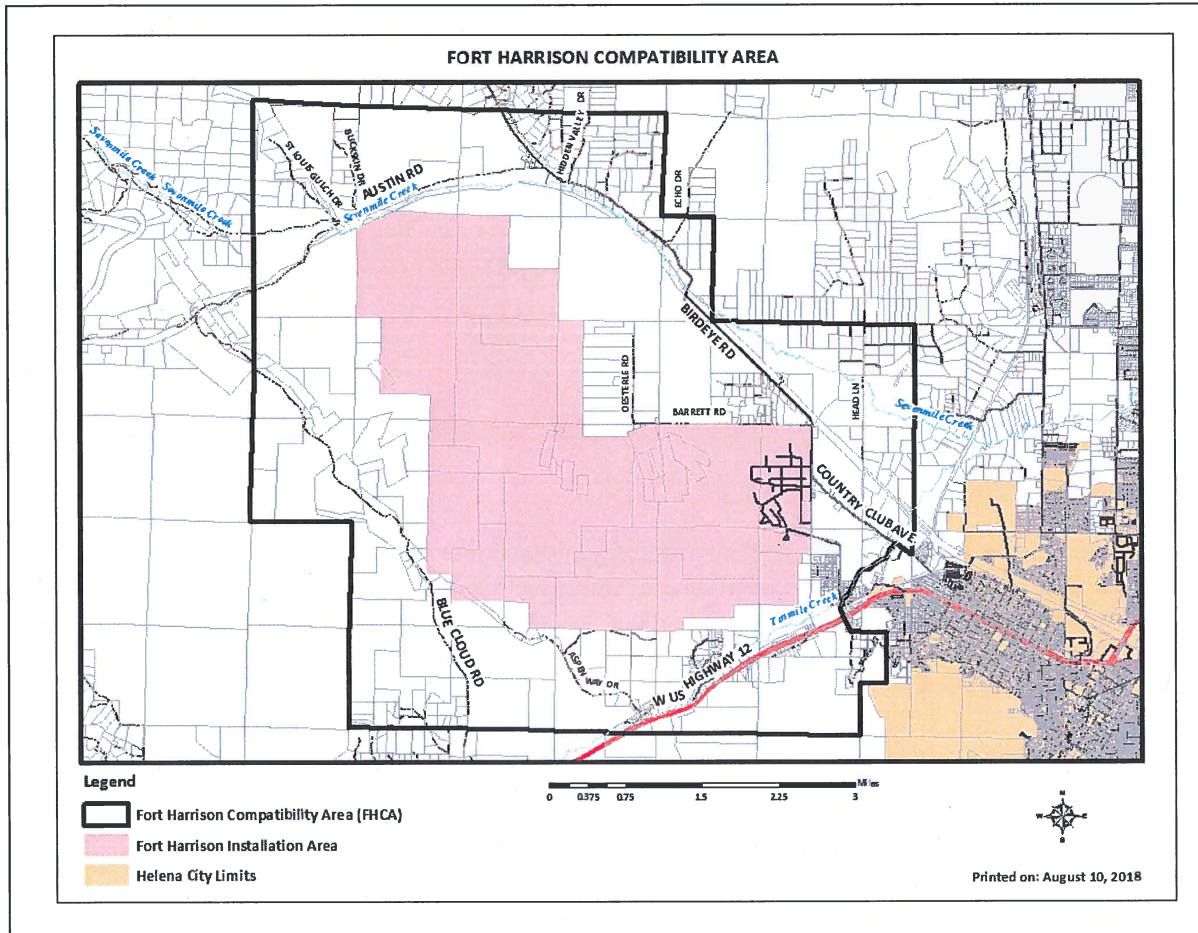
5.41 Utility Sites

Parcels of land specifically designed and used to provide a public or quasi-public service subject to special governmental regulations. Such services would typically include, but are not limited to, water tanks, electrical substations, and communications facilities.

5.42 Wind Turbines

An alternate energy device which converts wind energy by means of a rotor to mechanical or electrical energy. A wind generator may also be deemed a windmill.

Exhibit A: Map of Lewis and Clark County Fort Harrison Compatibility Area



LEGAL DESCRIPTION OF THE LEWIS AND CLARK COUNTY
FORT HARRISON COMPATIBILITY AREA

In accordance with the provisions of Section 10-1-1501 through 10-1-1517 (Military Area Compatibility Act) of the Montana Code Annotated (MCA), a Military Affected Area (MAA) has been proposed around Fort Harrison in Lewis and Clark County, Montana for the purpose of promoting public health, safety, and general welfare by reducing conflicts with adjoining land uses and increasing compatibility with the military operations occurring at Fort Harrison. The proposed Lewis and Clark County Fort Harrison Compatibility Area (FHCA) consists of approximately 20,722 acres or 32.38 square miles located around Fort Harrison. The FHCA encompasses County lands in the following areas:

Township 11 North Range 4 West

- Section 31 - All
- Section 32 – All

Township 11 North Range 5 West

- Section 35 - All
- Section 36 – All

Township 10 North Range 4 West

- Section 4 – SW $\frac{1}{4}$ and S $\frac{1}{2}$ of NW $\frac{1}{4}$
- Section 5 - All
- Section 6 – All
- Section 7 - All
- Section 8 – All
- Section 9 - All
- Section 10 - All
- Section 11 - NW $\frac{1}{4}$ and SW $\frac{1}{4}$
- Section 14 - NW $\frac{1}{4}$ and SW $\frac{1}{4}$
- Section 15 - All
- Section 16 - All
- Section 17 - All
- Section 18 – All
- Section 19 - All
- Section 20 - All
- Section 21 - All
- Section 22 –NW $\frac{1}{4}$, NE $\frac{1}{4}$, SW $\frac{1}{4}$, and SE $\frac{1}{4}$ less lands south and east of Tenmile Creek and east of the centerlines of Williams Street and LeGrande Cannon Boulevard
- Section 23 – NW $\frac{1}{4}$ less lands south and east of Tenmile Creek and east of the centerline of Country Club Avenue
- Section 26 – W $\frac{1}{2}$ of NW $\frac{1}{4}$
- Section 27 - All
- Section 28 - All
- Section 29 - All
- Section 30 – All

Township 10 North Range 5 West

- Section 1 - All
- Section 2 - All
- Section 11 - All
- Section 12 - All
- Section 13 - All
- Section 14 – All
- Section 24 - All
- Section 25 - All

Exhibit "B"

**FORT HARRISON RURAL GROWTH AREA ZONE DISTRICT
DRAFT: August 10, 2018**

1. GENERAL PROVISIONS

1.1 Title

These regulations are to be known as the Fort Harrison Rural Growth Area (FHRGA) Zone Regulations.

1.2 Authority

These regulations are adopted under the authority of Section 76-2-201, MCA.

1.3 Purpose

The purpose of these regulations is to promote the public health, safety, morals, and general welfare consistent with the policy recommendations of the Lewis and Clark County Growth Policy and it's complimentary Helena Valley Area Plan. Additionally, these regulations are intended to:

- a. Secure safety from fire and other dangers;
- b. Promote public health, public safety and general welfare;
- c. Limit the density of development in areas that may be constrained by the availability of water, the condition of roads, and the limitations of rural fire protection systems;
- d. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements;
- e. Provide for adequate light and air;
- f. Lessen congestion on motorized and non-motorized transportation systems;
- g. Promote compatible urban growth in the vicinity of cities and towns in consideration of the character of the district and its peculiar suitability for particular uses;
- h. Conserve the value of buildings and encourage the most appropriate use of land throughout the jurisdictional area; and
- i. Promote compatibility with zoning ordinances of nearby municipalities.

1.4 Applicability

These regulations apply to the creation of parcels of land within the FHRGA Zone District as established on the official FHRGA Zone District Map attached hereto and incorporated herewith as Exhibit A.

1.5 Compliance Required

No parcel of land shall be created unless it is in conformance with these zoning regulations.

1.6 Conflict with Other Laws & Severability

Whenever the requirements of these regulations are in conflict with the requirements of other lawfully adopted rules, regulations, or resolutions, the most restrictive, or that imposing higher standards, shall govern. If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, the remaining regulations will remain in effect, and be construed as if the invalid portion was never a part of these regulations.

1.7 Vested Rights

A vested right is the right to proceed with the creation of one or more new parcels of land in compliance with previous regulations or approvals. For subdivisions or exemptions from the Montana Subdivision and Platting Act and the Lewis and the Clark County Subdivision Regulations, as amended, a vested right to proceed with the creation of one or more new parcels of land shall be established by obtaining a letter of sufficiency, from the Zoning Administrator or designee, for a subdivision application, or concept approval for the use of an exemption from subdivision review as such may be deemed acceptable by the Survey Review Committee, prior to the date of adoption of these regulations. Vested rights terminate when a subdivision approval period, including any extensions approved by the governing body, expires without the applicant submitting a complete application for final approval or when the concept approval period expires for the proposed subdivision exemption.

1.8 Continuation of Non-conforming Uses

If, at the time of adoption of these regulations or of any amendments to these regulations, or at the time a zone district is created or of any amendments to the boundaries of this district to which these regulations are applied, any structure located or erected in an otherwise lawful manner that does not conform to the provisions of these regulations shall be deemed a legal, non-conforming structure, and any lot or structure being used in an otherwise lawful manner that does not conform to the use provisions of these regulations shall be deemed a legal, non-conforming use. Both legal non-conforming structures and/or uses may continue in the manner and to the extent that each existed or was being used at the time of the adoption of these regulations. Such non-conforming status will run with the lot and shall not be affected by changes in ownership.

Any structure in which on-site construction has begun prior to the adoption or amendment of these regulations, or creation or amendment of the zone district to which these regulations apply, and the erection of which is in conformity with all current regulations in effect, but does not conform to the provisions of these regulations, is a non-conforming structure.

Any non-conforming structure and/or use may be continued, except if the non-conforming structure and/or use is abandoned or deserted, or voluntarily or by legal action caused to be discontinued for a period of 180 days. If the non-conforming structure and/or use is abandoned, deserted, or caused to be discontinued for a period of 180 days or longer, any subsequent use of the lot or structure shall be required to conform to the provisions of these regulations.

The following are the only changes allowed to non-conforming structures and/or uses:

- a. Routine maintenance and repair, or those modifications required by applicable health and safety codes.
- b. Enlarging, extending, reconstructing, or structurally altering a non-conforming structure if said structure is changed to completely conform to these regulations.

A non-conforming structure or use that is destroyed or substantially damaged by fire, flood, or other natural disaster may not be restored as a non-conforming structure or use unless a variance is issued or unless initiation of the restoration process occurs within 24 months of the damage having occurred and the resulting structure or use occupies the same physical footprint and is used for the same purpose(s) as the original non-conforming structure or use. Completion of this restoration must occur within 60 months of the damage. A non-conforming structure or use is considered to be substantially damaged when 80% or more of a structure is damaged or destroyed.

1.9 Private Agreements

Adoption of these regulations does not nullify easements, covenants, and/or similar private agreements, but where any such easement, covenant, and/or agreement imposes requirements less restrictive than those adopted herein, the requirements of these regulations apply.

1.10 Interpretation

The language of these regulations must be read literally. These regulations are no more or less strict than stated. In the event a question arises concerning any provision or the application of any provision of these regulations, the Zoning Administrator shall be responsible for such interpretation and will look to the overall purpose of these regulations, the Lewis and Clark County Growth Policy, and its complimentary Helena Valley Area Plan for guidance. Any person who disputes the interpretation of the Zoning Administrator, may appeal the Administrator's decision using the procedure in Section 3.3.a, Administrative Appeals.

1.11 Minimum Requirements

All requirements of these regulations shall be interpreted as the minimum necessary to protect the public health, safety and general welfare. These regulations are designed for consistency with the Lewis and Clark County Growth Policy and its complimentary Helena Valley Area Plan, and should be interpreted to achieve their goals, objectives, policies and strategies.

2. ZONE DISTRICT AND MAP

2.1 Zone District

The following zone district and its boundaries, as shown on the official FHRGA Zone Map, is established:

- a. Fort Harrison Rural Growth Area (FHRGA) Zone District.

2.2 Zone District Map

The FHRGA Zone District Map attached hereto and incorporated herewith as Exhibit A is adopted by reference as a part of these regulations. The most recently adopted, official map shall be recorded at the office of the Lewis and Clark County Clerk and Recorder with a copy of this map maintained for public inspection at the office of the Zoning Administrator.

2.3 Zone District Boundaries

When definite distances or boundaries are not shown on the FHRGA Zone Map, the following rules shall apply:

- a. Boundaries indicated as approximately following the Township, Range, Section, or Quarter-Section lines, rights-of-way or centerlines of roads, highways, trails, pathways or alleys shall be construed to follow such rights-of-way or centerlines.
- b. Boundaries indicated as approximately following municipal limits shall be construed as following those boundaries.
- c. Boundaries indicated as approximately following platted lots lines shall be construed as following such lot lines.
- d. Boundaries indicated as approximately following centerlines of lakes, streams, rivers, canals, irrigation ditches or other bodies of water or other physical features shall be construed as following such centerlines.
- e. Boundaries indicated as approximately following the boundaries of the Urban Growth Area or Transitional Growth Area in the Lewis and Clark County Growth Policy, as amended by its complimentary Helena Valley Area Plan, shall be construed as following those boundaries.
- f. Boundaries indicated as approximately following the boundaries of the Fort Harrison Compatibility Area shall be construed as following those boundaries.

Any person who disputes the location of a zone district boundary as interpreted by the Zoning Administrator may appeal the Administrator's decision using the procedure in Section 3.3.a, Administrative Appeals.

2.4 Zone District Regulations

a. Minimum Parcel Size

1. The minimum size for newly created parcels of land in the FHRGA Zone District shall be ten (10) acres, except as provided in Section 2.5, Cluster Development.
2. In the case where parcels of any size exist at the time of adoption of these regulations, the boundaries between parcels may be relocated to result in one or more parcels with less than the minimum parcel sizes stated in Section 2.4.a.1, provided that there is no net increase in the number of developable parcels.

b. Land Use

All land uses are allowable in the FHRGA District in compliance with local, State and Federal laws and regulations. Only one principal use is allowed on each parcel.

2.5 Cluster Development

The purpose of this section is to encourage alternative design techniques that efficiently make use of land and water resources; protect environmentally sensitive areas, natural features and soils of agricultural importance; and promote cost savings in infrastructure development and maintenance. Clustering development allows for the creation of lots smaller than the minimum lot sizes established in these regulations, with the balance of the property maintained in open space and/or a resource use such as agriculture.

- a. The minimum size of parcels to be developed is the minimum size allowable under the Administrative Rules of Montana adopted by the Montana Department of Environmental Quality under Title 76, Chapter 4, MCA.
- b. Apart from any parcel that will remain as undeveloped open space and/or resource use, the maximum size of each parcel to be developed in a cluster development is two (2) acres.
- c. To reduce the potential for groundwater depletion due to the concentration of wells, the maximum number of parcels to be developed in a cluster development is ten (10). Additional non-clustered lots can be included in a subdivision plan for a cluster development to achieve the maximum density allowed under the FHRGA District as shown in Figure 1.
- d. The minimum amount of land preserved in a cluster development is equal to the base density of ten (10) acres per parcel, minus the area in new lots planned for development. For example, an 80-acre parcel can be divided into 8 lots (80 acres ÷ a base density of 10 acres per lot). In Figure 1, each of the eight cluster lots is one acre in size as allowed under DEQ rules for water and wastewater. The 9th parcel, 72 acres in size, is to be preserved as open space and/or a resource use(s). Under this development scenario, approximately 90 percent of the parcel is maintained in open space, and the need for road construction is minimized.

Figure 1 shows a second example of development of a 160-acre parcel. A 160-acre parcel of land can be divided into sixteen lots planned for development (160 acres ÷ a base density of 10 acres per lot). Each of the ten cluster lots (the maximum number of cluster lots allowed) planned for development is two acres in size. An added six non-clustered lots of 10 acres each are allowed on the parcel being subdivided to achieve the full development potential of the quarter section of land. The 17th parcel, 80 acres in size, is to be preserved as open space and/or a resource use(s). Under this development scenario, approximately half of the parcel is maintained in open space, and the need for road construction is minimized.

Numerous other combinations and configurations are possible so long as they comply with the provisions for cluster development and the density restrictions.

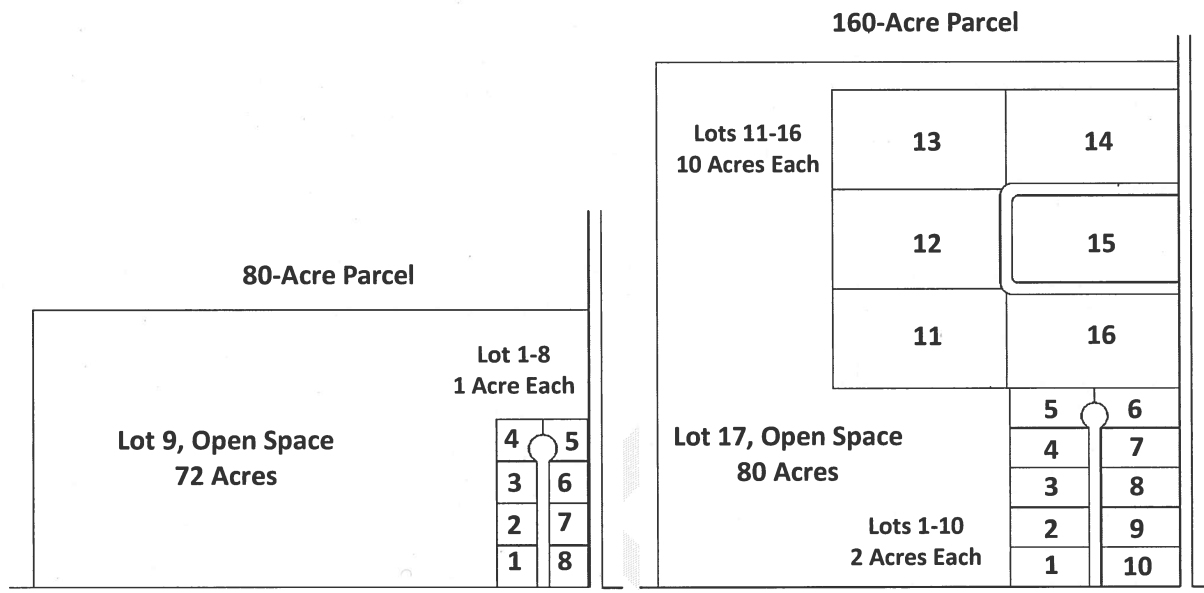


Figure 1 – Alternative layouts for clustered development.

- e. The land preserved in open space and/or a resource use(s) must:
1. Be maintained on a long-term basis through a revocable covenant prohibiting further subdivision, division, or development of the open space and/or resource use parcel. Revocation of said covenant requires approval by the Lewis and Clark County Board of County Commissioners (BoCC). Revocations may be considered if zoning and/or development constraint conditions no longer require density to be limited on the subject property;
 2. Be accessible via a road and/or trail easement filed with the Lewis and Clark County Clerk and Recorder's office;
 3. Be identified on a final subdivision plat or certificate of survey (for exemptions from subdivision). The Final Plat or COS shall include a notation as to the official recordation location of the revocable covenant;
 4. Include a plan for ongoing use and maintenance as open space and/or a resource use(s) that includes provisions to manage vegetation and noxious weeds, and that may be amended by the BoCC in consultation with parties owning title to the land;
 5. When present, include environmentally sensitive areas such as wetlands, streams, floodplains or riparian areas; agricultural soils (prime farmland); wildlife habitat; rare, threatened or sensitive plants; and scenic resources such as hillsides or forested areas; and,
 6. Be located adjacent to the one or more lots to be developed.

2.6 Park Dedication Requirement

Given the minimum lot size of ten (10) acres and the provisions for open space and/or a resource use(s) in cluster developments, no park land is required for development in the FHRGA Zone District as provided in Section 76-3-621(2), MCA and the Lewis and Clark County Subdivision Regulations, as amended.

2.7 Exemption from Requirements for Environmental Assessment and Review of Impacts

As provided in Section 76-3-609(2)(d), MCA and the Lewis and Clark County Subdivision Regulations, as amended, first minor subdivisions in the FHRGA Zone District are exempt from the requirements for completion of an environmental assessment and for review of impacts on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety.

2.8 Accessory Uses and Buildings

- a. Home occupations are an allowable accessory use provided they comply with Section 2.9, Home Occupations.
- b. One accessory dwelling unit per parcel is allowed.
- c. Accessory uses must comply with all other applicable local, State and Federal regulations.

2.9 Home Occupations

A residential use may include a home occupation(s), which is allowable as an accessory use. A home occupation must comply with the following provisions:

- a. A home occupation must not involve more than the equivalent of two (2) persons, whom work on the site, and who do not live in the residence;
- b. A home occupation must not create noticeable glare, noise, odor, vibration, smoke, dust, or heat at or beyond the property line(s); and
- c. A home occupation must not generate more than an average of ten (10) additional vehicle trips per day on a weekly basis, including deliveries.

Agricultural activities are exempt from these requirements.

3. ADMINISTRATION

The Director of the Lewis and Clark County Community Development and Planning Department (CD&P) or designee is hereby designated as the Zoning Administrator to administer and interpret these regulations.

3.1 Variances

Variances provide relief for landowners whom, due to some unique characteristic of their property, would suffer unnecessary hardship if these regulations were strictly enforced. Variances may be granted, but only as provided here.

- a. The applicant shall submit to the CD&P department, a properly completed application form, the required supporting materials including a narrative which evaluates the variance request under the review criteria (Section 3.1.f, Review Criteria), and the required application fee.
- b. When an application is submitted, the Zoning Administrator shall determine whether the application form and supporting materials are complete and sufficient. When an application is determined to be incomplete or insufficient, the Zoning Administrator shall provide written notice to the applicant indicating what information must be submitted for the review to proceed.
- c. When an application is deemed complete and sufficient, the Zoning Administrator shall schedule a public hearing on the agenda of the next available meeting of the Lewis and Clark County Board of Adjustment (BOA) for which notice requirements can be met and providing fifty (50) calendar days for processing of the application materials. Notice shall be published at least once in a newspaper of general circulation and mailed to all adjacent landowners at least fifteen (15) calendar days prior to the public hearing. Notice shall, at a minimum, include the nature of the request and the time and place of the public hearing.
- d. The Zoning Administrator shall prepare a report that describes the proposed variance, its site, its context, and an evaluation of the request under the variance criteria in Section 3.1.f, Review Criteria.
- e. The BOA shall conduct a public hearing on the proposed variance. Following the public hearing, the BOA may review the particular facts and circumstances of the proposed variance and develop findings and conclusions in support of its decision or continue the meeting to a new date prior to making its decision.
- f. Review Criteria. The BOA may approve a variance only upon finding that:
 1. The need for a variance results from physical limitations or unique circumstances related to the lot or parcel on which the variance is requested;
 2. The failure to approve the variance will result in an undue hardship because without a variance, strict compliance with the terms of these regulations will limit the reasonable use of the property and deprive the applicant of rights enjoyed by other properties similarly situated in the District;
 3. The alleged hardship has not been created by an action(s) of the owner(s) or occupant(s);
 4. Approval of the variance will not have a substantial adverse impact on neighboring properties or the public; and,
 5. Granting of the variance will observe the spirit of these regulations and provide substantial justice.
- g. Development related to a variance must be initiated within one (1) year of the variance's issuance and shall be completed within three (3) years of that issuance.
- h. Conditions may be attached to the approval of any variance in accordance with the following:
 1. Conditions shall be designed to ensure compliance with one or more specific requirements of these or other applicable adopted regulations;

2. Conditions shall be directly related to any anticipated impacts of the applicant's proposal; and/or
 3. Conditions shall be roughly proportional to any anticipated impacts of the applicant's proposal.
- i. The Zoning Administrator shall notify the applicant of the decision within 30 calendar days. Such notification shall include the following:
1. The decision of the BOA;
 2. The findings that support the decision;
 3. Any adopted conditions of approval; and
 4. A statement that the decision may be appealed to the Court of Record.

3.2 Amendments

Any person may petition for an amendment of the FHRGA Zone District Map and these regulations. The amendment procedure shall be as provided here and in Section 76-2-205, MCA. Amendments may also be initiated by the City-County Consolidated Planning Board (Planning Board) or the Zoning Administrator, in which case steps 3.2.a.1, a.2, and a.3, are not required.

a. Amendment Process

1. The applicant shall submit, to the CD&P department, a properly completed application form, the required supporting materials, including a narrative which evaluates the request under Section 3.2.b, Amendment Criteria, and the required application fee.
2. The Zoning Administrator shall determine whether the application and supporting materials are complete and sufficient. When an application is determined to be incomplete or insufficient, the Zoning Administrator shall provide written notice to the applicant indicating what information must be submitted for the review to proceed.
3. When the application is determined to be complete and sufficient, the Zoning Administrator shall schedule a public hearing for the application on an agenda of the Planning Board meeting for which notice requirements can be met, and providing one hundred twenty (120) calendar days for processing of the application materials.
4. The Zoning Administrator shall publish notice of the public hearing in a newspaper of general circulation in Lewis and Clark County at least fifteen (15) calendar days prior to the Planning Board's public hearing.
5. The Zoning Administrator shall prepare a report that describes the proposed amendment and how it complies, or fails to comply, with the amendment criteria contained in Section 3.2.b, Amendment Criteria.
6. The Planning Board shall conduct a public hearing on the proposed amendment. Following the public hearing, the Planning Board may determine whether the proposed amendment meets the amendment criteria or continue the meeting to a new date prior to making a recommendation to the BoCC. As a part of this recommendation, the Planning Board shall review the particular facts and circumstances of the proposed amendment and develop findings and conclusions that support its recommendation for approval, approval with modifications, or denial.

7. The Zoning Administrator shall convey the Planning Board's recommendation and public comments to the BoCC and place a public hearing on the agenda of the next regular meeting for which notice and posting requirements can be met, and at which time allows for its proper consideration.
8. The Zoning Administrator shall publish notice of the amendment once per week for two (2) weeks in a newspaper of general circulation and submit a copy of the proposed regulations to the Lewis and Clark County Clerk and Recorder's office to be available for public inspection. Notice shall include the information required in Section 76-2-205(1), MCA. The Zoning Administrator shall also post notice not less than forty-five (45) days before the public hearing in at least five public places, including, but not limited to, public buildings and adjacent to public rights-of-way within the District.
9. The BoCC shall conduct a hearing on the proposed amendment. After the public hearing, the BoCC shall review the proposals of the Planning Board and make any revisions or amendments that it determines to be proper.
10. The BoCC may pass a resolution of intention to amend the zone district map and/or these regulations. If the BoCC passes a resolution of intention, it shall publish notice of passage of the resolution of intention once a week for two (2) weeks in a newspaper of general circulation. The notice must include the elements required in Section 76-2-205(5), MCA.
11. No less than thirty (30) calendar days following the first publication of notice, the BoCC may pass a resolution to amend the regulations and/or map.
12. At the conclusion of the amendment process, the Zoning Administrator shall notify the applicant within thirty (30) calendar days.

b. Amendment Criteria

1. Zoning amendments shall be made:
 - i. In accordance with the Lewis and Clark County Growth Policy and its complimentary Helena Valley Area Plan;
 - ii. To secure safety from fire and other danger;
 - iii. To promote public health, safety and general welfare; and
 - iv. To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.
2. In reviewing and making recommendations or decisions on zoning amendments, the Zoning Administrator, Planning Board and BoCC shall also consider:
 - i. The reasonable provision of adequate light and air;
 - ii. The effect on motorized and non-motorized transportation systems;
 - iii. Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;
 - iv. The character of the District and its peculiar suitability for particular uses;
 - v. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and

- vi. Compatibility with zoning ordinances of nearby municipalities.

3.3 Appeals

a. Administrative Appeals

A determination of the Zoning Administrator may be appealed to the BOA as per Section 76-2-226, MCA using the following procedure:

1. The appellant shall submit a properly completed notice of appeal and supporting materials to the Zoning Administrator within thirty (30) calendar days after the determination was issued. The issuance date is the date the determination is mailed to the appellant.
2. The Zoning Administrator shall schedule a hearing for the appeal on the agenda of the next available meeting of the BOA for which notice requirements can be met and providing fifty (50) calendar days for processing of the application materials. Notice shall be published at least once in a newspaper of general circulation and mailed to all adjacent landowners at least fifteen (15) days prior to the public hearing. Notice shall, at a minimum, include the nature of the request and the time and place of the hearing.
3. The Zoning Administrator shall prepare a summary report that includes the determination and surrounding circumstances, and forward it to the BOA.
4. The BOA shall conduct a hearing on the appeal following the procedure established in the BOA's bylaws. Following the public hearing, the BOA may decide whether the determination being appealed is in compliance with these regulations, and affirm, modify, or overturn that determination accordingly or continue the meeting to a new date prior to making a decision. The BOA's decision shall be in writing and contain a summary of the facts relied on as the basis for its decision.
5. The Zoning Administrator shall notify the applicant of the BOA's decision.

b. Appeals to Court of Record

Any person or persons, jointly or severally, aggrieved by a decision of the BoCC or the BOA may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within thirty (30) calendar days after the filing of the decision in the office of the appropriate Board as per Section 76-2-227(2), MCA. The decision is considered filed on the day that the Zoning Administrator mails notification of the BoCC or BOA's decision.

3.4 Enforcement

- a. The Zoning Administrator is charged with enforcing these regulations.
- b. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of these regulations, the County may institute any appropriate action or proceedings to:
 1. prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
 2. restrain, correct, or abate a violation;

3. prevent the occupancy of the building, structure, or land; or
 4. prevent any illegal act, conduct, business, or use in or near the premises.
- c. For the purposes of enforcing this section, the County shall attempt to obtain voluntary compliance at least 30 calendar days before filing a complaint for a violation of this part that is subject to the penalties under Section 76-2-211, MCA.
 - d. A violation of these regulations is a misdemeanor and shall be punishable by a fine not to exceed \$500 or imprisonment in the county jail not exceeding 6 months or both. Each day constitutes a separate violation.

4 DEFINITIONS

4.1 Abandoned - The relinquishment of property, or a cessation of the use of the property, by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property.

4.2 Accessory Dwelling - A separate, complete housekeeping unit with a separate entrance, kitchen, sleeping area, and bathroom facilities, which is an attached or detached extension of a principal use.

4.3 Accessory Use - A use, building, or structure that is incidental and subordinate to and customarily found with the principal use.

4.4 Agriculture - Montana Code Annotated contains definitions for the words "agriculture" and "agricultural" as follows:

Section 41-2-103, M.C.A. Definitions. As used in this part, the following definitions apply: (1) "Agriculture" means: (a) all aspects of farming, including the cultivation and tillage of the soil; (b)(i) dairying; and (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the Federal Agricultural Marketing Act [12 U.S.C. 1141j(g)]; (c) the raising of livestock, bees, fur-bearing animals, or poultry; and (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

Section 81-8-701, M.C.A. Definitions. Unless the context requires otherwise, in this part the following definitions apply: (1) "Agricultural and food product" includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

4.5 Board of Adjustment – An appointed board authorized under Section 76-2-221, MCA with the authority to hear and decide administrative appeals and variances from the requirements of these regulations.

4.6 Cluster Development – Cluster development means a subdivision with lots clustered that is designed to concentrate building sites on smaller lots in order to reduce capital and

maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

4.7 Creation of New Parcels of Land – The creation of new parcels specifically includes lots or parcels created through court order (Section 76-3-201(1)(a), MCA); mortgage exemption (Section 76-3-201(1)(b), MCA); the reservation of a life estate (Section 76-3-201(1)(e), MCA); condominium declaration (Section 76-3-203, MCA); family transfer (Section 76-3-207(1)(b), MCA); agricultural exemption (Section 76-3-207(1)(c), MCA), and subdivision review (Section 76-3-101, MCA).

This term does not include cemetery lots (Section 76-3-201(1)(d), MCA); lease or rental for farming and agricultural purposes (Section 76-3-201(1)(f), MCA); lots created in a location where the State does not have jurisdiction (Section 76-3-201(1)(g), MCA); or lots created for rights-of-way or utility sites (Section 76-3-201(1)(h), MCA). *Also see Parcel of Land.*

4.8 Develop or Development – Commercial, industrial or residential use or any combination thereof. This term does not include land to be used for agricultural production, open space, and/or resource use.

4.9 Lot – *See Definition for Parcel of Land.*

4.10 MCA – Montana Code Annotated, the laws of the State of Montana.

4.11 Non-Conforming Parcel - Any parcel that at the time of creation conformed to existing rules and regulations, but is now inconsistent with these regulations.

4.12 Non-conforming Use - An existing use that was lawful prior to the adoption or amendment of these regulations, but is no longer considered an allowed use.

4.13 Parcel of Land – An individual tract of record, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the Lewis and Clark County Clerk and Recorder's office. The terms Parcel and Lot are used interchangeably in these regulations.

4.14 Parent Parcel – The original tract or tracts of record from which new parcels are created.

4.15 Person – Any individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

4.16 Principal Use – The dominant, main, or primary use of a parcel of land.

4.17 Residential - A property or structure dwelling unit(s) that is used primarily as a dwelling place.

4.18 Structure - An object or building constructed or installed by man, including, but not limited to, buildings, towers, antennas, wind turbines, smoke stacks, and overhead transmission lines.

4.19 Utility Sites – Parcels of land specifically designed and used to provide a public or quasi-public service subject to special governmental regulations. Such services would typically include, but are not limited to, water tanks, electrical substations, and communications facilities.

4.20 Zoning Administrator – The Director of the Lewis and Clark County CD&P Department or designee, who is responsible for interpreting and carrying out the provisions of these regulations.

Exhibit "C"

**FORT HARRISON URBAN GROWTH AREA ZONE DISTRICT
DRAFT: August 9, 2018**

1. GENERAL PROVISIONS

1.1 Title

These regulations are to be known as the Fort Harrison Urban Growth Area (FHUGA) Zone Regulations.

1.2 Authority

These regulations are adopted under the authority of Section 76-2-201, MCA.

1.3 Purpose

The purpose of these regulations is to promote the public health, safety, morals, and general welfare consistent with the policy recommendations of the Lewis and Clark County Growth Policy and it's complimentary Helena Valley Area Plan. Additionally, these regulations are intended to:

- a. Secure safety from fire and other dangers;
- b. Promote public health, public safety and general welfare;
- c. Limit the density of residential development by reducing conflicts with adjoining land uses and increasing compatibility with the military operations occurring at Fort Harrison;
- d. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements;
- e. Provide for adequate light and air;
- f. Lessen congestion on motorized and non-motorized transportation systems;
- g. Promote compatible urban growth in the vicinity of cities and towns in consideration of the character of the district and its peculiar suitability for particular uses;
- h. Conserve the value of buildings and encourage the most appropriate use of land throughout the jurisdictional area; and
- i. Promote compatibility with zoning ordinances of nearby municipalities.

1.4 Applicability

These regulations apply to the creation of parcels of land within the FHUGA Zone District as established on the official FHUGA Zone District Map attached hereto and incorporated herewith as Exhibit A.

1.5 Compliance Required

No parcel of land shall be created unless it is in conformance with these zoning regulations.

1.6 Conflict with Other Laws & Severability

Whenever the requirements of these regulations are in conflict with the requirements of other lawfully adopted rules, regulations, or resolutions, the most restrictive, or that imposing higher standards, shall govern. If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, the remaining regulations will remain in effect, and be construed as if the invalid portion was never a part of these regulations.

1.7 Vested Rights

A vested right is the right to proceed with the creation of one or more new parcels of land in compliance with previous regulations or approvals. For subdivisions or exemptions from the Montana Subdivision and Platting Act and the Lewis and the Clark County Subdivision Regulations, as amended, a vested right to proceed with the creation of one or more new parcels of land shall be established by obtaining a letter of sufficiency, from the Zoning Administrator or designee, for a subdivision application, or concept approval for the use of an exemption from subdivision review as such may be deemed acceptable by the Survey Review Committee, prior to the date of adoption of these regulations. Vested rights terminate when a subdivision approval period, including any extensions approved by the governing body, expires without the applicant submitting a complete application for final approval or when the concept approval period expires for the proposed subdivision exemption.

1.8 Continuation of Non-conforming Uses

If, at the time of adoption of these regulations or of any amendments to these regulations, or at the time a zone district is created or of any amendments to the boundaries of this district to which these regulations are applied, any structure located or erected in an otherwise lawful manner that does not conform to the provisions of these regulations shall be deemed a legal, non-conforming structure, and any lot or structure being used in an otherwise lawful manner that does not conform to the use provisions of these regulations shall be deemed a legal, non-conforming use. Both legal non-conforming structures and/or uses may continue in the manner and to the extent that each existed or was being used at the time of the adoption of these regulations. Such non-conforming status will run with the lot and shall not be affected by changes in ownership.

Any structure in which on-site construction has begun prior to the adoption or amendment of these regulations, or creation or amendment of the zone district to which these regulations apply, and the erection of which is in conformity with all current regulations in effect, but does not conform to the provisions of these regulations, is a non-conforming structure.

Any non-conforming structure and/or use may be continued, except if the non-conforming structure and/or use is abandoned or deserted, or voluntarily or by legal action caused to be discontinued for a period of 180 days. If the non-conforming structure and/or use is abandoned, deserted, or caused to be discontinued for a period of 180 days or longer, any subsequent use of the lot or structure shall be required to conform to the provisions of these regulations.

The following are the only changes allowed to non-conforming structures and/or uses:

- a. Routine maintenance and repair, or those modifications required by applicable health and safety codes.
- b. Enlarging, extending, reconstructing, or structurally altering a non-conforming structure if said structure is changed to completely conform to these regulations.

A non-conforming structure or use that is destroyed or substantially damaged by fire, flood, or other natural disaster may not be restored as a non-conforming structure or use unless a variance is issued or unless initiation of the restoration process occurs within 24 months of the damage having occurred and the resulting structure or use occupies the same physical footprint and is used for the same purpose(s) as the original non-conforming structure or use. Completion of this restoration must occur within 60 months of the damage. A non-conforming structure or use is considered to be substantially damaged when 80% or more of a structure is damaged or destroyed.

1.9 Private Agreements

Adoption of these regulations does not nullify easements, covenants, and/or similar private agreements, but where any such easement, covenant, and/or agreement imposes requirements less restrictive than those adopted herein, the requirements of these regulations apply.

1.10 Interpretation

The language of these regulations must be read literally. These regulations are no more or less strict than stated. In the event a question arises concerning any provision or the application of any provision of these regulations, the Zoning Administrator shall be responsible for such interpretation and will look to the overall purpose of these regulations, the Lewis and Clark County Growth Policy, and its complimentary Helena Valley Area Plan for guidance. Any person who disputes the interpretation of the Zoning Administrator, may appeal the Administrator's decision using the procedure in Section 3.3.a, Administrative Appeals.

1.11 Minimum Requirements

All requirements of these regulations shall be interpreted as the minimum necessary to protect the public health, safety and general welfare. These regulations are designed for consistency with the Lewis and Clark County Growth Policy and its complimentary Helena Valley Area Plan, and should be interpreted to achieve their goals, objectives, policies and strategies.

2. ZONE DISTRICT AND MAP

2.1 Zone District

The following zone district and its boundaries, as shown on the official FHUGA Zone Map, is established:

- a. Fort Harrison Urban Growth Area (FHUGA) Zone District.

2.2 Zone District Map

The Fort Harrison Urban Growth Area Zone District Map attached hereto and incorporated herewith as Exhibit A is adopted by reference as a part of these regulations. The most recently adopted, official map shall be recorded at the office of the Lewis and Clark County Clerk and Recorder with a copy of this map maintained for public inspection at the office of the Zoning Administrator.

2.3 Zone District Boundaries

When definite distances or boundaries are not shown on the Fort Harrison Urban Growth Area Zone Map, the following rules shall apply:

- a. Boundaries indicated as approximately following the Township, Range, Section, or Quarter-Section lines, rights-of-way or centerlines of roads, highways, trails, pathways or alleys shall be construed to follow such rights-of-way or centerlines.
- b. Boundaries indicated as approximately following municipal limits shall be construed as following those boundaries.
- c. Boundaries indicated as approximately following platted lots lines shall be construed as following such lot lines.
- d. Boundaries indicated as approximately following centerlines of lakes, streams, rivers, canals, irrigation ditches or other bodies of water or other physical features shall be construed as following such centerlines.
- e. Boundaries indicated as approximately following the boundaries of the Rural Growth Area or Transitional Growth Area in the Lewis and Clark County Growth Policy, as amended by its complimentary Helena Valley Area Plan, shall be construed as following those boundaries.
- f. Boundaries indicated as approximately following the boundaries of the Fort Harrison Compatibility Area shall be construed as following those boundaries.

Any person who disputes the location of a zone district boundary as interpreted by the Zoning Administrator may appeal the Administrator's decision using the procedure in Section 3.3.a, Administrative Appeals.

2.4 Zone District Regulations

a. Minimum Parcel Size

1. The minimum size for newly created residential parcels of land in the FHUGA Zone District shall be ten (10) acres, except as provided in Section 2.5, Cluster Development. There is no minimum parcel size for newly created non-residential parcels of land in the FHUGA Zone District.
2. In the case where residential parcels of any size exist at the time of adoption of these regulations, the boundaries between parcels may be relocated to result in one or more parcels with less than the minimum parcel sizes stated in Section 2.4.a.1., provided that there is no net increase in the number of developable parcels.

b. Land Use

All land uses are allowable in the FHUGA District in compliance with local, State and Federal laws and regulations. Only one principal use is allowed on each residential parcel.

2.5 Cluster Development

The purpose of this section is to encourage alternative design techniques for residential developments that efficiently make use of land and water resources; protect environmentally sensitive areas, natural features and soils of agricultural importance; and promote cost savings in infrastructure development and maintenance. Clustering residential development allows for the creation of lots smaller than the minimum lot sizes established in these regulations, with the balance of the property maintained in open space and/or a resource use such as agriculture.

- a. The minimum size of parcels to be developed is the minimum size allowable under the Administrative Rules of Montana adopted by the Montana Department of Environmental Quality under Title 76, Chapter 4, MCA.
- b. Apart from any parcel that will remain as undeveloped open space and/or resource use, the maximum size of each parcel to be developed in a cluster development is two (2) acres.
- c. To reduce the potential for groundwater depletion due to the concentration of wells, the maximum number of parcels to be developed in a cluster development is ten (10). Additional non-clustered lots can be included in a subdivision plan for a cluster development to achieve the maximum density allowed under the FHUGA District as shown in Figure 1.
- d. The minimum amount of land preserved in a cluster development is equal to the base density of ten (10) acres per parcel, minus the area in new lots planned for development. For example, an 80-acre parcel can be divided into 8 lots (80 acres ÷ a base density of 10 acres per lot). In Figure 1, each of the eight cluster lots is one acre in size as allowed under DEQ rules for water and wastewater. The 9th parcel, 72 acres in size, is to be preserved as open space and/or a resource use(s). Under this development scenario, approximately 90 percent of the parcel is maintained in open space, and the need for road construction is minimized.

Figure 1 shows a second example of development of a 160-acre parcel. A 160-acre parcel of land can be divided into sixteen lots planned for development (160 acres ÷ a base density of 10 acres per lot). Each of the ten cluster lots (the maximum number of cluster lots allowed) planned for development is two acres in size. An added six non-clustered lots of 10 acres each are allowed on the parcel being subdivided to achieve the full development potential of the quarter section of land. The 17th parcel, 80 acres in size, is to be preserved as open space and/or a resource use(s). Under this development scenario, approximately half of the parcel is maintained in open space, and the need for road construction is minimized.

Numerous other combinations and configurations are possible so long as they comply with the provisions for cluster development and the density restrictions.

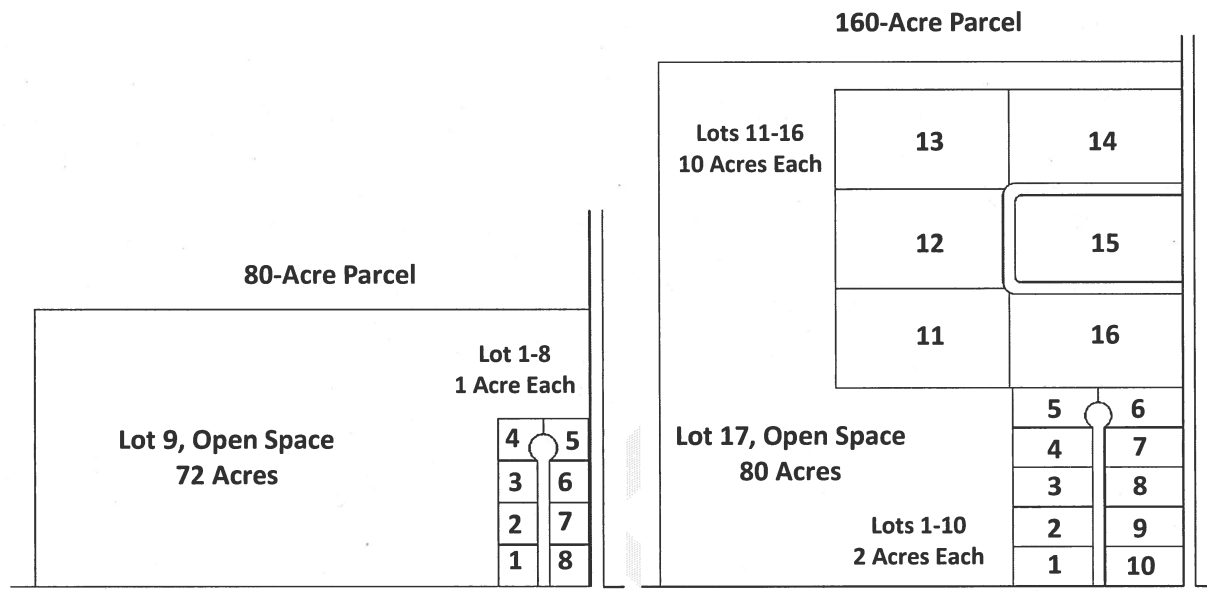


Figure 1 – Alternative layouts for clustered development.

- e. The land preserved in open space and/or a resource use(s) must:
1. Be maintained on a long-term basis through a revocable covenant prohibiting further subdivision, division, or development of the open space and/or resource use parcel. Revocation of said covenant requires approval by the Lewis and Clark County Board of County Commissioners (BoCC). Revocations may be considered if zoning and/or development constraint conditions no longer require density to be limited on the subject property;
 2. Be accessible via a road and/or trail easement filed with the Lewis and Clark County Clerk and Recorder's office;
 3. Be identified on a final subdivision plat or certificate of survey (for exemptions from subdivision). The Final Plat or COS shall include a notation as to the official recordation location of the revocable covenant;
 4. Include a plan for ongoing use and maintenance as open space and/or a resource use(s) that includes provisions to manage vegetation and noxious weeds, and that may be amended by the BoCC in consultation with parties owning title to the land;
 5. When present, include environmentally sensitive areas such as wetlands, streams, floodplains or riparian areas; agricultural soils (prime farmland); wildlife habitat; rare, threatened or sensitive plants; and scenic resources such as hillsides or forested areas; and,
 6. Be located adjacent to the one or more lots to be developed.

2.6 Park Dedication Requirement

Given the minimum lot size of ten (10) acres for residential uses and the provisions for open space and/or a resource use(s) in cluster developments, no park land is required for development in the Fort Harrison Urban Growth Area Zone District as provided in Section 76-3-621(2), MCA and the Lewis and Clark County Subdivision Regulations, as amended.

2.7 Exemption from Requirements for Environmental Assessment and Review of Impacts

As provided in Section 76-3-609(2)(d), MCA and the Lewis and Clark County Subdivision Regulations, as amended, first minor subdivisions in the Fort Harrison Urban Growth Area Zone District are exempt from the requirements for completion of an environmental assessment and for review of impacts on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety.

2.8 Accessory Uses and Buildings

- a. Home occupations are an allowable accessory use provided they comply with Section 2.9, Home Occupations.
- b. One accessory dwelling unit per residential parcel, or non-residential parcel with a minimum of ten acres, is allowed.
- c. Accessory uses must comply with all other applicable local, State and Federal regulations.

2.9 Home Occupations

A residential use may include a home occupation(s), which is allowable as an accessory use. A home occupation must comply with the following provisions:

- a. A home occupation must not involve more than the equivalent of two (2) persons, whom work on the site, and who do not live in the residence;
- b. A home occupation must not create noticeable glare, noise, odor, vibration, smoke, dust, or heat at or beyond the property line(s); and
- c. A home occupation must not generate more than an average of ten (10) additional vehicle trips per day on a weekly basis, including deliveries.

Agricultural activities are exempt from these requirements.

3. ADMINISTRATION

The Director of the Lewis and Clark County Community Development and Planning Department (CD&P) or designee is hereby designated as the Zoning Administrator to administer and interpret these regulations.

3.1 Variances

Variances provide relief for landowners whom, due to some unique characteristic of their property, would suffer unnecessary hardship if these regulations were strictly enforced. Variances may be granted, but only as provided here.

- a. The applicant shall submit to the CD&P department, a properly completed application form, the required supporting materials including a narrative which evaluates the variance request under the review criteria (Section 3.1.f, Review Criteria), and the required application fee.
- b. When an application is submitted, the Zoning Administrator shall determine whether the application form and supporting materials are complete and sufficient. When an application is determined to be incomplete or insufficient, the Zoning Administrator shall provide written notice to the applicant indicating what information must be submitted for the review to proceed.
- c. When an application is deemed complete and sufficient, the Zoning Administrator shall schedule a public hearing on the agenda of the next available meeting of the Lewis and Clark County Board of Adjustment (BOA) for which notice requirements can be met and providing fifty (50) calendar days for processing of the application materials. Notice shall be published at least once in a newspaper of general circulation and mailed to all adjacent landowners at least fifteen (15) calendar days prior to the public hearing. Notice shall, at a minimum, include the nature of the request and the time and place of the public hearing.
- d. The Zoning Administrator shall prepare a report that describes the proposed variance, its site, its context, and an evaluation of the request under the variance criteria in Section 3.1.f, Review Criteria.
- e. The BOA shall conduct a public hearing on the proposed variance. Following the public hearing, the BOA may review the particular facts and circumstances of the proposed variance and develop findings and conclusions in support of its decision or continue the meeting to a new date prior to making its decision.
- f. Review Criteria. The BOA may approve a variance only upon finding that:
 1. The need for a variance results from physical limitations or unique circumstances related to the lot or parcel on which the variance is requested;
 2. The failure to approve the variance will result in an undue hardship because without a variance, strict compliance with the terms of these regulations will limit the reasonable use of the property and deprive the applicant of rights enjoyed by other properties similarly situated in the District;
 3. The alleged hardship has not been created by an action(s) of the owner(s) or occupant(s);
 4. Approval of the variance will not have a substantial adverse impact on neighboring properties or the public; and,
 5. Granting of the variance will observe the spirit of these regulations and provide substantial justice.
- g. Development related to a variance must be initiated within one (1) year of the variance's issuance and shall be completed within three (3) years of that issuance.
- h. Conditions may be attached to the approval of any variance in accordance with the following:
 1. Conditions shall be clearly designed to ensure compliance with one or more specific requirements of these or other applicable adopted regulations;

2. Conditions shall be directly related to any anticipated impacts of the applicant's proposal; and/or
 3. Conditions shall be roughly proportional to any anticipated impacts of the applicant's proposal.
- i. The Zoning Administrator shall notify the applicant of the decision within 30 calendar days. Such notification shall include the following:
1. The decision of the BOA;
 2. The findings that support the decision;
 3. Any adopted conditions of approval; and
 4. A statement that the decision may be appealed to the Court of Record.

3.2 Amendments

Any person may petition for an amendment of the FHUGA Zone District Map and these regulations. The amendment procedure shall be as provided here and in Section 76-2-205, MCA. Amendments may also be initiated by the City-County Consolidated Planning Board (Planning Board) or the Zoning Administrator, in which case steps 3.2.a.1, a.2, and a.3, are not required.

a. Amendment Process

1. The applicant shall submit, to the CD&P department, a properly completed application form, the required supporting materials, including a narrative which evaluates the request under Section 3.2.b, Amendment Criteria, and the required application fee.
2. The Zoning Administrator shall determine whether the application and supporting materials are complete and sufficient. When an application is determined to be incomplete or insufficient, the Zoning Administrator shall provide written notice to the applicant indicating what information must be submitted for the review to proceed.
3. When the application is determined to be complete and sufficient, the Zoning Administrator shall schedule a public hearing for the application on an agenda of the Planning Board meeting for which notice requirements can be met, and providing one hundred twenty (120) calendar days for processing of the application materials.
4. The Zoning Administrator shall publish notice of the public hearing in a newspaper of general circulation in Lewis and Clark County at least fifteen (15) calendar days prior to the Planning Board's public hearing.
5. The Zoning Administrator shall prepare a report that describes the proposed amendment and how it complies, or fails to comply, with the amendment criteria contained in Section 3.2.b.
6. The Planning Board shall conduct a public hearing on the proposed amendment. Following the public hearing, the Planning Board may determine whether the proposed amendment meets the amendment criteria or continue the meeting to a new date prior to making a recommendation to the BoCC. As a part of this recommendation, the Planning Board shall review the particular facts and circumstances of the proposed amendment and develop findings and conclusions that support its recommendation for approval, approval with modifications, or denial.

7. The Zoning Administrator shall convey the Planning Board's recommendation and public comments to the BoCC and place a public hearing on the agenda of the next regular meeting for which notice and posting requirements can be met, and at which time allows for its proper consideration.
8. The Zoning Administrator shall publish notice of the amendment once per week for two (2) weeks in a newspaper of general circulation and submit a copy of the proposed regulations to the Lewis and Clark County Clerk and Recorder's office to be available for public inspection. Notice shall include the information required in Section 76-2-205(1), MCA. The Zoning Administrator shall also post notice not less than forty-five (45) days before the public hearing in at least five public places, including, but not limited to, public buildings and adjacent to public rights-of-way within the District.
9. The BoCC shall conduct a hearing on the proposed amendment. After the public hearing, the BoCC shall review the proposals of the Planning Board and make any revisions or amendments that it determines to be proper.
10. The BoCC may pass a resolution of intention to amend the zone district map and/or these regulations. If the BoCC passes a resolution of intention, it shall publish notice of passage of the resolution of intention once a week for two (2) weeks in a newspaper of general circulation. The notice must include the elements required in Section 76-2-205(5), MCA.
11. No less than thirty (30) calendar days following the first publication of notice, the BoCC may pass a resolution to amend the regulations and/or map.
12. At the conclusion of the amendment process, the Zoning Administrator shall notify the applicant within thirty (30) calendar days.

b. Amendment Criteria

1. Zoning amendments shall be made:
 - i. In accordance with the Lewis and Clark County Growth Policy and its complimentary Helena Valley Area Plan;
 - ii. To secure safety from fire and other danger;
 - iii. To promote public health, safety and general welfare; and
 - iv. To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.
2. In reviewing and making recommendations or decisions on zoning amendments, the Zoning Administrator, Planning Board and BoCC shall also consider:
 - i. The reasonable provision of adequate light and air;
 - ii. The effect on motorized and non-motorized transportation systems;
 - iii. Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;
 - iv. The character of the District and its peculiar suitability for particular uses;
 - v. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and

- vi. Compatibility with zoning ordinances of nearby municipalities.

3.3 Appeals

a. Administrative Appeals

A determination of the Zoning Administrator may be appealed to the BOA as per Section 76-2-226, MCA using the following procedure:

1. The appellant shall submit a properly completed notice of appeal and supporting materials to the Zoning Administrator within thirty (30) calendar days after the determination was issued. The issuance date is the date the determination is mailed to the appellant.
2. The Zoning Administrator shall schedule a hearing for the appeal on the agenda of the next available meeting of the BOA for which notice requirements can be met and providing fifty (50) calendar days for processing of the application materials. Notice shall be published at least once in a newspaper of general circulation and mailed to all adjacent landowners at least fifteen (15) days prior to the public hearing. Notice shall, at a minimum, include the nature of the request and the time and place of the hearing.
3. The Zoning Administrator shall prepare a summary report that includes the determination and surrounding circumstances, and forward it to the BOA.
4. The BOA shall conduct a hearing on the appeal following the procedure established in the BOA's bylaws. Following the public hearing, the BOA may decide whether the determination being appealed is in compliance with these regulations, and affirm, modify, or overturn that determination accordingly or continue the meeting to a new date prior to making a decision. The BOA's decision shall be in writing and contain a summary of the facts relied on as the basis for its decision.
5. The Zoning Administrator shall notify the applicant of the BOA's decision.

b. Appeals to Court of Record

Any person or persons, jointly or severally, aggrieved by a decision of the BoCC or the BOA may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within thirty (30) calendar days after the filing of the decision in the office of the appropriate Board as per Section 76-2-227(2), MCA. The decision is considered filed on the day that the Zoning Administrator mails notification of the BoCC or BOA's decision.

3.4 Enforcement

- a. The Zoning Administrator is charged with enforcing these regulations.
- b. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of these regulations, the County may institute any appropriate action or proceedings to:
 1. prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
 2. restrain, correct, or abate a violation;

3. prevent the occupancy of the building, structure, or land; or
 4. prevent any illegal act, conduct, business, or use in or near the premises.
- c. For the purposes of enforcing this section, the County shall attempt to obtain voluntary compliance at least 30 calendar days before filing a complaint for a violation of this part that is subject to the penalties under Section 76-2-211, MCA.
 - d. A violation of these regulations is a misdemeanor and shall be punishable by a fine not to exceed \$500 or imprisonment in the county jail not exceeding 6 months or both. Each day constitutes a separate violation.

4 DEFINITIONS

4.1 Abandoned - The relinquishment of property, or a cessation of the use of the property, by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property.

4.2 Accessory Dwelling - A separate, complete housekeeping unit with a separate entrance, kitchen, sleeping area, and bathroom facilities, which is an attached or detached extension of a principal use.

4.3 Accessory Use - A use, building, or structure that is incidental and subordinate to and customarily found with the principal use.

4.4 Agriculture - Montana Code Annotated contains definitions for the words "agriculture" and "agricultural" as follows:

Section 41-2-103, M.C.A. Definitions. As used in this part, the following definitions apply: (1) "Agriculture" means: (a) all aspects of farming, including the cultivation and tillage of the soil; (b)(i) dairying; and (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the Federal Agricultural Marketing Act [12 U.S.C. 1141j(g)]; (c) the raising of livestock, bees, fur-bearing animals, or poultry; and (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

Section 81-8-701, M.C.A. Definitions. Unless the context requires otherwise, in this part the following definitions apply: (1) "Agricultural and food product" includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

4.5 Board of Adjustment – An appointed board authorized under Section 76-2-221, MCA with the authority to hear and decide administrative appeals and variances from the requirements of these regulations.

4.6 Cluster Development – Cluster development means a subdivision with lots clustered that is designed to concentrate building sites on smaller lots in order to reduce capital and

maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

4.7 Creation of New Parcels of Land – The creation of new parcels specifically includes lots or parcels created through court order (Section 76-3-201(1)(a), MCA); mortgage exemption (Section 76-3-201(1)(b), MCA); the reservation of a life estate (Section 76-3-201(1)(e), MCA); condominium declaration (Section 76-3-203, MCA); family transfer (Section 76-3-207(1)(b), MCA); agricultural exemption (Section 76-3-207(1)(c), MCA), and subdivision review (Section 76-3-101, MCA).

This term does not include cemetery lots (Section 76-3-201(1)(d), MCA); lease or rental for farming and agricultural purposes (Section 76-3-201(1)(f), MCA); lots created in a location where the State does not have jurisdiction (Section 76-3-201(1)(g), MCA); or lots created for rights-of-way or utility sites (Section 76-3-201(1)(h), MCA). *Also see Parcel of Land.*

4.8 Develop or Development – Commercial, industrial or residential use or any combination thereof. This term does not include land to be used for agricultural production, open space, and/or resource use.

4.9 Lot – *See Definition for Parcel of Land.*

4.10 MCA – Montana Code Annotated, the laws of the State of Montana.

4.11 Non-Conforming Parcel - Any parcel that at the time of creation conformed to existing rules and regulations, but is now inconsistent with these regulations.

4.12 Non-conforming Use - An existing use that was lawful prior to the adoption or amendment of these regulations, but is no longer considered an allowed use.

4.13 Parcel of Land – An individual tract of record, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the Lewis and Clark County Clerk and Recorder's office. The terms Parcel and Lot are used interchangeably in these regulations.

4.14 Parent Parcel – The original tract or tracts of record from which new parcels are created.

4.15 Person – Any individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

4.16 Principal Use – The dominant, main, or primary use of a parcel of land.

4.17 Residential - A property or structure dwelling unit(s) that is used primarily as a dwelling place.

4.18 Structure - An object or building constructed or installed by man, including, but not limited to, buildings, towers, antennas, wind turbines, smoke stacks, and overhead transmission lines.

4.19 Utility Sites – Parcels of land specifically designed and used to provide a public or quasi-public service subject to special governmental regulations. Such services would typically include, but are not limited to, water tanks, electrical substations, and communications facilities.

4.20 Zoning Administrator – The Director of the Lewis and Clark County CD&P Department or designee, who is responsible for interpreting and carrying out the provisions of these regulations.