ZONING REGULATIONS

HELENA VALLEY

An Implementation Element of the
Lewis and Clark County Growth Policy

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SECTION 1 ADMINISTRATIVE PROVISIONS AND PROCEDURES

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101 Intent

This document shall be known as the Helena Valley Zoning Regulations (Regulations) and is adopted pursuant to the enabling authority of Title 76, Chapter 2, Part 2, Montana Code Annotated (MCA) to promote the public health, safety, morals, and general welfare of the community. These Regulations have been established for the area known as the "Helena Valley Planning Area" as defined in the Lewis and Clark County Growth Policy Update – 2015, Volume 1 - Key Issues, and Volume 2 -Helena Valley Area Plan (Growth Policy); and as depicted on the map referenced in Appendix – A.

To achieve the above stated goals, these Regulations shall govern, but are not necessarily limited to, such issues as the height and size of buildings and structures, the size of yards and open space, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes in a manner consistent with the goals and objectives of the Growth Policy.

102 Conflicting Provisions

Whenever a provision of these Regulations, and any other law, ordinance, resolution, rule, Part-2 zoning, or regulation of any kind (other than Part-1 zoning), contain any restriction covering any of the same, or substantially the same, subject matter, whichever restriction is more restrictive or imposes a higher standard or requirement shall govern. However, wherever a Part-1 zone district is overlaid by Part-2 zoning, that Part-2 zoning shall have no effect whatsoever on the area of the Part-1 zoning; until and unless such Part-1 zoning may be repealed.

Unless otherwise specified, references within these Regulations to Lewis and Clark County agreements, plans, codes, ordinances, manuals, and other regulations shall refer to the version most recently approved or amended by the County.

103 Existing Permits, Easements, Development Guides, or Other Approvals

These Regulations are not intended to abrogate, annul, govern, or prevail over any permits, easements or agreements approved prior to the effective date of these Regulations, except as otherwise noted in Section 102.

104 Jurisdiction

These Regulations shall apply to all land (existing or future parcels) within the unincorporated area of Lewis and Clark County, Montana known as the Helena Valley Planning Area and as depicted on the zoning map referenced in these Regulations.

105 Fees

The Board of County Commissioners (BoCC) shall establish and adopt a schedule of fees to be paid by the applicant/developer to defray the expenses of the County in the review and hearing of all proposed actions relative to these Regulations.

106 Calculation of Time Period for Public Notice

When calculating the time period for publishing or posting a public notice or providing mailed notice to abutting (and other) landowners of a public hearing, the day of publishing, posting, or mailing will not be counted in the total number of days required. The day of the hearing shall be counted toward the total number of days required for the notification period. References to "days" in public notice requirements are to calendar days unless otherwise expressly stated.

107 Amendment of the Zoning Regulations - Procedure

107.01 Initiating Amendments. An amendment to the text of the Regulations or to the designation of zoning districts (the zoning map) may be initiated by the BoCC, the Zoning Administrator, the Consolidated City and County Planning Board (Planning Board), or one (1) or more residents or landowners within the jurisdictional area of the Regulations. The amendment procedure will be as provided in Section 76-2-205, MCA, and as otherwise set forth herein.

107.02 Application Requirements. When an amendment is proposed by anyone other than the BoCC, Planning Board or Zoning Administrator, the applicant must notify the Zoning Administrator and request a pre-application meeting. At the pre-application meeting, the Zoning Administrator will discuss the necessary information regarding the proposal, the application form and its submittal requirements, fees, timeline, and address any questions regarding the overall petition process to amend the Regulations. The submittal requirements shall include, but not be limited to:

107.02.1 A letter signed by at least one (1) landowner within the jurisdictional area of the proposed amendment;

107.02.2 A scaled vicinity map of the affected area(s) and surrounding one (1) mile area, clearly identifying the location of the property (when applicable);

107.02.3 A legal description of the boundaries of the proposed amended map area (when applicable);

107.02.4 A description of the existing land-use of the affected and all adjacent areas (when applicable);

107.02.5 A description of the anticipated impact upon all adjacent properties (when applicable);

107.02.6 A description of any previous request for a zone change or variance involving the parcel, as well as any action taken on previous requests.

107.02.7 A statement from the applicant which addresses the following considerations:

(a) Explains how the proposed amendment is in accordance with the Growth Policy;

(b) Explains how the proposed amendment is designed to:(i) Secure safety from fire, and other dangers; (ii) Promote public health, public safety, and general welfare; (iii) Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and

(c) Explains how the proposed amendment addresses (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, as applicable; (iv) the character of the district and its peculiar suitability for particular uses; (iv) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and (v) as nearly as possible, is made compatible with the zoning ordinances of nearby municipalities.

107.02.8 Application fee (available from the Lewis and Clark County Community Development and Planning Department (CDP).

107.03 Determination of Complete Application. 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.

107.04 Planning Board Meeting. When the application is determined to be complete and sufficient, the Zoning Administrator shall schedule a public meeting before the Planning Board and provide public notice in accordance with the notice requirements set forth in Section 76-2-204, MCA.

107.05 Staff Report. The Zoning Administrator shall prepare a staff report that describes the proposed amendment and gives consideration to the amendment criteria set forth in Section 107.

107.06 Planning Board Meeting and Consideration. The Planning Board shall conduct a public meeting on the proposed amendment and, after considering the application, the staff report, public comments, the amendment criteria, these Regulations and all other relevant information, shall make a recommendation to the BoCC. The Planning Board shall provide a written report of its recommendation to the BoCC.

107.07 Board of County Commissioners' Hearing. Following receipt of the Planning Board's recommendation, the Zoning Administrator shall convey the Planning Board's recommendation and public comment to the BoCC and the BoCC shall schedule a public hearing and provide public notice in accordance with Section 108. At the hearing, the BoCC shall provide an opportunity for the public to be heard.

107.08 Resolution. After the public hearing, the BoCC shall give consideration to the application, the staff report, the recommendation from the Planning Board, public comments, the amendment criteria, these Regulations and all other relevant information and may make such revisions or amendments to the proposed amendment as it deems proper. The BoCC may pass a Resolution of Intention to amend these Regulations. If the BoCC passes a Resolution of Intention, the BoCC shall publish notice of passage of the Resolution of Intention in accordance with the requirements of Section 76-2-205(5), MCA.

107.09 Final Action. Following the 30-day period prescribed in Section 76-2-205(5), MCA and in accordance with the relevant portions therein, the BoCC may, within thirty (30) days thereafter, adopt a resolution amending these Regulations and promptly notify the applicant of its determination.

107.10 Amendment Criteria. For all requests to amend these Regulations, the following criteria and guidelines shall apply:

107.10.1 Zoning amendments shall be made as follows:

(a) In accordance with the Growth Policy;

(b) To secure safety from fire and other danger;

(c) To promote public health, safety and general welfare; and

(d) To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

107.10.2 In reviewing and making recommendations or decisions on zoning amendments, the Zoning Administrator, Planning Board and BoCC shall also consider:

(a) The reasonable provision of adequate light and air;

(b) The effect on motorized and non-motorized transportation systems;

(c) Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;

(d) The character of the zoning district and its peculiar suitability for particular uses;

(e) Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and

(f) Compatibility with zoning regulations of nearby municipalities.

107.11 Effective Date of Zoning Regulation Amendments
Amendments approved by the BoCC shall become effective immediately upon approval of a Resolution of Adoption by the BoCC.

108 Public Notice Requirements for Amendments

108.01 Notice Procedure.

108.01.1 For actions to amend the Regulations and/or the Zoning Map pursuant to Section 107, post a notice in at least five (5) public places at least forty-five (45) days prior to a public hearing, in compliance with Section 76-2-205(1), MCA.

108.01.2 Publish a notice once a week for two (2) weeks in a newspaper of general county circulation, with at least six (6) days separating each publication.

108.02 Notice Content.

108.02.1 Public notice shall contain:

(a) A brief statement of the type of application being sought or action being proposed, and for proposed or amendments to zoning regulations the general character of those proposed regulations;

(b) The location of the subject property, or the boundaries of a proposed or amended zoning district;

(c) The date, time, and place of the public hearing or other action; and

(d) A statement that the application or proposed action is on file for public inspection at the Community Development and Planning Office and, for proposals to create or amend a zoning district under Section 107, the application or proposed action shall also be available for review at the Lewis and Clark County Clerk and Recorder office.

109 Violations

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, as set forth in Section 76-2-211, MCA, in addition to other remedies, may institute any appropriate action or proceedings to:

109.01 Prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

109.02 Restrain, correct, or abate a violation;

109.03 Prevent the occupancy of the building, structure, or land; or

109.04 Prevent any illegal act, conduct, business, or use in or near the premises.

109.05 For the purposes of enforcing the above noted subsections 109.01 – 109.04, the County shall attempt to obtain voluntary compliance at least thirty (30) days before filing a complaint for a violation of this part that is subject to the penalties as noted in Section 110, and in Title 76, Chapter 2, Part 2, MCA.

109.06 The BoCC may appoint enforcing officers to supervise and enforce the provisions of these Regulations.

110 Penalties

A violation of these Regulations is a misdemeanor and shall be punishable by a fine not exceeding five hundred (500) dollars or imprisonment in the county jail not exceeding six (6) months or both pursuant to Section 76-2-211, MCA. Each day constitutes a separate violation.

111 Zoning Administrator

The BoCC shall appoint a Zoning Administrator to administer and enforce the provisions of these Regulations. It shall be the duty of the Zoning Administrator and the Zoning Administrator's designees to:

111.01 Enforce the provisions of these Regulations;

111.02 Keep records of all zoning proceedings;

111.03 Accept and process applications and fees in accordance with these Regulations;

111.04 Update the Regulations as approved by the BoCC;

111.05 Interpret the Regulations and zoning district boundaries consistent with the intent of the Regulations and statutory authority;

111.06 Issue such permits as may be approved by the BoCC, the Board of Adjustment, or otherwise, and ensure compliance with such permits;

111.07 Investigate allegations of non-compliance or violations of these Regulations;

111.08 Make such recommendations to the Planning Board or BoCC for amendments to these Regulations; and

111.09 Take such other actions as are needed or appropriate to carry out the terms of these Regulations.

112 Severability

If any portion of these Regulations is held to be invalid or unconstitutional by a court of competent jurisdiction, that portion is to be deemed severed from the Regulations and in no way affects the validity of the remainder of the Regulations.

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SECTION 2 GENERAL REQUIREMENTS AND EXCEPTIONS

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201 Zone Districts

The following zoning districts are hereby established to implement these Regulations:
Urban Residential Mixed-Use Zone District (UR)
Suburban Residential Mixed-Use Zone District (SR)
Rural Residential Mixed-Use Zone District (RR)
Fort Harrison Urban Growth Area Zone District (FHUGA)
Fort Harrison Rural Growth Area Zone District (FHRGA)

202 Overlay Districts

In order to recognize special areas, and to afford flexibility in development design within the Helena Valley Planning Area, the following overlay district is hereby established:

(a) Planned Development Overlay District (PD)

203 Incorporation of Maps

The location and boundaries of the zone districts hereby established by these Regulations are shown on the "Helena Valley Zone District Map of Lewis and Clark County", hereafter referred to as the Zoning Map, incorporated herein and made a part hereof.

204 Zone District Boundaries

District boundaries are shown on the Zoning Map. However, where uncertainty exists as to the boundaries of a district, the following rules shall apply:

204.01 A boundary indicated as approximately following the center line of a street, highway, streambed, railroad right-of-way (R-O-W), or alley shall be construed to follow such center line.

204.02 A boundary indicated as approximately following the right-of-way or easement line of a street, highway, or alley shall be construed to follow such right-of-way line or easement, and in the event of a change in such R-O-W or easement line the zoning boundary shall be construed as moving with the R-O-W or easement line.

204.03 A boundary indicated as approximately following platted lot lines shall be construed to follow such lot lines.

204.04 A boundary indicated as parallel to or an extension of features indicated in subsections 204.01 - 204.03 above shall be so construed. Distances not specifically indicated on the official Zoning Map shall be determined by the scale of the map.

204.05 Disputes concerning the exact location of any district boundary line shall be decided by the Zoning Administrator.

204.06 All streets, alleys, public ways, waterways and railroad rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone / classification area as the property immediately abutting upon such streets, alleys, public ways, waterways and railroad rights-of-way.

204.07 Where the centerline of a street, alley, public way, waterway or railroad right-of-way serves as a district boundary, the zoning/classification of such areas, unless otherwise

specifically designated, shall be deemed to be the same as that of the abutting property up to the centerline.

205 Exclusion of Uses

Uses not specifically listed, or reasonably similar to those uses listed, in any particular zone district shall be deemed to be excluded from the particular zone district.

Uses listed in any particular zone district shall be deemed to be excluded from any other zone district, unless such use is specifically listed in the other zone district.

206 Inclusion of a Use Not Listed

Uses not listed may be interpreted for inclusion in a specific zone district by the Zoning Administrator when such use is reasonably similar to those uses listed.

Uses not specifically listed, or not reasonably similar to those uses listed, or not interpreted for inclusion by the Zoning Administrator, in a specific zone district, may be added to the appropriate zone district upon the approval by the BoCC in accordance with the procedure set forth in Section 107.

207 Community Decay and Litter

All land must be in compliance with the Lewis and Clark County *Ordinance to Control Community Decay* (Document No. 3152137), as amended, and *Ordinance No. 2013-01: An Ordinance to Control Litter in Lewis and Clark County and Establishing Procedures for its Enforcement* (Document No. 3247987), as amended, on file with the Lewis and Clark County Clerk and Recorder.

208 Minimum Area

208.01 The area of a lot required for the purpose of complying with the provisions of these Regulations shall not be included as part of the area required for another lot.

208.02 A minimum lot area shall not be required for utility service facilities, telecommunication facilities, or major facilities of a public utility and telecommunication facilities.

208.03 Lots conforming to the minimum lot area requirements of a zone district that are reduced in land area due to land acquisition by a governmental entity shall be considered conforming to the minimum lot area requirements of the specific district for principal uses, accessory uses, conditional uses, and special exception uses, as if its size had not been reduced.

208.04 Lots approved to be created through the exemption process as listed in Section 76-3-207, MCA shall comply with all aspects of these Regulations, including but not limited, to lot size.

208.05 Lots approved to be created through the exemption process as listed in Section 76-3-201, MCA shall comply with all aspects of these Regulations, however, are exempt from the zone district minimum lot size.

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SECTION 3 DEFINITIONS

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301 Rules of Construction

301.01 The particular controls the general.

301.02 In case of any difference of meaning or implication between the text of these Regulations and the captions for each section, the text shall control.

301.03 The words "shall", “must”, and “will” are always mandatory, and not merely directory. The word "may" is permissive.

301.04 Words used in the present tense include the future, unless the context clearly indicates the contrary.

301.05 Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.

301.06 A "building" or "structure" includes any part thereof. A "building or other structure" includes all other structures of every kind, regardless of similarity to buildings.

301.07 The phrase "used for," includes "arranged for," "designed for," "intended for," "maintained for," and "occupied for."

301.08 The word “lot” includes the words “tract of record” or “parcel”.

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302 Definitions

Unless specifically defined in this section, or otherwise determined by the BoCC, words or phrases used in these Regulations shall be interpreted so as to give them the meaning they have in common usage in the English language, and to give these Regulations their most reasonable application.

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.

Abutting: Having a common border with or separated from such a common border by a (public and/or private) right-of-way, alley, or easement (for such features including but not necessarily limited to, streets, railroads, or irrigation canals.) When a common border is simply via a corner-to-corner connection, the subject lot and/or parcel shall be deemed to be abutting, adjacent, or adjoining. *(also see "adjacent" and "adjoining")*

Accessory Structure: A subordinate structure detached from but located on the same lot as the principal structure, the use of which is incidental and accessory to that of the principal structure.

Accessory Use: A use naturally and normally incidental to, subordinate to and devoted exclusively to the principal use.

Adjacent: Having a common border with or separated from such a common border by a (public and/or private) right-of-way, alley, or easement (for such features including but not necessarily limited to, streets, railroads, or irrigation canals.) When a common border is simply via a corner-to-corner connection, the subject lot and/or parcel shall be deemed to be abutting, adjacent, or adjoining. *(also see "adjoining" and "abutting")*

Adjoining: Having a common border with or separated from such a common border by a (public and/or private) right-of-way, alley, or easement (for such features including but not necessarily limited to, streets, railroads, or irrigation canals.) When a common border is simply via a corner-to-corner connection, the subject lot and/or parcel shall be deemed to be abutting, adjacent, or adjoining. *(also see "adjacent" and "abutting")*

Agriculture: For the purposes of these Zoning Regulations, Sections 41-2-103 and 81-8-701, MCA, as amended, shall rule.

Agricultural Activities, Youth-Oriented: Special activities oriented toward children and held for educational, instructional, or recreational purposes, including but not necessarily limited to 4-H.

Airport: Any area of land (including buildings and water bodies) designed for the landing, take-off, loading, unloading, or parking, of aircraft (fixed-wing or rotary) for business or commercial purposes and generally intended for both public and private use, including all necessary facilities for passenger and cargo loading, fixed based operations (FBOs), maintenance and fueling facilities and housing of aircraft.

Airstrip: An area designed for the landing or take-off of aircraft (fixed-wing or rotary) for the benefit of the landowner/lessee and not to be used for commercial purposes. Generally, as a paved, graveled, or dirt surface for a non-FAA sanctioned airport operation.

Alteration: A change or rearrangement of the structural parts in the existing facilities or an enlargement by extending the sides or increasing the height or depth or moving a building or structure from one location or position to another.

Animal Boarding: See Kennel.

Animal Hospital, Veterinary Clinic: Provides medical care of animals, including office space, medical labs, appurtenant facilities, and enclosures or kennels for animals under the immediate medical care of a veterinarian, including pet clinics, dog and cat hospitals, and animal hospitals.

Animal Shelter: A place that temporarily houses stray animals and may include a crematorium.

Animal Therapeutic Facility: Therapy that involves individuals interacting with animals, most frequently, but not limited to, horses using specially trained therapists that work with the individual and the animal. Such therapy may be beneficial to people with a variety of special needs, including but not limited to, children with autism. Examples are therapeutic horseback riding or hippotherapy.

Animated Sign: A class of signs, utilizing electronic, mechanical, or computer technology (and/or any combination thereof), and with the capability of a changeable display of graphic images or message content. (see Changeable Copy, Digital, Electronic Sign)

Annexation: The process by which land in an unincorporated area becomes part of a nearby municipality.

Applicant: Any person, firm or corporation, or other entity that proposes an application under these Regulations; often also referred to as an Authorized Representative.

Approach: The point where a driveway meets a road or where a road intersects another road.

Batch Plant, Concrete, Mortar, or Asphalt: A site, together with its accessory facilities, where sand, gravel, cement and various petroleum derivatives are compounded to manufacture concrete, mortar or asphalt. (not a Temporary Batch Plant)

Bed and Breakfast: A private, owner- or manager-occupied residence that is used as a private residence but in which: 1. breakfast is served and is included in the charge for a guest room; and 2. the number of daily guests served does not exceed eighteen (18).

Board of Adjustment (BOA): An appointed board authorized under Title 76, Chapter 2, Part 2, MCA, with the authority to hear and decide administrative appeals and variances from the requirements of these Regulations.

Board of County Commissioners (BoCC): The Board of County Commissioners of Lewis and Clark County; sometimes referred to as the “governing body”.

Boarding/Rooming House: A building in which separate sleeping rooms are rented that provide sleeping accommodations for three (3) or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

Borrow Site: A site used for the extraction of earthen materials such as sand, gravel, rock, dirt, etc., where the material is removed from the legally described site and characterized by a short-term operation and a limited quantity of earthen material.

Buffer Area: An area of land established to separate and protect one type of land use from another, to screen from objectionable noise, smoke or visual impact, or to provide for future public improvements or additional open space.

Building: A structure, including its projections and extensions, constructed for support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

Building Envelope: The designated area of a lot within which a structure(s) can be built and which is depicted or described on a certificate of survey, plat, covenant, deed, or other document filed or recorded with the Lewis and Clark County Clerk and Recorder.

Building Height: The vertical distance above a reference datum measured to the highest point of the coping of a flat roof, the deck line of a mansard roof, and for a pitched or hipped roof, the average height of the highest gable. The reference datum is either of the following, whichever yields a greater height of building:

1. The elevation of the highest adjoining sidewalk or ground surface within a five (5) foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than ten (10) feet above lowest grade.
2. An elevation ten (10) feet higher than the lowest grade when the sidewalk or ground surface described in Subsection 1 of this definition is more than ten (10) feet above lowest grade.
3. The height of a stepped or terraced building is the maximum height of any segment of the building.

Bulk Requirements: Include, but are not limited to, the standards that regulate the minimum area of a lot, the setback from lot lines for all structures, the maximum height of all structures, and the cumulative permitted lot coverage for all structures.

Camp/Retreat Center: A centrally managed facility that provides full service lodging, dining, or cooking facilities, and on-site recreational activities for overnight guests or members. A camp/retreat center may include an organized program of activities such as hunting, fishing, nature study, arts, Nordic skiing, snowmobiling, boating, rafting, horseback riding, hiking, and/or pack trips. A camp/retreat center may also include corporate or religious retreats or conference facilities. Activities shall be provided on-site to the extent possible. Adjacent lands and waterways may be used to supplement on-site activities if proper licenses, permits, and/or agreements are obtained.

Campground: A place, publicly or privately owned, used for camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes. (see Recreational Vehicle Park)

Cemetery: A place and/or building, or portion thereof, that is used, or is intended, for the interring / burial of the deceased. A cemetery may include associated uses such as columbarium's, crematories, and mausoleums.

Centralized Wastewater Treatment System: See Wastewater Treatment System, Centralized.

Centralized Water System: See Water System, Centralized.

Certificate of Survey (COS): A drawing of a field survey prepared by a registered land surveyor for the purpose of disclosing facts pertaining to boundary locations and parcel features.

Changeable Copy Sign: A class of signs, utilizing electronic, mechanical, or computer technology (and/or any combination thereof), and with the capability of a changeable display of graphic images or message content. (see Animated, Digital, and Electronic Sign)

Church: See Worship Facility.

Clinic, Dental or Medical: A facility licensed and used for the provision of medical, dental, surgical or mental health care of the sick or injured but excluding therefrom inpatient and overnight accommodations.

Cluster Development: A grouping of lots designed to concentrate building sites onto a smaller area 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.

Community Center: A building, or portion thereof, used for short term and intermittent meetings or gatherings of individuals that are generally open to the public for purposes of recreation, sharing information, entertainment, socializing, or similar activities, and includes fraternal, social or civic clubs, lodges, and union halls.

Community Residential Facility:

Community Residential Facility (Type I): A community residential facility serving twelve (12) or fewer individuals.

Community Residential Facility (Type II): A community residential facility serving thirteen (13) or more individuals.
Includes the following:

1. A facility licensed by a governmental agency and providing care on a twenty-four (24) hour a day basis and as defined by State law:
   (a) A community group home for developmentally, mentally, or severely disabled persons that does not provide skilled or intermediate nursing care.
   (b) A youth care facility in which substitute care is provided to youth, including youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, childcare agencies, and transitional living programs, but excluding youth assessment centers.
   (c) An adult foster family care home.
   (d) A halfway house operated in accordance with regulations of the Montana Department of Public Health and Human Services for the rehabilitation of persons dependent on drugs and/or alcohol.
   (e) An assisted living facility.
2. A maternity home, including administrative offices, services for childcare, counseling, classroom training, independent living training, and support groups.

Conditional Use: A use that may be allowed in a specified zone district(s) if the use meets certain requirements. However, without the additional requirements of the conditional use process, it would likely not be appropriate throughout the zoning district.

Conditional Use Permit: The documented evidence of authority granted by the Board of County Commissioners to locate a conditional use at a particular location.

Condominium: A legal form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project with the land and all other parts of the project held in common ownership or use with owners of the other units. The term does not include a townhome, a townhouse, a community land trust, or a housing unit located on land belonging to a community land trust.

Consolidated City and County Planning Board: (CCCPB), also see "Planning Board".

Conservation Easement: An easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction as defined by Sections 76-6-101 through 76-6-110 and Sections 201 through 212, MCA. A conservation easement may also prohibit the further subdivision, division, or development of the open space lots or parcels, as provided for in Sections 70-17- 201 through 70-17-206 and 76-3-509, MCA.

Correctional Facility: Includes County prisons and jails for the detention of persons awaiting trial or sentenced as punishment for criminal offenses, including youth detention facilities.

County: Lewis and Clark County, Montana

Day Care Facility:
A facility which provides daily care and supervision of children, or persons with a disability, or elderly adults, not related by blood or marriage, and not the legal ward of the attendant adult. A day care facility shall be in compliance with State regulations and, if required by the State, must be registered or licensed.

> Adult Day Care: A place that provides supplemental care for up to twelve (12) adults on a regular basis, operated by a public or private entity.
>
> Day Care Center: A place that provides supplemental care for thirteen (13) or more individuals on a regular basis.
>
> Family Day Care: A private residence or other structure in which supplemental care is provided on a regular basis for six (6) or fewer children.
>
> Group Day Care: A private residence or other structure in which supplemental care is provided on a regular basis for seven (7) to twelve (12) children.

Density: The number of units per area of measure, for example, the number of dwelling units per acre.

Department: The Lewis and Clark County Community Development and Planning Department (CDP)

Developer: An owner, or any person authorized by the owner, who intends to improve or to construct improvements upon the owner's property.

Digital Sign: A class of signs, utilizing electronic, mechanical, or computer technology (and/or any combination thereof), and with the capability of a changeable display of graphic images or message content. (see Animated, Changeable Copy, and Electronic Sign)

Driveway: An access point onto a road that services a residential or non-residential parcel of land; it is not a street or roadway.

Dwelling Unit: Any building, or portion thereof, designed to provide complete, independent, and permanent living facilities for one family.

Easement: A right to use land, other than as a tenant, for a specific purpose; such right being held by someone other than the owner who holds title to the land. An easement may be for either public or private benefit. An easement is not the same as a setback.

Educational Facility (Higher Education): A place and/or building, or portion thereof, for colleges, universities, community colleges, and vocational schools.

Educational Facility (K-12): A place and/or building, or portion thereof, for pre-schools, elementary, middle/junior high, or high schools.

Electronic Sign: A class of signs, utilizing electronic, mechanical, or computer technology (and/or any combination thereof), and with the capability of a changeable display of graphic images or message content. (see Animated, Changeable Copy, and Digital Sign)

Equipment Rental: Rental equipment and supplies, such as hand tools, party equipment, lawn care, yard equipment, trucks, vertical lifts, forklifts, backhoes, heavy equipment, and modular buildings.

Existing Licensed Premises: Licensed premises that were licensed, or which had a pending application before the Montana Department of Revenue, for the retail sale of alcoholic beverages for on-premises consumption prior to the enactment of these zoning Regulations and which have continuously operated under said license(s).

Extractive Industries: Operations involving the removal and processing of natural accumulations of sand, rock, soil, gravel, and/or any mineral. The site may also include areas for commercial operations (retail or wholesale) of the sand, rock, soil, gravel, or any mineral.

Family: One (1) or more persons related by blood, marriage, or adoption, and/or a group of persons, not related by blood or marriage, living together as a single housekeeping unit in a dwelling unit.

Funeral Home: A place and/or building, or portion thereof, used or intended for the care and preparation of human dead for burial; the term includes mortuaries and may include a crematorium.

Garage:

Private - A building, or portion thereof, including carports, in which motor vehicles used by the landowners, resident tenants, or their guests, are stored or kept.

Public - A building, or portion thereof, other than a private garage, used for the parking of automobiles. A public garage may include above and below ground structured parking.

General Repair: A place and/or building, or portion thereof, that is used or is intended for the repair of consumer goods such as shoes, bicycles, appliances, business equipment, small engine repair such as lawn mowers and snowblowers, and the like. The term does not include repair of vehicles or industrial equipment.

General Sales: A place and/or building, or portion thereof, that is used or is intended for retail sale of a diverse product line; the term includes grocery stores, warehouse retail outlets, comparison shopping stores, full-line department stores, and the like.

General/Professional Services: A place and/or building, or portion thereof, that is used or is intended for providing professional and personal care services where customers come to the property for the service, including services such as engineering, accounting, legal, architectural, surveying, medical, dental, real estate, insurance, photography, fitness, weight loss, postal, hairstyling, pet grooming, copying and printing, and laundry and dry-cleaning services.

Greenhouse/Plant Nursery: A place and/or building, or portion thereof, used for the propagation, cultivation or growing of nursery stock such as flowers, bulbs, plants, trees, shrubs or vines, may include wholesale and retail sales of product propagated, cultivated, or grown.

Gravel Pit: See Extractive Industries.

Grade: The elevation of the finished surface of the ground.

Growth Policy: The Lewis and Clark County Growth Policy, as may be amended from time to time by the Board of County Commissioners.

Health Care Facility: All or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

Heliport: Any area used by helicopters for commercial or business purposes, including landing and take-off, passenger and cargo loading, maintenance and fueling facilities.

Home Occupation: See Section 16.

Hospital: See Health Care Facilities.

Hotel: A building or structure kept, used, maintained as, or advertised as to be a hotel, motel, inn, motor court, tourist court, or public lodging house; and a place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

Indoor Entertainment, Sports, and Recreation: A place and/or building, or portion thereof, that is used for indoor activities such as movie theaters, dance halls, theaters for performing arts, bowling alleys, skating rinks, billiard and pool halls, arcades, rifle and pistol ranges, athletic clubs, courts and training centers, and gyms.

Industrial Uses: The activities predominantly connected with manufacturing, assembling, processing, or storing of products.

> Industrial, Heavy: The processing or manufacturing of materials or products predominantly from extracted or raw materials; storage of or manufacturing processes using flammable or explosive materials; or storage of or manufacturing processes that potentially involve hazardous or offensive conditions. Typical uses include motor vehicle assembly, oil refineries, textile production, sawmills, post and pole plants, log yards, asphalt and concrete operations, and primary metal processing.
>
> Industrial, Light: The manufacturing of finished products or parts, predominantly from previously prepared materials, including assembly, processing, fabrication, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing. Typical uses include assembly of computers and electronics, testing and production laboratories, packaging of premade goods, furniture production, metal fabrication, apparel manufacturing, printing, and publishing.

Infrastructure: Public facilities and services that typically include, streets, sewers, water, schools, police and fire buildings, libraries, hospitals, parks, trails, etc. to serve public demand and safety.

Instructional Facility: A place that prepares students for jobs in trades or professions, including vocational schools, or offers training, instruction, or tutelage in areas such as performing arts and sciences.

Jail: See Correctional Facility.

Kennel: A building, enclosure, or portion of any premises in or at which domesticated animals over the age of six (6) months are boarded, are kept for hire or for sale, or are kept or maintained by any person other than the owners thereof, or a building, enclosure, or portion of any premises in or at which five (5) or more dogs over the age of six (6) months are kept or maintained. (see Animal Boarding)

Landscape: Improvement to an area of land by the planting of a combination of trees, shrubs and ground covers.

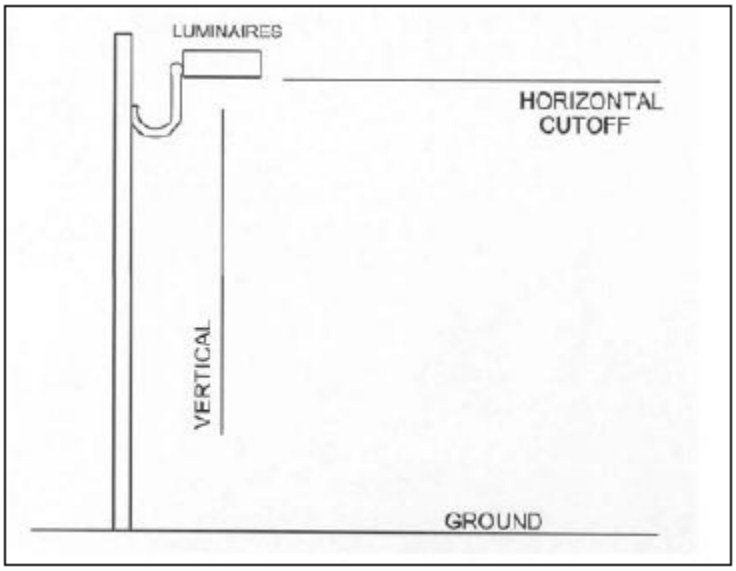
Land Use: As the context would indicate, (1) the development that has occurred on the land; (2) development that is proposed on the land; or (3) the use that is permitted on the land under an adopted and legally enforceable regulatory framework.

Land Use, Accessory: Any land use that is clearly incidental and subordinate to and customarily found with a principal land use.

Land Use, Principal: The dominant land use of a parcel of land.

Light Fixture: A complete lighting unit (luminaire) consisting of a lamp or lamps and ballasting (when applicable) together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply.

Light Fixture - Full Cutoff: A luminaire light distribution where zero candela intensity occurs at an angle of 90 degrees above nadir, and at all greater angles from nadir.



Light Glare: The sensation produced by a light source that is sufficiently brighter than the ambient lighting level to which the eyes are adapted causing annoyance, discomfort, or loss in visual performance and visibility. The magnitude depends on such factors as the size, position, brightness of the source; and the brightness of the ambient lighting level, which is generally defined as all available light surrounding a subject sign at any point in time with the subject sign light source extinguished.

Light Pollution: Any adverse effect of manmade light, including but not limited to, light trespass, up-lighting, the distraction to the eye, or any manmade light that diminishes the ability to view the night sky.

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.

Light Trespass: Any form of artificial illumination emanating from a light fixture that penetrates other property and creates a direct glare source that exceeds one-half (½) foot-candles in a vertical plane at the subject property line.

Loading Area, Off-street: An off-street space generally located at or near a building entrance to allow service pickups and deliveries by commercial vehicles.

Lot: See Tract of Record.

Lot, Corner: A lot at the junction of and fronting on two (2) or more intersecting streets.

Lot, Double-Fronted or Through: A lot having frontage on two (2) more or less parallel streets.

Lot, Flag: A lot with access provided by a narrower corridor from a street to the larger bulk area of the lot.

Lot, Interior: A lot that abuts only one (1) street.

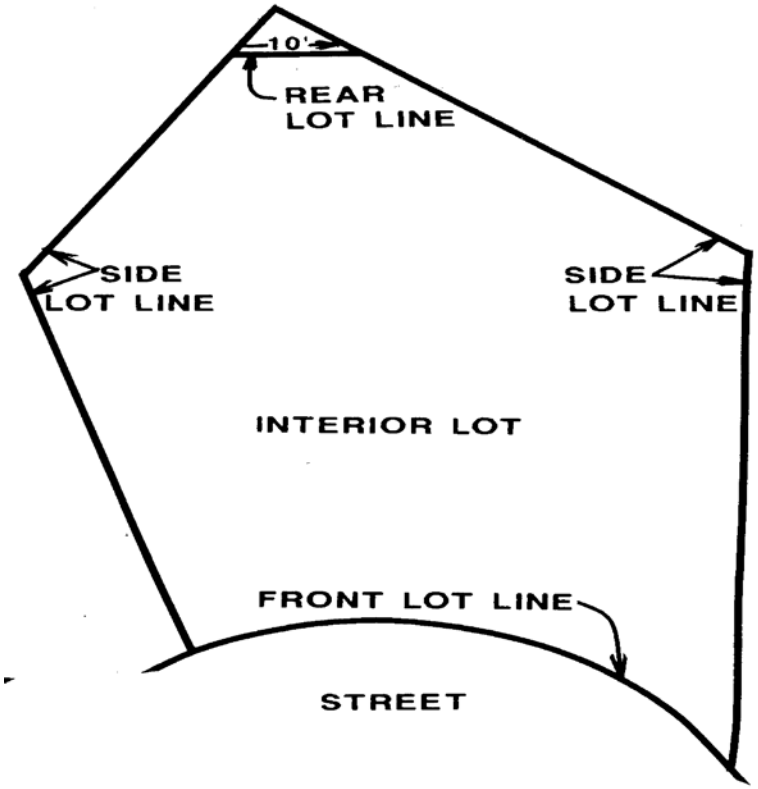
Lot Line: Any boundary of a lot. The classification of lot lines are:

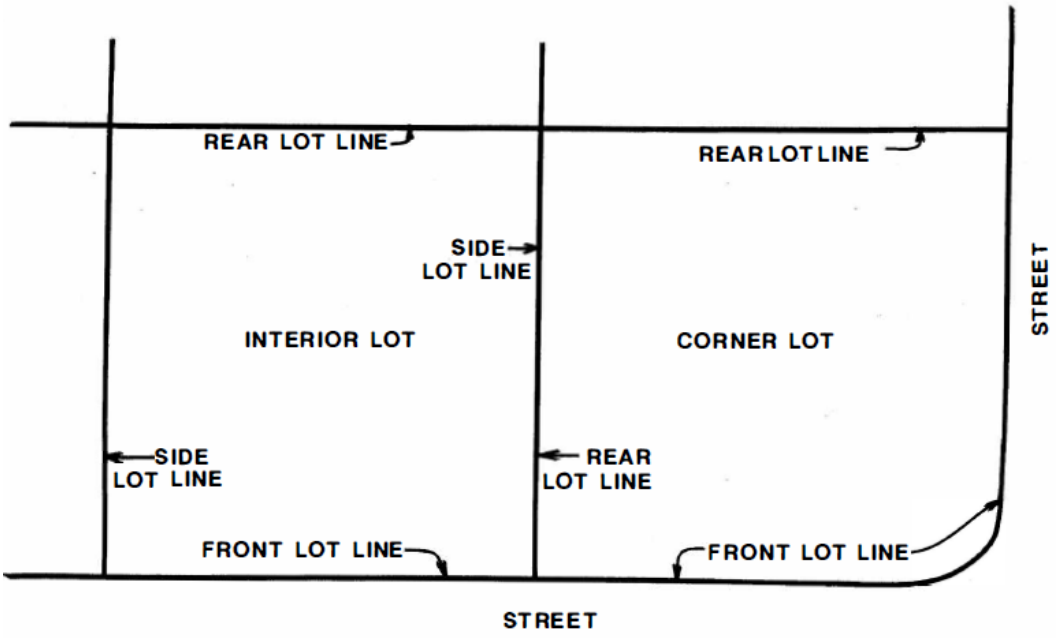
Front: The lot line bounding a lot that is adjacent to any street. On a corner lot or double-fronted lot, each lot line separating the lot from a street is considered a front lot line. (See Lot Line Diagrams)

Rear: The lot line opposite and most distant from the front lot line; however, for corner lots the rear lot line may be any lot line not abutting a street. For triangular, pie-shaped, or irregularly shaped lots the rear lot line shall be deemed to be a line within the lot having a length of ten (10) feet, parallel to and most distant from the front lot line for the purpose of determining required setbacks. (See Lot Line Diagrams)

Side: Any property boundary line which is neither a front lot line nor rear lot line. (See Lot Line Diagrams)

Lot Line Diagrams





M.C.A.: Montana Code Annotated or MCA (State of Montana statutes.)

Manufactured Home: A dwelling for a single household, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least one thousand (1,000) square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States Department of Housing and Urban Development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in Section 15-1-101, MCA.

Manufactured/Mobile/Modular Housing Sales: The on-site display and sale of mobile homes, modular homes, and manufactured housing.

Medical Marijuana Dispensary: Premises, approved by the Montana Department of Health and Human Services, from which a provider of marijuana infused products dispenses marijuana related products to a registered medical marijuana cardholder.

Medical Marijuana Grow Operation: An enterprise or facility engaged in growing medical marijuana for commercial purposes.

Medical Marijuana Provider: A person licensed by the Montana Department of Health and Human Services to assist a registered cardholder as allowed under Montana Code Annotated. The term does not include the cardholder's treating physician or referral physician.

Metes and Bounds: A method of describing or locating real property; metes are measures of length and bounds are boundaries; this description starts with a well-marked point of beginning and follows the boundaries of the land until it returns once more to the point of beginning

Mini-Storage Facility: See Storage Facility, Self-Service.

Mobile Home: Forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding eight (8) feet in width or forty-five (45) feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to eight (8) feet in width or forty-five (45) feet in length used as a principal residence.

Mobile Home Park: A parcel of land that has been planned and improved for the placement of mobile and/or manufactured homes for residential use.

Mobile Home Space: The designated portion of a mobile home park designed for the accommodation of one mobile or manufactured home, and its accessory structure(s) for the exclusive use of the occupants.

Modular Home: A sectional, prefabricated dwelling unit residence set on a permanent foundation on the subject parcel, that consists of multiple modules or sections which are manufactured in a remote facility. A modular home does not include a manufactured or mobile home.

Motel: See Hotel.

Motor Vehicle Graveyard: A collection point, established by a county, for junk motor vehicles prior to their disposal.

Motor Vehicle Wrecking Facility: A facility buying, selling, or dealing in four or more vehicles a year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification.

Noise Level (Ambient): The average equivalent sound level (LEQ) occurring during a six (6) minute period as measured with a sound level measuring instrument. The ambient noise level shall be determined with the noise source at issue silent, and in the same location and approximate time as the measurement of the noise level of the source at issue.

Non-Residential Use: Any use not requiring or providing facilities for individuals to live on the premises including uses of property or land containing or suitable for agricultural, commercial, recreational, or industrial purposes rather than private dwellings.

Noxious Weed: Any exotic plant species established or that may be introduced in the state which may render land unfit for agriculture, forestry, livestock, wildlife or other beneficial uses or that may harm native plant communities and that is designated by the Montana Department of Agriculture or by a weed management district.

Ordinary High-Water Mark: The line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line may include, but not be limited to, the deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural value. A flood plain adjacent to surface waters is not considered to lie within the surface water's high-water marks.

Outbuilding: An accessory building or accessory portion of a principal or conditionally permitted building(s) to be used only for the shelter or storage of vehicles or other personal property owned or operated by the landowner.

Outdoor Entertainment: Leisure activities, usually organized and enjoyed with a gathering of others that may use equipment and take place at prescribed places, sites, or fields for outdoor spectator type uses or events, including, but not limited to, racetracks, motocross courses, sports arenas, concerts, and zoos.

Outdoor Sports and Recreation: A place and/or structure, or portion thereof, that is used or is intended for outdoor entertainment of all types; the term includes swimming pools, tennis courts, golf courses, golf driving ranges, paintball fields, firearms ranges, archery ranges, and the like.

Owner of Record: The person or persons who are listed in the official County records as the legal owners of a tract of record.

Parcel: See Tract of Record.

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

Park: A place and/or building, or portion thereof, that is used or is intended for recreational activities for use by the general public; the term includes developed and undeveloped areas and neighborhood recreation centers.

Parking Lot: An open area, other than a public right-of-way, used for off-street parking of motor vehicles.

Parking Space, Off-Street: A space located off of any travel right-of-way / easement that is available for parking a motor vehicle.

Part 1 Zoning: Zoning adopted pursuant to the enabling authority of Title 76, Chapter 2, Part 1, Montana Code Annotated.

Part 2 Zoning: Zoning adopted pursuant to the enabling authority of Title 76, Chapter 2, Part 2, Montana Code Annotated.

Permitted Use: Any use authorized alone or in conjunction with another use under a specified zoning classification and subject to the limitations of the Regulations of such classification. (see Principal Use)

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.

Planned Development: A tract of land developed as an integrated unit. The Planned Development Overlay Zone District is often referred to simply as a "PD." They are unique and based upon a plan which allows for flexibility of design, setting, and density not otherwise possible under the prevailing zone district Regulations.

Planning Board: The Consolidated City and County Planning Board, created pursuant to Title 76, Chapter 1, Part 1, MCA.

Plat: A graphical representation of a subdivision; and includes, but is not limited to the terms, Preliminary, Amended, and Final, as all such terms are more particularly defined within MCA and the most current adopted Subdivision Regulations of Lewis and Clark County, Montana.

Principal Building: A building in which the primary use of the lot/parcel on which the building is located is conducted.

Principal Use: The dominant, main, or primary use of a parcel of land. (see Permitted Use.)

Prison: See Correctional Facility.

Propane Distribution/Storage Facility: Any facility where the primary function is to store liquid petroleum gas prior to further distribution, where liquid petroleum gas is received by cargo tank motor vehicle, railroad tank car, or pipeline, and distributed by portable container delivery, by cargo tank motor vehicle, or through gas piping.

Public Facilities: Infrastructure and associated improvements including water facilities, wastewater facilities, fire protection facilities, law enforcement facilities, parks and streets.

Public Services: Services and facilities provided to the general community by government or quasi-public entities. Examples include roads and bridges, emergency services, schools and libraries, water and wastewater treatment systems, and solid waste disposal.

Recreational Vehicle (RV): A vehicular type unit primarily designed as temporary living quarters for recreation, camping, or travel use that either has its own motor power or is mounted on or towed by another vehicle; and which can be operated independently of utility connections and designed to be used principally as a temporary dwelling for travel, recreation and vacation. The term includes, but is not limited to, travel trailers, camping trailers, truck campers, and motor homes.

Recreational Vehicle Park: See Campground.

Recreational Vehicle Space: A designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle.

Recycling Facility: A place and/or building, or portion thereof, that is used or is intended for collecting and/or processing recoverable materials prior to shipment to others who use those materials to manufacture new products. Typical types of recoverable materials include glass, newspaper, metal, and plastic. The term shall not include a junk yard.

Registered Architect: An individual licensed to practice architecture in Montana.

Registered Professional Land Surveyor: An individual licensed to practice surveying in Montana.

Registered Professional Engineer: An individual licensed to practice engineering in Montana.

Regulation: That which is required, unless an explicit exception is made.
Regulations: The Lewis and Clark County Helena Valley Zoning Regulations.

Renewable Energy Facility: A site, together with its accessory facilities, where energy is generated using renewable resources. Such sites may include but are not limited to solar farms, wind turbines, or geothermal facilities.

Research and Development Facility: A place and/or building, or portion thereof, that is intended to be used in the research and testing activities associated with discovering new or improved products, methods, processes, or services.

Residence:

> Single-Dwelling Unit Residence: A single building situated on one (1) lot that contains one (1) dwelling unit for residential occupancy by one (1) family.
>
> Two-Dwelling Unit Residence: A single building situated on one (1) lot that contains two (2) dwelling units for occupancy by two (2) families living separately from each other, also known as a Duplex-Dwelling Unit Residence, or two (2) buildings situated on one (1) lot that each contain one (1) dwelling unit for occupancy by one (1) family.
>
> Multiple-Dwelling Unit Residence: A single building containing three (3) or more dwelling units for occupancy by three (3) or more families living separately from each other.

Residential Use: Any use of a residence by its occupants as a regular and consistent place of abode, which is made one's home as opposed to one's place of business and which has housekeeping and cooking facilities for its occupants only.

Restaurant: A place and/or building, or portion thereof, that is used or is intended for the preparation and sale of food and beverages primarily for immediate consumption on the premises, and where consumption of beer, wine, or other liquors, if any, is clearly secondary and subordinate to the sale of food and beverages. The term does not include a grocery store with a food service section.

Retail: An establishment where the principal use is the selling or renting of goods or merchandise to the general public for personal or household consumption and rendering of services incidental to the sale of such goods.

Rezoning: A revision of the Helena Valley Zone District Map.

Right-of-Way: That land which the Montana Department of Transportation, County or City has title to, or right of use, for public roads and appurtenances, including utilities; a strip of land dedicated or acquired for public use as public way.

Riparian Area: Defined by the University of Montana's Riparian and Wetland Research Program as the "green zone" which lies between channels of flowing water and uplands, and which serves several functions, including the following: water storage and aquifer recharge; filtering of chemical and organic wastes; sediment trapping; bank building and maintenance; flow energy dissipation; and primary biotic production. Riparian areas provide important habitat for many species of wildlife.

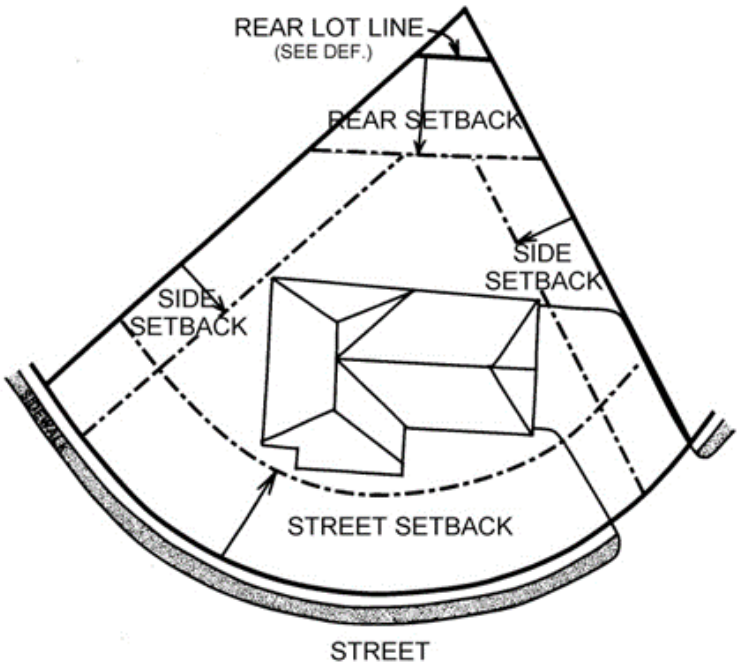
Satellite Earth Station: A telecommunication facility consisting of multiple satellite dishes for transmitting and receiving signals from orbiting satellites.

School: See Education Facility (Higher Education/K-12)

Setback: The required minimum horizontal distance between the location of structures or uses and the related front, side, or rear lot line measured perpendicular to such lot line; except when adjacent to the right-of-way, the measurement shall be from the closest right-of-way line.

> Front: A setback (sometimes called a Street Setback) extending across the full width of the lot and parallel to the right-of-way line, measured perpendicular to the right-of-way line. (See Setback Diagram)
>
> Rear: A setback extending across the full width of the lot and parallel to the rear lot line, measured perpendicular to the rear lot line; except that on pie shaped lots, a chord is to be drawn at a length of ten (10) feet in order to establish the rear lot line for the purpose of setback measurement. (See Setback Diagram)
>
> Side: A setback extending from the front lot line to the rear setback and parallel to the side lot line, measured perpendicular to the side lot line. (See Setback Diagram)

SETBACK DIAGRAM



Staff: Lewis and Clark County employees with a role in reviewing or administering the provisions contained in these Regulations.

State: The State of Montana.

Storage Facility, Self-Service: A place and/or building, or portion thereof, which is divided into individual spaces and is used or is intended as individual storage units that are rented, leased, or owned; the term includes a tract of land used to store vehicles that are not for sale or trade. Also known as mini-storage or mini- warehousing. An on-site manager/caretaker may reside at the facility.

Structure: Any permanent or temporary object that is constructed, installed or placed by man, the use of which requires a location on a parcel of land; it includes buildings of all types, bridges, in-stream structures, wholesale business tanks, fences, decks, swimming pools, towers, poles, pipelines, transmission lines, smokestacks, signs and other similar objects.

Subdivision: A division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any re-subdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

Subject Land: Real property which is the subject of these Regulations.

Surveyor: See Registered Professional Land Surveyor.

Telecommunication Facility: A facility and all elements thereof, including but not limited to support towers, antennas, and accessory equipment buildings, that together facilitate communication by the electronic transmission of telephone, radio, television, internet, wireless, or microwave impulses of an FCC licensed carrier, but excluding those used exclusively for private radio and television reception, private citizen's band, amateur radio communications.

Townhome: Property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities. Also referred to as townhouse.

Tract of Record: An individual parcel of land, 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 County Clerk and Recorder's office. (See Lot and Parcel)

Utility Sites: Parcels of land and necessary improvements 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, gas pipelines, and communications facilities.

Vehicle Fuel Sales: Retail sale of gasoline, kerosene, diesel, or other motor fuels, including accessory sale of convenience foods and goods, light maintenance activities, and minor repairs.

Vehicle Repair: A place for maintenance, service, and repair of vehicles, including tires, transmissions and brakes, bodywork and painting, upholstery, engine repair, and overhauls.

Vehicle Sales and Rental: Buying, selling, exchanging, selling on consignment, renting, or leasing of new or used vehicles, including snowmobiles, motorcycles, all-terrain vehicles, recreational vehicles, trailers, and watercraft.

Wastewater Treatment System, Centralized: A shared, multi-user, public, or municipal wastewater treatment system.

Wastewater Treatment System, Individual: Any form of wastewater treatment system that serves or is intended to serve one service connection.

Water System, Centralized: A shared, multi-user, public, or municipal water system.

Water System, Individual: Any form of water system that serves that serves or is intended to serve one service connection.

Wind Energy Conversion System: Any mechanism including blades, rotors or other moving surfaces designed for the purpose of converting wind energy into mechanical or electrical power. Towers, tower bases, guy wires and any other structures necessary for the installation of small wind energy conversion systems are also included.

Worship Facility: A building designed and used for public worship by a religious body, group, sect, or organization, but not including church residences and private schools.

Zoning Administrator: The Director of the Lewis and Clark County Community Development and Planning Department (CDP) unless another person is appointed by the Board of County Commissioners.

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SECTION 7 RURAL RESIDENTIAL MIXED-USE DISTRICT (RR)

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701 Intent

To provide for lower density residential development, along with an opportunity for continued agricultural activities, within the rural areas of the Helena Valley. Also, on a limited basis, to provide areas for non-residential uses in balance with residential development and agricultural activities as an integral part of the community providing essential services and employment opportunities. Non-residential development within this district should be permitted in compact centers rather than in extended strips of development along roadways to provide for orderly development, minimized traffic congestion, and to provide for safe pedestrian movement.

Urban development within this district is strongly discouraged. Expansion of urban development into rural areas is a matter of public concern because of the challenges in satisfactorily addressing the impacts associated with the five key issues identified in the Growth Policy. Those key issues (fire, water, wastewater, roads, and flooding) along with the potential for conflicts between agricultural and urban activities support the lower development intensity levels of the Rural Residential Mixed-Use zone district. Development or use of land in this district is permitted only in accordance with the provisions herein.

702 Principal Uses

Only one (1) principal use is allowed on each parcel. The following principal uses are allowable in the Rural Residential Mixed-Use District:

702.01 Agriculture

702.02 Apiculture

702.03 Community Residential Facility – Type-I

702.04 Community Uses:
- 702.04.01 Education Facility
- 702.04.02 Library
- 702.04.03 Open space/trails
- 702.04.04 Park
- 702.04.05 Public Facilities (without outdoor training)

702.05 Day-care Facility
- 702.05.01 Adult Daycare
- 702.05.02 Family Daycare
- 702.05.03 Group Daycare

702.06 Forestry

702.07 Horticulture

702.08 Residence
- 702.08.01 A single dwelling unit residence per parcel
- 702.08.02 A two – dwelling unit residence per parcel

702.09 Septic Waste and Domestic Sludge Application

702.10 Silviculture

702.11 Telecommunication Facility

702.12 Temporary Use

702.13 Utility Site

702.14 Worship Facility

703 Accessory Uses

Each permitted accessory use shall be customarily incidental to the principal use established on the same parcel; be subordinate to and serve such principal use; be subordinate in area, extent, and purpose to such principal use; and contribute to the comfort, convenience, or necessity of users of such principal use.

The following uses shall be allowed only when a principal use has already been established on the parcel:

703.01 Accessory Uses and Buildings

703.02 Home Occupations, in compliance with Section 16, of these Regulations.

703.03 Temporary Uses, in compliance with Section 15 of these Regulations.

704 Conditional Uses

The following uses are permitted, upon approval of a Conditional Use Permit (CUP) by the Board of County Commissioners (BoCC), in accordance with Section 14, of these Regulations:

704.01 Airstrip

704.02 Aircraft Hangars when in association with properties within or adjoining an airstrip

704.03 Animal Hospital, Veterinary Clinic

704.04 Batch Plant (concrete, mortar, or asphalt; not including temporary batch plants)

704.05 Bank/Financial Institution

704.06 Bar/Lounge

704.07 Bed and Breakfast Establishment

704.08 Building materials - wholesale/retail

704.09 Camp/ Retreat Center

704.10 Cemetery

704.11 Community Residential Facility, Type-II

704.12 Contractor's storage yard

704.13 Daycare Center

704.14 Equipment Rental

704.15 Extractive Industries

704.16 Funeral Home

704.17 General/Professional Services

704.18 General Repair

704.19 Greenhouse/Plant Nursery

704.18 Health Care Facility

704.19 Heliport

704.20 Hotel (including conference or convention facilities)

704.21 Industrial (must not emit unusual or excessive amounts of dust, smoke, fumes, gas, noxious odors, or noise beyond the parcel boundary)

704.22 Indoor Entertainment, Sports, and Recreation

704.23 Jail/Correctional Facility

704.24 Kennel

704.25 Medical Marijuana Dispensary

704.26 Medical Marijuana Grow Operation

704.27 Medical Marijuana Provider

704.28 Motor Vehicle Graveyard

704.29 Motor Vehicle Wrecking Facility

704.30 Motorized vehicle/equipment - service/repair and incidental sales

704.31 Outdoor Sports and Recreation

704.32 Outdoor Entertainment

704.33 Parking Lot - public or private

704.34 Propane Distribution/storage facility

704.35 Public Facilities (with outdoor training)

704.36 Recycling Facility/solid waste transfer facility

704.37 Renewable Energy Facilities

704.38 Research and Development Facility

704.39 Residence
704.39.01 Multiple – Dwelling Unit Residence per parcel

704.40 Restaurant

704.41 Retail

704.42 Satellite Earth Station

704.43 Storage Facility, Self Service

704.44 Vehicle Fuel Sales

704.45 Vehicle Repair

704.46 Vehicle Sales and Rental

704.47 Warehouse

704.48 Water/Wastewater Treatment Facility

705 Special Exception Uses

The following uses are allowed in addition to an established principal use, an accessory use, or conditional uses:

705.01 Agricultural

705.02 Apiculture

705.03 Community Residential Facility – Type-1

705.04 Day Care Facility
705.04.01 Adult Daycare
705.04.02 Family Daycare
705.04.03 Group Daycare

705.05 Forestry

705.06 Horticulture

705.07 Silviculture

705.08 Telecommunication Facility

706 Minimum Lot Area

The following requirements of this Section 706 shall become effective and in full force and effect June 1, 2022.

The minimum parcel size shall be ten (10) Acres. However, in order to permit creative and environmentally sensitive site design, smaller parcel sizes may be permitted through the use of a Cluster Design as detailed below.

706.01 Cluster Lot Design

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.

706.01.1 The minimum size of parcels to be developed is the effective minimum size allowable under the Administrative Rules of Montana adopted by the Montana Department of Environmental Quality under Title 76, Chapter 4, MCA.

706.01.2 Apart from any parcel that will remain as undeveloped open space, the maximum size of each parcel to be developed in a cluster development is two (2) acres.

706.01.3 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 Rural Residential Mixed-Use District as shown in Figure 1.

706.01.4 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 eight (8) lots (80 acres ÷ a base density of 10 acres per lot).

In the eighty (80) acre example below in Figure 1, each of the eight (8) cluster lots is one (1) acre in size as allowed under DEQ rules for water and wastewater. The 9th parcel, seventy-two (72) acres in size, is to be preserved as open space and/or a resource use(s). Under this development scenario, approximately ninety (90) percent of the parcel is maintained in open space, and the need for road construction is minimized

The one hundred sixty (160) acre example below in Figure 1, shows a second example of development of a one hundred sixty (160) acre parcel. A one hundred sixty (160) acre parcel of land can be divided into sixteen (16) lots planned for development (160 acres ÷ a base density of 10 acres per lot). Each of the ten (10) cluster lots (the maximum number of cluster lots allowed) planned for development is two (2) acres in size. An added six (6) non-clustered lots of ten (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, eighty (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.

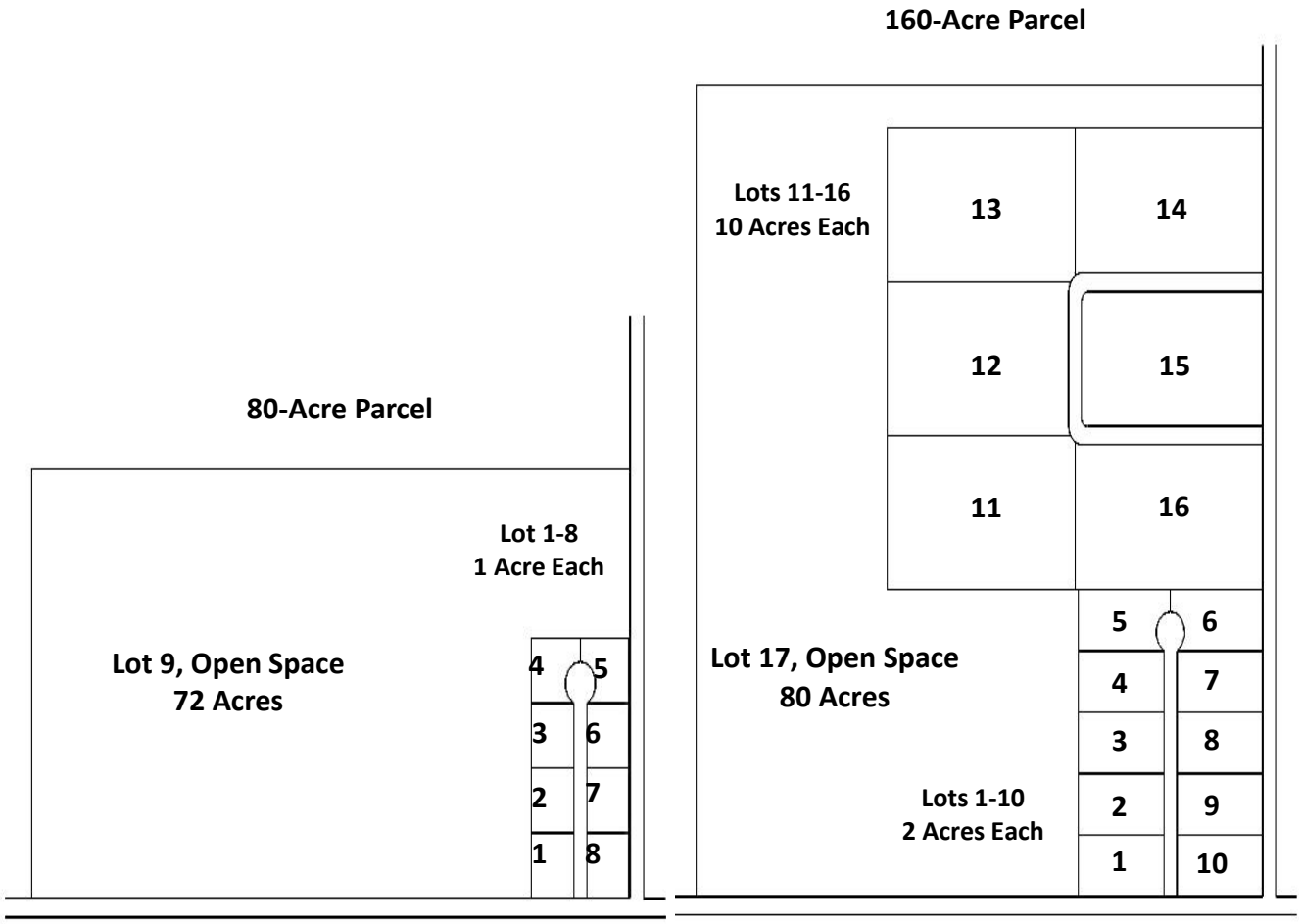

Figure 1 – Alternative layouts for clustered development (for illustrative purposes only, as many other scenarios are possible.)

706.02 Open Space Standards

The land preserved in open space and/or a resource use(s) must:

706.02.1 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 BoCC. Revocations may be considered if zoning and/or development constraint conditions no longer require density to be limited on the subject property;

706.02.2 Be accessible via a road and/or trail easement filed with the Lewis and Clark County Clerk and Recorder's office;

706.02.3 Be identified on a final subdivision plat or certificate of survey (COS) (for exemptions from subdivision). The final subdivision plat or COS shall include a notation as to the official recordation location of the revocable covenant;

706.02.4 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;

706.02.5 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,

706.02.6 Be located adjacent to the one (1) or more lots to be developed.

707 Maximum Gross Density

The following requirements of this Section 707 shall become effective and in full force and effect June 1, 2022.

The gross density shall not exceed one (1) Parcel per ten (10) Acres.

708 Minimum Setbacks (see 708.04 for non-conforming parcels)

The following requirements of this Section 708 shall become effective and in full force and effect June 1, 2022.

708.01 Principal Use: (also apply to Special Exception Uses)
Front: Twenty-five (25) feet.
Side: Twenty-five (25) feet.
Rear: Twenty-five (25) feet.

708.02 Accessory Use:
Front: Twenty-five (25) feet.
Side: Fifteen (15) feet.
Rear: Fifteen (15) feet.

708.03 Conditional Use:
Same as Principal unless otherwise defined with the CUP

708.04 Non-Conforming Parcel Minimum Setbacks:
For any parcel which does not meet the minimum lot area requirement as defined in Section 706 and which is subject to Section 1802, the front, side, and rear setbacks (for principal, accessory, and special exception uses) shall be ten (10) feet. A conditional use shall be subject to the same setbacks unless otherwise defined with the CUP.

709 Encroachments (Setbacks)

709.01 Utility distribution lines and related equipment may be located within a required setback.

709.02 Fences and walls in excess of forty-two (42) inches in height are not allowed in the front setback.

710 Building Height

Maximum building height: thirty-five (35) feet

The maximum building height shall not apply to belfries, cupolas, penthouses or domes not used for human occupancy, roof-mounted church spires, chimneys, skylights, ventilators, water tanks, silos, parapet walls, cornices, antennas, utility poles and necessary mechanical appurtenances usually carried above the roof level.

710.01 The height of an antenna shall be no greater than the distance to the nearest lot line.

711 Street Standards

Construction of streets shall be in accordance with the Lewis and Clark County, Montana Public Works Manual.

712 Parking Standards

All non-residential parking requirements shall be as established in the Institute of Transportation Engineers (ITE) parking standards established in that document entitled "Parking Generation Manual, 5th Edition, 2019" or as otherwise set forth herein. All calculations are rounded up to the nearest whole number. The following minimum number of off-street parking spaces shall be provided under this zoning district:

712.01 Community Residential Facility (Type I): two (2) spaces for each one thousand (1,000) square feet of gross floor area.

712.02 Educational Facility (K-12): one (1) space for each three (3) employees, plus five (5) spaces.

712.03 Educational Facility (Higher Education): 0.19 spaces per student.

712.04 Day Care Facility: one (1) space for every two (2) employees, plus two (2) additional parking spaces, plus one (1) loading space for every eight (8) clients.

712.05 Public Facility: four (4) spaces per one thousand (1,000) square feet of gross floor space.

712.06 Funeral Home; Worship Facility: one (1) space for every four (4) seats.

712.07 Vehicle Fuel Sales: one (1) space for each two (2) employees, excluding spaces to serve the gas pumps.

712.08 Bank Financial Institution (Walk-in Only): 0.63 spaces per one thousand (1,000) square feet of gross floor area.

712.09 Bank Financial Institution (Walk-in with Drive-up): 4.23 spaces per one thousand (1,000) square feet of gross floor area.

712.10 Health Care Center; Animal Hospital; Veterinary Clinic: 4.11 spaces per one thousand (1,000) square feet of gross floor area.

712.11 Administrative Government Agency; Bus Terminal (if operated by a Government Agency); Public Safety Facility: 3.84 spaces per one thousand (1,000) square feet of gross floor area.

712.12 Crematorium; General Repair; Light Industrial; Vehicle Repair: 1.59 spaces per one thousand (1,000) square feet of gross floor area.

712.13 Vehicle Sales and Rental: 2.1 spaces per one thousand (1,000) square feet of gross floor area.

712.14 Equipment Rental: 2.1 spaces per one thousand (1,000) square feet of gross floor area.

712.15 Hotel: 0.89 spaces per room

712.16 Indoor/Outdoor Entertainment, Sports, and Recreation; Outdoor Concerts and Theatrical Performances: 0.26 spaces per seat.

712.17 Specialized Food Production; Artisan Shop (with Production and Manufacturing): 1.59 spaces per one thousand (1,000) square feet of gross floor area.

712.18 Community Residential Facility (Type II): one (1) space for each three (3) dwelling units.

712.19 Residence: two (2) spaces for each residential dwelling unit.

712.20 Kennel or Other Animal-Related Services; General/Professional Services; General Retail Sales: 4.1 spaces per one thousand (1,000) square feet of gross floor area.

712.21 Bed and Breakfast; Camping and Retreat Center: one (1) space for each room for rent, plus two (2) additional spaces if a portion of the building is used as a single dwelling unit residence.

712.22 Other Uses: For any other use not specifically mentioned or provided for in this Section, the Zoning Administrator shall determine the standards to be applied for parking, using as a guide the listed use which most closely resembles the use proposed.

713 Lighting Standards

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.

713.01 Residential Outdoor Lighting

All exterior light fixtures shall be of a full-cutoff design except as otherwise permitted below.

713.02 Commercial Outdoor 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 or fixture.

713.03 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.

713.04 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.

713.05 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.

713.06 Exemptions

713.06.1 Fixtures producing two thousand eight hundred fifty (2,850) average lumens (equivalent of a one hundred fifty (150) watt incandescent bulb) or less.

713.06.2 American Flag illumination

713.06.3 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.

713.06.4 Seasonal Lighting

Seasonal lighting used for the celebration of commonly acknowledged holidays and special events.

713.06.5 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.

713.07 Prohibited Lighting

The following types of lights are prohibited within the Rural Residential Mixed-Use Zone District.

713.07.1 The installation of any mercury vapor light fixture, lamp or replacement bulb for use as an outdoor light. Lighting that could be confused for a traffic control device.

713.07.2 Lighting designed for the creation of sky glow to attract attention (whether stationary or moving), in excess of the lighting used to provide safety, security, and utility.

713.07.3 When projected above a horizontal plane, beacons, laser source lights, strobe lights, or any similar high intensity light used for promotional or entertainment purposes.

713.07.4 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 with total per source level not exceeding an average of two thousand eight hundred fifty (2,850) lumens.

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SECTION 8 SUBURBAN RESIDENTIAL MIXED-USE DISTRICT (SR)

The Suburban Residential Mixed-Use Zone District is hereby adopted.
Its boundaries are as depicted on the Zoning Map. Detailed regulations to be adopted with a future amendment.

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SECTION 9 URBAN RESIDENTIAL MIXED-USE DISTRICT (UR)

The Urban Residential Mixed-Use Zone District is hereby adopted.
Its boundaries are as depicted on the Zoning Map. Detailed regulations to be adopted with a future amendment.

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SECTION 10 FORT HARRISON RURAL GROWTH AREA DISTRICT (FHRGA)

The Fort Harrison Rural Growth Area Zone District was previously approved, and its regulations can be found at Resolution 2019-20 recorded with the Lewis and Clark County Clerk and Recorder's office at document number 3333541 (see below.)

Nothing contained within these Helena Valley Zoning Regulations apply to the existing Fort Harrison Rural Growth Area District regulations, and vice versa.

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Paulette DeHart Clerk & Recorder, Lewis & Clark MT

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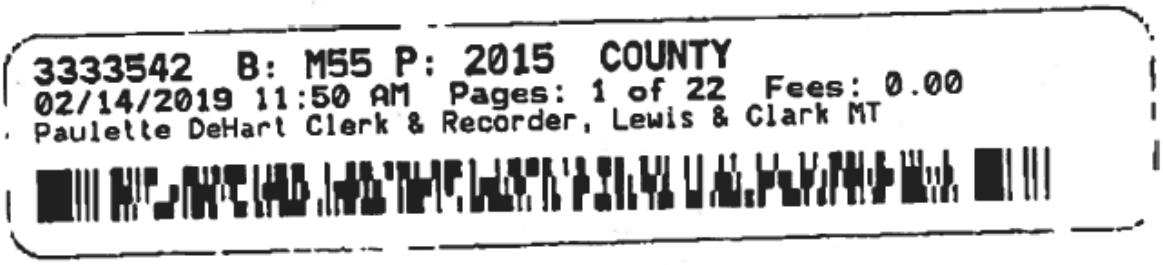
SECTION 11 FORT HARRISON URBAN GROWTH AREA DISTRICT (FHUGA)

The Fort Harrison Urban Growth Area Zone District was previously approved and, its regulations can be found at Resolution 2019-21 recorded with the Lewis and Clark County Clerk and Recorder's office at document number 3333542 (see below.)

Nothing contained within these Helena Valley Zoning Regulations apply to the existing Fort Harrison Urban Growth Area District regulations, and vice versa.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SECTION 12 RESERVED.

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SECTION 13 RESERVED.

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SECTION 14 CONDITIONAL USES AND PERMITS (CUP)

-Section Contents-

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1401 Intent

To provide for uses in specific zone districts when such uses may possess unique and special characteristics which otherwise may not be ordinarily compatible with all aspects of the zone districts in question. To provide a public process which affords the County and the public a way to satisfactorily address any impacts of the use. To establish procedures for the review of Conditional Use Permits (CUP) by the County Community Development and Planning Department (CDP) and the Board of Adjustment (BOA) with an opportunity for the public to participate.

1402 Criteria for Consideration of a Conditional Use Permit

A CUP may be approved only if the BOA finds and concludes that the proposed use satisfactorily addresses the criteria set forth in Section 1402.01 In reaching its conclusions, the BOA will assess the applicant's information; however, the burden of proof for satisfying the approval standards shall rest wholly with the applicant, and not the BOA. The granting of a CUP rests in the discretion of the BOA and a refusal is not the denial of a right, conditional or otherwise.

No structure, building or land shall be used, constructed, altered, or expanded where a CUP is specifically required by the terms of these Regulations until a CUP or CUP Amendment for such use has been authorized by the BOA and issued by the Zoning Administrator.

Structures or buildings devoted to any use which is permitted under the terms of these Regulations, subject to the securing of a CUP, may be altered, added to, enlarged, expanded, or moved from one location to another on the parcel only after securing a new or amended CUP.

The BOA may establish lesser setbacks than those required and heights greater than those allowed in the underlying zone district, if the BOA determines that adequate buffering is or will be provided to mitigate such concerns as noise, visual, dust, or other social or environmental impacts. The burden of proof is on the applicant to demonstrate such adequate mitigation measures.

A CUP may be permitted on nonconforming parcels when such use is permitted, as a CUP, in the zone district to which the parcel conforms in size.

1402.01 Approval Criteria

Each CUP application shall demonstrate how the proposal will satisfactorily address the following five (5) approval criteria.

1402.01.1 Site Suitability

That the site is suitable for the use. This includes:

(a) Adequate usable space;
(b) Adequate access; and
(c) Absence of adverse environmental constraints.

1402.01.2 Appropriateness of Design

The site plan for the proposed use will provide the most convenient and functional use of the lot. Consideration of design should include:

(a) Parking scheme;
(b) Traffic circulation;
(c) Open space;
(d) Fencing, screening;
(e) Landscaping;

(f) Signage; and
(g) Lighting.

1402.01.3 Availability of Public Services and Facilities
The following services and facilities are to be available and adequate to serve the needs of the use as designed and proposed:
(a) Sewer;
(b) Water;
(c) Storm water drainage;
(d) Fire protection;
(e) Police protection; and
(f) Streets.

1402.01.4 Immediate Neighborhood Impact
That the proposed use will not be detrimental to surrounding neighborhoods in general. Typical negative impacts which extend beyond the proposed site include:
(a) Excessive traffic generation;
(b) Noise or vibration;
(c) Dust, glare, or heat;
(d) Smoke, fumes, gas, or odors; and
(e) Inappropriate hours of operations.

1402.01.5 Growth Policy
The proposed development will be consistent with the Growth Policy.

1403 Approval Conditions
The BOA may impose conditions of approval where such conditions are necessary or appropriate to ensure a CUP meets the criteria set forth in Section 1402.

1404 Decision Based on Findings
Every decision of the Board of Adjustment pertaining to the granting, denial, or amendment of a request for a CUP shall be based upon "Findings of Fact". Each Finding of Fact shall be supported in the records of the proceedings. The criteria set forth in Section 1402 as they relate to matters, which the BOA is empowered to review under these Regulations and MCA, shall be construed as a limitation on the power of the BOA to act in the matter of approval / denial of a CUP. A mere finding or recitation of the enumerated conditions, unaccompanied by findings of specific fact, shall not be deemed in compliance with these Regulations.

1405 Length of Approval
A CUP shall be valid for a duration of time specified by the BOA or until the land use changes, is revoked, or is terminated, whichever occurs first. The CUP may transfer with the transfer of the land.

1406 Standards and Additional Requirements for Conditional Uses
When the proposal lies within a Planned Development (PD) overlay, the development plan for said PD overlay shall set forth the conditional uses and any additional requirements therein. In the absence of a PD, the conditional uses shall be as set forth within the specific zone district applicable to the proposed project site.

The following uses are listed as Conditional Uses below and are subject to additional requirements as noted:

1406.01 Airstrip

(a) Minimum setback for landing area: two hundred (200) feet from the sides of the landing strip, and four hundred (400) feet from the ends.
(b) The landing field shall be for the exclusive use of the landowner and guests.
(c) Any commercial use, flight training, ground school, or sales, are prohibited.
(d) Aircraft noise at the parcel boundaries may not exceed seventy-eight (78) db(A) for more than five (5) minutes in a one (1) hour period.
(e) The FAA shall be notified regarding approval of airspace.
(f) The landing strip shall be oriented such that aircraft landing and takeoff do not pass directly over dwellings not owned by the landowner, schools, churches, or other places of public assembly.
(g) Minimum setback from existing residences (except landowner's): one-half (½) mile from either end of the runway.
(h) A management plan shall be submitted with the application that addresses the following:
    (1) Type and use of aircraft for which the facility is intended;
    (2) Number of planes to be stationed on the site;
    (3) Frequency of flights and diagram of flight patterns; and
    (4) Hours of operation.

1406.02 Animal Hospital / Veterinary Clinic

(a) Such uses must be located at least one hundered (100) feet from all parcel lines.

1406.03 Extractive Industries

Requirements contained in this section shall not exempt the owner or operator of an extractive industry from compliance with the Montana Open Cut Mining Act, Section 82-4-401, et seq., MCA, as administered by the Montana Department of Environmental Quality, but shall be in addition to the requirements of said Act.

1406.03.1 Operational Requirements

(a) The site of an extractive industry shall be of sufficient size and dimensions to accommodate the proposed operations. Consideration shall be given to noise, light, dust, smoke and vibration and how they affect adjoining properties. Blasting operations shall be restricted to Monday through Friday between the hours of 8:00 A.M. and 5:00 P.M. Pockets and stagnant pools of water resulting from surface drainage shall either be:
    (1) Sprayed to eliminate breeding places for mosquitoes and other insects. Method and chemical uses shall be approved by the Montana State Department of Agriculture; or
    (2) Drained to prevent the creation of such breeding places.

1406.03.2 Off-street parking areas adequate for all employees' vehicles and trucks shall be provided.

1406.03.3 Plan for Development of the Site.

The plan to be submitted with the application for a CUP shall include a plan for the development of the subject property which shall consist of two (2) phases: the exploitation phase and the re-use phase. When such a plan is also required by the Open Cut Mining Act, the submitted plan must include all information required by the Department of Environmental Quality for such an application.

(a) Exploitation Phase

(1) The plan for the exploitation phase shall show the proposed development as planned in relation to surrounding property within three hundred (300) feet and shall include topographic surveys and other materials indicating existing conditions, including soil and drainage and the conditions, including drainage, topography and soil which shall exist at the end of the exploitation phase. Contour intervals for topography shall be five (5) feet in areas where slope is less than ten (10) percent.

(2) The plan for the exploitation phase shall demonstrate the feasibility of the operation proposed without creating hazards or causing damage to other properties. This plan shall also show the different stages of exploitation, where and how traffic will be handled, where equipment will be operating, the location and dimension of structures, the manner in which safeguards will be provided, including those for preventing access by children and other unauthorized persons to dangerous areas. The final stage of this plan shall indicate how the project is to be finished in accordance with the plan for re-use.

(b) Re-Use Phase

The plan for the re-use phase shall indicate how the property is to be left in a form suitable for re-use for purposes permissible in the district, relating such re-uses to uses existing or proposed for surrounding properties. Among items to be included in the plan are feasible circulation patterns in and around the site, the treatment of exposed soil or subsoil, including measures to be taken to replace topsoil or establish vegetation in excavated areas in order to make the property suitable for the proposed re-use and treatment of slopes to prevent erosion. In such a re-use plan, intermittent lakes shall be allowed, provided that such lakes are deep enough to sustain a species of game fish approved by the Montana Department of Fish, Wildlife and Parks. Such fish should have the capacity of feeding on insects and mosquito larvae, thereby eliminating an insect and mosquito breeding area.

1406.04 <u>Greenhouse Nursery</u>

The following items may be restricted based upon compatibility with the surrounding land uses:

(a) Location, size, height and use of structures;

(b) Number of vehicle trips;

(c) Lighting and hours of operation;
(d) Location and type of materials stored outside; and
(e) Wholesale/Retail sale of items.

1406.05 Heliport

(a) The FAA shall be notified regarding approval of airspace.
(b) A management plan shall be submitted with the application that addresses the following:
    (1) Type and use of aircraft for which the facility is intended;
    (2) Number of helicopters to be stationed on the site;
    (3) Frequency of flights and diagram of flight patterns; and
    (4) Hours of operation.

1406.06 Industrial Uses

Must not emit unusal or excessive amounts of dust, smoke, fumes, gas, noxious odors, or noise beyond the parcel boundary.

1406.07 Jail/Correctional

Security for the facility may include barb, electric, or concertina wire when located a minimum of six (6) feet six (6) inches in height measured from the ground level outside the fence.

1406.08 Kennel

Provided that all uses are located at least one hundred (100) feet from all parcel lines.

1406.09 Satellite Earth Station

A report describing the satellite earth station shall be included with the application. The report shall include the following:

(a) Discussion of proposed number, height, and types of satellite dishes to be accommodated;
(b) Description of output frequency, number of channels and power output per channel for each proposed antenna;
(c) A letter from the applicant stating that an intermodulation study, if required, has been conducted and concludes that no interference problems are predicted;
(d) A plan for the use and estimated life of the proposed telecommunication facility; and
(e) Statement that the proposed facility will be in compliance with all FCC and FAA regulations, and applicable federal requirements including, but not limited to, those associated with the National Environmental Protection Act (NEPA) as amended.

1406.10 Storage Facility, Self Service

The BOA may require the applicant present a plan that indicates how Outdoor Storage Areas will be screened/concealed/blended from the adjoining lands when such adjoining lands are in a residential use.

1407 Submittal Prerequisite

The applicant shall attend a pre-application meeting with the Zoning Administrator to discuss their CUP proposal, the submittal process, and requirements for a new CUP or an amendment to an existing CUP. Within fifteen (15) days of the pre-application meeting, the Zoning Administrator shall provide a written summary of the meeting.

A proposed amendment to an existing CUP may be considered in accordance with the procedures identified in the Amendment Section 1416. An amendment to a CUP shall be considered through an administrative process when the Zoning Administrator determines that the change does not represent a substantial increase in the intensity of the use or impacts to the neighborhood. This type of amendment shall be referred to as a CUP Administrative Amendment.

If the Zoning Administrator determines that the proposed amendment to an existing CUP does represent a substantial increase in the intensity of the use or impacts to the neighborhood, the proposed amendment shall be subject to the same submittal and process requirements as required for a new CUP application. This type of amendment shall be referred to as a CUP Amendment. When making the determination, the Zoning Administrator shall consider the proposed degree of change to the site improvements and management plan as reflected on the approved Plan Exhibit, with specific consideration for potential increased impacts to the surrounding community.

The applicant may appeal the Zoning Administrator's determination on the amendment process for an existing CUP to the BOA in accordance with Section 20 (Appeals).

1408 Submittal Process

The following shall apply to a new CUP or a CUP Amendment. The application shall be submitted only after the pre-application meeting(s) has been completed and the applicant has received the written Staff comment summary from the pre-application meeting. For a request for a CUP, or a CUP amendment, the submittal is processed as follows:

1408.01 The applicant shall submit the required submittal information to the CDP. The submittal shall be reviewed by the Staff assigned the project and a determination of completeness and sufficiency shall be made within twenty-one (21) days. The applicant shall be notified in writing if the submittal is incomplete and/or insufficient, and any inadequacies shall be specifically identified. An incomplete or insufficient submittal will not be processed.

1408.02 Once the submittal is determined complete and sufficient, Staff will notify the applicant in writing of the number of copies of the submittal information required for distribution to referral agencies.

1408.03 If the referral agencies elect to comment, they may comment within thirty (30) days from the date the referral packets were mailed or electronically distributed, unless the applicant grants, in writing, an extension of no more than thirty (30) days.

All referral agency comments shall be provided by the Staff to the applicant. The applicant shall be given an opportunity to address the comments of all referral agencies by identifying in writing the extent to which the project has been revised in response to the comments. The applicant is strongly encouraged to provide the Staff with a written

response. The applicant is encouraged to meet with the referral agencies and the Staff to address any concerns.

1408.04 The Staff will review the referral agency comments and discuss the concerns with the applicant. Upon receipt of written notice from the applicant that they are ready to proceed with a public hearing, Staff shall schedule a public hearing before the BOA. Once such public hearing has been determined, Staff shall notify the applicant in writing of the hearing date and time, and prepare a staff report for the BOA. The Staff will provide the public notice for the hearing as set forth in Section 1412.

1408.05 The BOA shall evaluate the CUP request, staff report, referral agency comments, applicant responses, and public comment and testimony, and shall approve, approve with conditions, or deny the CUP request. The BOA's action shall be based on the evidence presented, public comment, compliance with the adopted County standards, regulations, policies, and other guidelines. The BOA shall have up to sixty (60) days from the date of public hearing to render their decision unless an extension is mutually agreed-upon between the applicant and the BOA.

1408.06 If denied by the BOA, a resubmittal of a CUP request for the same or substantially same request, as determined by the Zoning Administrator, shall not be accepted within one (1) year of such denial. The applicant may appeal the decision, in writing, to the BOA pursuant to the Section 20 (Appeals) of these Regulations. The submittal of a new application and processing fee shall be required to pursue another proposed CUP.

1408.07 Following approval by the BOA, the applicant shall submit a signed Plan Exhibit to the CDP. The Staff shall verify that all conditions of approval have been met and all technical corrections have been satisfactorily made, prior to the Zoning Administrator's execution of the approval certificate on behalf of the BOA. The applicant shall submit the final signed Plan Exhibit no later than ninety (90) days from the date of BOA approval, unless the BOA allows for a longer period of time as part of its approval. The Zoning Administrator may grant a one-time extension of no more than an additional ninety (90) days. Further extensions may be submitted for the BOA's consideration.

1409 Withdrawal of a Conditional Use Permit Application

A request to withdraw an application shall be submitted, in writing, to the Staff. Once withdrawn, the submittal of a new application and processing fee shall be required in order to re-initiate the application; and such re-initiation shall be considered and processed as a new application.

1410 Submittal Requirements

The following submittal requirements shall apply to all applications for a new CUP:

1410.01 Completed application (available from the CDP).

1410.02 Application fee (available from the CDP).

1410.03 Proof of ownership that includes an updated or current title insurance policy or title commitment, or other acceptable form of title verification, no more than six (6) months old from the date of application.

1410.04 A notarized letter of authorization from the landowner permitting a representative to process the application, when applicable.

1410.05 Narrative to describe the following:
(a) General project concepts;
(b) Zoning of the land and compliance with the zone district requirements and any additional requirements for the CUP review as defined in this Section 14;
(c) Define overall impacts of the proposed use on the adjoining lands;
(d) Compliance with the Growth Policy;
(e) Compliance with appropriate agency regulations and any other necessary
(f) permits; and
(g) How the proposal satisfactorily address the approval criteria set forth in Section 1402.

1410.06 Plan Exhibit *(per Section 1411)*
Plan Exhibit (eleven (11) inch X seventeen (17) inch reduction) shall be required for the BOA public hearing packets; however, larger format plans (i.e. twenty-four (24) inches x thirty-six (36) inches etc.) may be required if needed for clarity purposes.

1410.07 Development Reports, unless waived by the Zoning Administrator in consultation with the County Engineer:
(a) Drainage Report and Plan;
(b) Utility drawings(s);
(c) Off-site improvement plans, as required;
(d) Engineering construction drawings; and
(e) Traffic Impact Study.

An improvements agreement may be required to identify and financially secure the improvements and other commitments required as part of the CUP approval.

1410.08 Other detailed technical studies, including but not limited to environmental, noise, and wildlife, based upon the scale and impact of the application, as may be necessary to demonstrate compliance with the approval standards.

1410.09 Documentation of capacity from the fire protection authority having jurisdiction.

1411 <u>Plan Exhibit</u>
For a CUP or a CUP amendment (Section 1416), a Plan Exhibit shall consist of both a Site Plan and Management Plan as required herein.

1411.01 All or portions of the required Site Plan elements may be waived by the Zoning Administrator if it is determined that the CUP review will occupy an existing structure with no exterior modifications, no site modifications, or will not otherwise require significant public or private improvements:
(a) Scaled Site Plan;
(b) Landscape Plan;
(c) Grading and Drainage Plan; and
(d) Lighting Plan.

1411.02 A Management Plan shall be provided that addresses all aspects of the day-to-day operation of the CUP. The degree of detail will depend upon the specific use. The following items shall be included, at a minimum, in the plan. The Management Plan shall be appended to the Site Plan Exhibit prior to final approval.

1411.02.1 Number of clients/customers expected daily or weekly.

1411.02.2 Hours of operation - whether the use is seasonal and the number of days of the week.

1411.02.3 Number of employees.

1411.02.4 Required outside storage/parking/loading areas.

1411.02.5 Permit requirements from other state, federal or local agencies.

1411.02.6 Method of providing fire protection.

1411.02.7 Other operational elements necessary to address the potential impacts for the specific special use.

1411.03 Plan Exhibit Title

The Plan Exhibit title shall include the name and legal description of the proposed development along with the address, site acreage (both for the CUP area and total site when different), and project file number. The business name shall not appear in the official title.

1411.04 Plan Exhibit Approval Certificate

Provide either a corporate/limited liability corporation (LLC) or individual approval certificate on the first sheet of the plan set, as follows.

APPROVAL CERTIFICATE

THE CONDITIONAL USE PERMIT (CUP) AS DEPICTED HEREON WAS APPROVED BY THE BOARD OF ADJUSTMENT
ON _____ _____, 20_____.

_____
Zoning Administrator for the Board of Adjustment

- The CUP is subject to review as defined by the Board of Adjustment as part of its approval, to ensure compliance with the approval standards and conditions of approval.
- Construction shall commence pursuant to the CUP review within three (3) years from the date of approval, or within the extended effective approval period, otherwise the CUP shall terminate.
- The CUP shall terminate when the use of the land changes or when the time period established by the Board of Adjustment through the approval process expires. The owner shall notify the Planning Division of a termination of the use. When the Plannng

Division is notified of a termination of use or observes that the use has been terminated during the annual review, a written notice of termination shall be sent to the landowner.

The undersigned as the owner or owner's representative of the lands described herein, hereby agree on behalf of itself, its successors and assigns to develop and maintain the property described hereon in accordance and compliance with this approved CUP Plan Exhibit and the Helena Valley Zoning Regulations.

By: _____(Signature)_____

Title: _____

Date: _____

An initialed secondary approval block is required on all subsequent Plan Exhibit sheets:

Approval Certificate

Planning _____
Initials/Date

Owner/Rep. _____
Initials/Date

1412 Public Notice Requirements

The following requirements shall apply to a CUP and CUP amendment.

1412.01 Written Notice

At least fifteen (15) days prior to the BOA hearing, Staff shall mail a written notice of the hearing by first-class mail to the address of each abutting landowner as such address is shown in the records of the County. The notice shall read substantially the same, as the published notice also required by this section.

The person completing the mailing of the written notice shall execute a certificate of mailing. Such certificate shall read as follows:

CERTIFICATE OF MAILING

I, _____, hereby certify that a true and correct copy of the attached written notice was placed in the U.S. mail, first-class, postage prepaid this _____ day of _____, 20___, and addressed as follows:
(attach *list of addresses as needed*)

_____
(*signature of person completing the mailing*)

1412.02 Published Notice

At least fifteen (15) days prior to the BOA hearing, Staff shall:

(a) Publish a notice in at least one (1) publication of a daily or a weekly legal newspaper of general circulation, printed or published in whole or in part in the County; and

(b) Obtain a publisher's affidavit of said published notice prior to the hearing.

1412.03 Posted Notice

At least fifteen (15) days prior to the BOA hearing, Staff shall post a notice on the land for which the CUP is requested.

NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF ADJUSTMENT

This land shall be considered for a Conditional Use Permit for a (*insert specific use*) in the _____ zone district. The public hearing is (*date*), in the Commissioners' Hearing Room, 316 N. Park Ave., Helena, MT at (*time*). For more information call County Planning, 406-447-8374

File No./Name:_____

1412.03.1 An affidavit of sign posting shall be submitted by the person who posted the sign for the file in the Planning Division prior to the hearings. The sign(s) shall be photographed by the person who posted them and attached to the affidavit as follows:

(*attach photo here*)
(*sign lettering must be legible in photo*)

I, (*person posting sign*), attest that the above sign was posted on (*date*) abutting (*name of street*).

_____(*signature*)_____ File No./Name: _____

1413 Post Approval

1413.01 Anniversary Date Reviews

Approved CUPs shall be field inspected by Staff for compliance with the terms and approval conditions of the CUP on every third anniversary; however the BOA may set a different rate for the frequency of reviews based upon the scope and magnitude of the use.

1413.02 Termination of Use

1413.02.1 Construction pursuant to approval of a CUP shall be commenced within three (3) years from the date of the BOA's approval, unless otherwise

specified, or the approval shall terminate. The Zoning Administrator may grant an extension of time, for good cause shown, upon a written request by the applicant.

1413.02.2 The Zoning Administrator may grant time extensions to the effective period of a CUP, not to exceed a total of three (3) years beyond the date of original approval, upon written request by the applicant. As necessary, the Zoning Administrator may include additional conditions with the time extension in order to ensure that the CUP remains in compliance with BOA's approval.

Time extensions in excess of the three (3) years noted above, may be requested by the applicant for consideration by the BOA at a public meeting.

1413.02.3 Where a CUP brings an existing use into compliance with applicable regulations, or is designed to correct a Notice of Violation, all improvements depicted on the CUP exhibit shall be completed within six (6) months of approval, unless otherwise approved by the BOA.

1413.02.4 A CUP shall terminate when the use of the land changes or when the time period established by the BOA through the approval process expires, whichever occurs first. The owner shall notify the Zoning Administrator of a termination of the use. When the Zoning Administrator is notified of a termination of use or observes that the use has been terminated, a written notice of termination shall be sent to the landowner.

1413.02.5 The termination notice is appealable, in writing, to the BOA pursuant to Section 20 (Appeals) of these Regulations.

1413.03 Revocation

If noncompliance with the approved Plan Exhibit or conditions of approval is demonstrated, the Zoning Administrator shall contact the landowner and provide thirty (30) days to cure the non-compliance. Failure to cure the noncompliance within the thirty (30) day period may give rise to revocation of the permit by the BOA. The BOA may consider revocation of the CUP at a public meeting. Written notice shall be provided to the landowner and/or lessee at least fifteen (15) days prior to the scheduled BOA meeting.

1414 Inactive Files

Files that become inactive, because the applicant has not responded to Staff's request for information or otherwise action in the process, for a period of more than six (6) months, shall become void and the resubmittal of a new application and fees shall be required to pursue the CUP request. After five (5) months of inactivity, Staff shall notify the applicant in writing that the application will become void within thirty (30) days. If the applicant fails to submit the required additional information or request a hearing date within thrity (30) days, Staff shall notify the applicant in writing that the application is void. This provision shall apply to all CUP applications on file with the CDP upon the effective date of adoption and any application thereafter. The Zoning Administrator may grant an extension of time, of no more than six (6) months, upon a written request by the applicant.

1415 Post Denial Application

If denied by the BOA, a resubmittal of the same or substantially same CUP application shall not be accepted within one hundered eighty (180) days from the date of denial by the BOA, or in the event of litigation, from the date of the entry of the final judgment. However, if evidence is presented to the Zoning Administrator showing that there has been a substantial change in physical conditions or circumstances, the Zoning Administrator may reconsider the CUP sooner than the above noted one hundred eighty (180) days. A new application and processing fee shall be required.

1416 Conditional Use Permit Amendments

1416.01 Amendment of an Approved CUP - BOA

An amendment to an approved CUP may be considered in accordance with the procedures identified in the Section 14 for a new CUP.

1416.02 Amendment of an Approved CUP - Administrative

When an existing CUP is proposed for a minor modification, it may be considered for an Administrative CUP Amendment by the Zoning Administrator as follows:

1416.02.1 Upon receipt of a complete application as set forth in Section 1410, the Zoning Administrator shall prepare a notice containing the pertinent facts to the application and shall have said notice served by first class mail upon adjoining property owners. The notice shall provide a reasonable period of time, not less than twenty-one (21) days, for interested parties to submit comments on the proposed activity. Within fifteen (15) days of the end of the comment period a written determination shall be mailed to the applicant approving or denying the Administrative Amendment to the CUP.

1416.02.2 The application and format used for the submittal of the Administrative Amendment to the CUP shall be the same as found in Section 1410 for CUP applications. All information required for the application shall be supplied by the applicant. The evaluation criteria for this Administrative Permit shall be supplied by the applicant. The criteria for this Administrative Permit shall be the same criteria as outlined in Section 1402. If there is no written public opposition and the project meets the criteria, the project will be approved. The Zoning Administrator shall issue a CUP Administrative Amendment, with or without conditions of approval, which will be indicated on the face of the permit.

1416.02.3 When written opposition from the property owners adjoining the property subject to the request are received prior to the end of the comment period and the expressed concerns of the opposition cannot be resolved by the applicant, the Administrative Amendment to the CUP will be scheduled for the next available BOA meeting for a decision. The applicant shall be responsible for all additional information and filing fees required.

1416.02.4 If the Administrative Amendment to the CUP is denied by the Zoning Administrator, the denial may be appealed. This appeal shall be made in accordance with Section 20 (Appeals). The appellant is responsible for all information and additional filing fees required.

1416.03 Title and Approval Certificate

The project title for all CUP amendments shall be consistent with the original title; except that it shall also identify it as an amendment (i.e. 1st Amendment.)

The following approval certificate shall accompany the required Plan Exhibit for a CUP amendment.

CUP Amendment Approval Certificate

1st (Administrative—if applicable) Amendment to File # _____ is hereby amended this ____ day of ____, 20____. The CUP continues to meet all approval criteria and is subject to all original conditions of approval, unless specifically noted hereon.

_____
Zoning Administrator for the Board of Adjustment

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SECTION 15 TEMPORARY USES

-Section Contents-

1501 Intent 15-2
1502 General Requirements 15-2

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1501 Intent

To provide for the regulation of temporary and seasonal uses such as, but not limited to, temporary construction offices, temporary sales offices, produce stands, Christmas tree lots, firework stands, uses central to seasons, holidays, special events, or development/construction projects. Temporary uses have defined commencement and termination dates.

1502 General Requirements

1502.01 Temporary uses shall comply with all accessory use setback requirements of the district.

1502.02 Temporary uses must be connected to approved water and sewer utilities, where appropriate.

1502.03 Parcels with a temporary use(s) must have an approach permit or permits (when such approach permit is required or when an acceptable existing approach permit exists) issued by the appropriate agency (Montana Department of Transportation, City of East Helena, City of Helena, or Lewis and Clark County) before the temporary use can commence.

1502.04 All parking associated with temporary uses must be off-street.

1502.05 Temporary structures associated with the temporary use(s) must be removed from the parcel within sixty (60) days of inactive use. Temporary structures shall be deemed inactive when not in use for a period of fourteen (14) consecutive days.

1502.06 Vegetation on the parcel disturbed due to the temporary use(s) must be restored to same condition as pre-disturbed state within sixty (60) days of inactive use of the temporary use(s) and the removal of temporary structure(s). Temporary use(s) shall be deemed inactive when not in use for a period of fourteen (14) consecutive days. The Zoning Administrator may extend the sixty (60) days if seasonal conditions prevent vegetation restoration.

SECTION 16 HOME OCCUPATIONS

-Section Contents-

1601 Intent 16-2
1602 Home Occupation 16-2
1603 Home Occupation Criteria 16-2

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1601 Intent

To provide for the operation of limited commercial activities within residential uses. The standards for home occupations herein are intended to ensure compatibility with other permitted uses and with the residential character of the neighborhood, plus a clearly secondary or incidental status in relation to the residential use of the main building as the criteria for determining whether a proposed accessory use qualifies as a home occupation.

1602 Home Occupation

Any business or activity conducted on the property that is clearly accessory and incidental to the use of the residence for residential purposes.

1603 Home Occupation - Criteria

A home occupation must not:

1603.01 Involve more than the equivalent of six (6) persons, who work on the site but do not live in the residence.

1603.02 Create noticeable glare, noise, odor, vibration, smoke, dust, or heat at or beyond the property line(s.)

1603.03 Generate more than an average of thirty (30) additional vehicle trips per day on a weekly basis, including deliveries.

1603.04 Have no exterior advertising of the home occupation.

1603.05 Such home occupation use shall comply with all other applicable County codes, health regulations, or any other local, state or federal regulation. The permission granted or implied by this Section shall not be construed as an exemption from any such regulation.

SECTION 17 RESERVED.

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SECTION 18 NONCONFORMING USES, STRUCTURES AND LAND

-Section Contents-

1801 Intent 18-2
1802 Nonconforming Uses, Structures, and Land 18-2
1803 Changes Permitted to Nonconforming Structures and Uses 18-2
1804 Establishment of Dates 18-3
1805 Nonconforming Lot 18-3
1806 Boundary Lines 18-3

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1801 Intent

To recognize the lawful use of land and/or structures existing at the time of the adoption of these Regulations that do not conform to these Regulations as set forth herein. The continuation of and limited development of nonconforming uses and/or structures is intended to prevent hardship and to allow the useful economic value of the land and/or structures to be realized.

1802 Nonconforming Uses, Structures, and Land

1802.01 If, at the time of adoption of these Regulations or of any amendments thereto, or at the time a zoning district to which these Regulations are applied is created, any lot, structure, or building being used in an otherwise lawful manner that does not conform to the use provisions of these Regulations, or if any structure or building was located or erected in an otherwise lawful manner that does not conform to the setbacks, height limit, or parking and loading provisions of these Regulations, such use of such location or erection shall be deemed to be a non-conforming use and may continue in the manner and to the extent that it existed or was being used at the time of adoption of these Regulations. Such non-conforming status will run with the parcel, building, or use and shall not be affected by changes in ownership.

1802.02 Whenever the on-site construction has begun for any building, for which a building permit has been issued by the authorized issuing agency or if a building permit is not required, prior to the adoption or amendment of these Regulations, or creation of a zoning district to which these Regulations apply, and the construction/erection of which is in conformity with the plans submitted and approved for such building permit, but does not conform to the provisions of these Regulations, such building shall be considered non-conforming.

1803 Changes Permitted to Nonconforming Structures and Uses

1803.01 Routine maintenance and repair, or those modifications required by applicable health and safety codes shall be permitted. Likewise, expansions such as covered wheelchair ramps, lifts, and handicap accessible rest rooms, which are needed to meet requirements of the Americans with Disabilities Act (ADA), shall be allowed.

1803.02 A nonconforming structure (whether due to dimensional or use issues) located either partially or entirely within the setback area, may be expanded in a direction away from the affected setback.

1803.03 A nonconforming use located either partially or entirely within the setback area, may be expanded subject to an appropriate Conditional Use Permit.

1803.04 Whenever a nonconforming structure is moved, it shall conform to the provisions of the district in which it is located after the move.

1803.05 No conforming structure or use will be allowed to revert to a nonconforming use.

1803.06 If any nonconforming use and/or structure is abandoned, deserted, or caused to be discontinued, voluntarily or by legal action, (for any reason other than as noted in Section 1803.07) for a period of more than one hundred eighty (180) days, any subsequent use of such land or structure(s) shall conform to the provisions of these Regulations and as thereafter amended.

1803.07 A nonconforming structure or use that is destroyed or substantially damaged by fire, flood, or other natural disaster may not be restored as a nonconforming structure or use unless initiation of the restoration process occurs within twenty-four (24) months of the damage having occurred.

1803.07.1 Said restored structure or use shall occupy the same physical footprint and must be used for the same purpose(s) as the original nonconforming structure or use; unless the restoration brings the structure or use either more, or fully, into compliance with these Regulations.

1803.07.2 A nonconforming structure or use shall be considered to be substantially damaged when the cost of restoring the structure or use to its before-damage condition would exceed fifty (50%) percent of the market value of the structure or use before the damage occurred.

1804 Establishment of Dates

The Zoning Administrator shall determine, to the maximum extent practicable, the applicable date(s) relative to nonconforming status based on substantiating evidence from the applicant and any other historical records or documents.

1805 Nonconforming Lot

In each zoning district all structures and/or uses whether as principal, accessory, conditional uses, or special exception uses may be erected/placed/developed on any nonconforming lot which was lawfully of record before these Regulations were adopted or amended. However, all development occurring on a nonconforming lot after the adoption of these Regulations shall conform with all other provisions of these Regulations.

1806 Boundary Lines

Boundary line relocation of a nonconforming lot, that is not subject to aggregation, is permitted where the relocation would either create a conforming lot, or not result in the addition of a nonconforming lot unless all bulk requirements can be met, or fully merge the nonconforming lot with an adjacent parcel.

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SECTION 19 VARIANCE STANDARDS AND PROCEDURES

-Section Contents-

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1904 Procedure for Variance 19-2
1905 Public Notice Requirements 19-4
1906 Decision 19-5
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1901 Intent

A variance may be requested for relief from certain provisions of these Regulations, when such request will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution shall be observed and substantial justice done.

1902 Variance Limitations

1902.01 Variances shall be limited to hardships resulting from lot size, shape, topography, height of structures, minimum setbacks, or other circumstances over which the applicant has no control.

1902.02 A variance for the following shall be strictly prohibited:

(a) Use - A variance for a use not listed within these Regulations applicable to the property in question; or

(b) Incongruent Purposes - A variance authorizing any action which would be contrary to the purpose and intent of these Regulations.

1903 Variance - Approval Criteria

A variance shall be granted by the Lewis and Clark County Board of Adjustment (BOA) only upon the finding of the following:

1903.01 The applicant has provided reasonable and adequate evidence that the variance request is not a self-imposed hardship which can be rectified by means other than relief through a variance;

1903.02 The need for a variance results from physical limitations or unique circumstances related to the lot or parcel on which the variance is requested;

1903.03 Approval of the variance will not have a substantial adverse impact on neighboring properties or the public; and

1903.04 Granting of the variance will observe the spirit of these Regulations and provide substantial justice.

1904 Procedure for Variance

1904.01 The applicant shall discuss the variance informally with Staff to go over the procedures and submittal requirements.

1904.02 The applicant shall submit the following to the CDP:

1904.02.1 A completed application form *(available from the CDP).*

1904.02.2 Documentation of ownership (such as a general or warranty deed, option to buy or buy-sell agreement) of the land which is the subject of the variance.

1904.02.3 Application fee *(available from the CDP).*

1904.02.4 A site plan, when applicable, indicating how the variance relates to the affected land. The site plan shall be drawn to scale including the height and setbacks of all existing and proposed structures and any other information requested by the CDP.

1904.02.5 A scaled vicinity map with a north arrow that, clearly shows the property in question, with its zoning, along with the zoning of the adjacent one (1) mile radius area.

1904.02.6 An explanation in narrative form explaining the requested variance and how it meets the criteria in Sections 1902 and 1903.

1904.03 When an application is submitted, the submittal shall be reviewed by the Staff assigned the project and a determination of completeness and sufficiency shall be made within twenty-one (21) days. The applicant shall be notified in writing if the submittal is incomplete and/or insufficient, and any inadequacies shall be specifically identified. An incomplete or insufficient application will not be processed.

1904.04 Once the submittal is determined to be complete and sufficient, Staff will notify the applicant in writing of the number of copies of the submittal information required for distribution to referral agencies.

1904.05 If the referral agencies elect to comment, they may comment within thirty (30) days from the date of the referral packets were mailed or electronically distributed, unless the applicant grants, in writing, an extension of no more than thirty (30) days.

All referral agency comments shall be provided by the Staff to the applicant. The applicant shall be given the opportunity to address the comments of all referral agencies by identifying, in writing, the extent to which the project has been revised in response to the comments. The applicant is strongly encouraged to provide the Staff with a written response. The applicant is encouraged to meet with the referral agencies and the Staff to address any concerns.

1904.06 The Staff will review the referral agency comments and discuss any concerns with the applicant. Upon receipt of written notice from the applicant that they are ready to proceed with a public hearing, Staff shall schedule a public hearing before the BOA. Once such public hearing has been determined, Staff shall notify the applicant in writing of the hearing date and time and prepare a staff report for the BOA. The Staff will provide the public notice for the hearing as set for in Section 1905.

1904.07 Conditions may be attached to the approval of any variance in accordance with the following:

1904.07.1 Conditions shall be designed to ensure compliance with one or more specific requirements of these or other applicable adopted regulations;

1904.07.2 Conditions shall be directly related to any anticipated impacts of the applicant's proposal; and/or

1904.07.3 Conditions shall be roughly proportional to any anticipated impacts of the applicant's proposal.

1904.08 The BOA shall evaluate the application, the staff report, and public testimony; and then shall approve, conditionally approve, or deny the variance based on the evidence presented and compliance with the applicable criteria. The BOA shall have up to sixty (60) days from the date of the public hearing to render their decision unless an extension is mutually agreed-upon between the applicant and the BOA.

1904.09 As part of the BOA's deliberative process in making their decision, it will adopt findings and conclusions in support of its decision.

1905 Public Notice Requirements

In calculating the time period for public notification, see Section 106 of these Regulations.

1905.01 Mailed Notice

At least fifteen (15) days prior to the BOA hearing, written notice by first-class must be mailed to each property owner of record immediately adjoining the land included in the variance request.

The notice shall indicate:

(a) The date, time and location of the hearing;
(b) An explanation of the variance;
(c) The general location of the land that is the subject of the request;
(d) The file name and number; and
(e) That questions should be directed to the CDP.

Staff completing the mailing of the written notice shall execute a certificate of mailing. Such certificate shall read as follows:

CERTIFICATE OF MAILING

I , _____, hereby certify that a true and correct copy of the attached written notice was placed in the U.S. mail, first-class, postage prepaid this ____ day of _____, 20___, and addressed as follows:
(attach list of addresses if necessary)

_____
(signature of person completing the mailing)

1905.02 Published Notice

At least fifteen (15) days prior to the BOA hearing, notice shall be given by publication in a newspaper of general circulation in the County.

The notice shall indicate:

(a) The date, time and location of the hearing;
(b) An explanation of the variance;
(c) The general location of the land that is the subject of the request;
(d) The file name and number; and

(e) That questions should be directed to the CDP.

1905.03 Additional public notice may be required by the Zoning Administrator.

1906 Decision

Construction pursuant to approval of a variance must be initiated within one (1) year from the date the variance was approved and must be completed within three (3) years; otherwise the variance approval shall terminate. The Zoning Administrator may grant an extension of time, for good cause shown, upon a written request by the applicant. Such time extension (for either or both initiation or completion of the field work) shall not exceed one (1) year.

If denied by the BOA, a resubmittal of the same or substantially same variance application shall not be accepted within one (1) year from the date of denial by the BOA or in the event of litigation, from the date of the entry of the final judgment. However, if evidence is presented to the BOA showing that there has been a substantial change in physical conditions or circumstances, the BOA will reconsider the variance. A new application and processing fee shall be required.

1906.01 The Zoning Administrator shall notify the applicant of the BOA decision within thirty (30) days.

1906.02 The notification shall include the following:
(a) The decision of the BOA;
(b) The findings that support the BOA decision;
(c) Any adopted conditions of approval;
(d) A reminder of the approval time validity; and
(e) A statement that the BOA decision may be appealed to the Court of Record.

1907 Administrative Variance

As an option available to the landowner, the Zoning Administrator shall have the authority to grant Administrative Variances of up to a twenty-five (25) percent adjustment in the zoning requirements for those items specific to front, side, and rear setbacks and building height without going to the BOA. The applicant shall submit the fee and the information required in Section 1904.02 to the Zoning Administrator. Staff shall notify abutting landowners of the request. Such notification shall be either a notice of the variance request sent by certified mail, return receipt requested, at least fifteen (15) days prior to the Zoning Administrator's consideration of such request; or the applicant may obtain a signed statement from the abutting landowners clearly stating that they were notified of the variance request and submit these signatures with the application.

The procedure for an Administrative Variance shall substantially follow that of Section 1904; however, without the need for the hearing before the BOA.

A decision by the Zoning Administrator to deny such variance may be appealed to the BOA in accordance with the procedure in Section 20 (Appeals). A written appeal shall be submitted by the applicant to the Zoning Administrator within thirty (30) days of such denial.

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SECTION 20 APPEAL STANDARDS AND PROCEDURES

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2002 Appeals Limitations 20-2
2003 Appeals – Approved Criteria 20-2
2004 Procedure for an Appeal 20-2
2005 Public Notice Requirements 20-3
2006 Decision 20-4

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2001 Intent

An appeal to the Board of Adjustment (BOA) may be taken by any person aggrieved by the decision of the Zoning Administrator based upon or made in the course of the administration or enforcement of the provisions of these Regulations in accordance with Title 76, Chapter 2, Part 2, MCA.

2002 Appeals Limitations

An appeal must be made in writing and submitted to the Community Development and Planning Department (CDP) within thirty (30) days of an administrative decision.

2003 Appeals - Approval Criteria

2003.01 An appeal shall be granted only upon the finding that the Zoning Administrator has erred in the interpretation or application of the Zoning Regulations.

2003.02 An appeal may be granted provided that no substantial detriment to the public good is created and that the intent and purpose of these Regulations are not impaired.

2003.03 The concurring vote of three (3) members of the BOA shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator.

2004 Procedure for an Appeal

2004.01 The applicant shall discuss the appeal informally with Staff to discuss the procedures and submittal requirements.

2004.02 The applicant shall submit the following to the CDP:

2004.02.1 A completed application form *(available from CDP)*;

2004.02.2 Application fee *(available from CDP)*; and

2004.02.3 An explanation in narrative form explaining the appeal request and how the Zoning Administrator has erred in the interpretation.

2004.03 The submittal shall be reviewed for completeness and the applicant notified of any inadequacies within twenty-one (21) days. An incomplete submittal shall not be processed.

2004.04 Once the submittal is determined to be complete, Staff will notify the applicant in writing of the number of copies of the submittal information required for distribution to referral agencies.

2004.05 If the referral agencies elect to comment, they may comment within thirty (30) days from the date the referral packet were mailed or electronically distributed, unless the applicant grants, in writing, an extension of no more than thirty (30) days.

All referral agency comments shall be provided by the Staff to the applicant. The applicant shall be given an opportunity to address the comments of all referral agencies by identifying, in writing, the extent to which the project has been revised in response to the comments. The applicant is strongly encouraged to provide the Staff with a

written response. The applicant is encouraged to meet with the referral agencies and the Staff to address any concerns.

2004.06 The Staff will review the referral agency comments and discuss any concerns with the applicant. Upon receipt of written notice from the applicant that they are ready to proceed with a public hearing, Staff shall schedule a public hearing before the BOA. Once such public hearing has been determined, Staff shall notify the applicant, in writing, of the hearing date and time and prepare a staff report for the BOA. The Staff will provide the public notice for the hearing as set forth in Section 2005.

2004.07 The BOA shall evaluate the application, staff report and public testimony, and shall approve, conditionally approve, or deny the appeal based on the evidence presented and compliance with the applicable criteria. The BOA shall have up to sixty (60) days from the date of the public hearing to render their decision unless an extension is mutually agreed-upon between the applicant and the BOA.

2005 Public Notice Requirements

In calculating the time period for public notification, see Section 106 of these Regulations.

2005.01 Mailed Notice

At least fifteen (15) days prior to the BOA hearing, written notice by first-class must be mailed to each property owner of record immediately adjoining the land included under the appeal.

The notice shall indicate:

(a) The date, time and location of the hearing;
(b) An explanation of the appeal;
(c) The general location of the land (as applicable) that is the subject of the request;
(d) The file name and number; and
(e) That questions should be directed to the CDP.

Staff completing the mailing of the written notice shall execute a certificate of mailing. Such certificate shall read as follows:

CERTIFICATE OF MAILING

I, _____, hereby certify that a true and correct copy of the attached written notice was placed in the U.S. mail, first-class, postage prepaid this ____day of _____, 20___, and addressed as follows:

(list of addresses)

_____
(signature of person completing the mailing)

2005.02 Published Notice

At least fifteen (15) days prior to the BOA hearing, notice shall be given by publication in a newspaper of general circulation in the County.

The notice shall indicate:

(a) The date, time and location of the hearing;
(b) An explanation of the appeal;
(c) The general location of the land that is the subject of the request;
(d) The file name and number; and
(e) That questions should be directed to the CDP.

2005.03 Additional public notice may be provided as appropriate.

2006 Decision

2006.01 The Zoning Administrator shall notify the applicant of the BOA decision within thirty (30) days.

2006.02 The notification shall include the following:

(a) The decision of the BOA;
(b) The findings that support the BOA decision;
(c) Any adopted conditions of approval;
(d) A reminder of the approval time validity; and
(e) A statement that the BOA decision may be appealed to the Court of Record.

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SECTION 21 PLANNED DEVELOPMENT OVERLAY DISTRICT (PD)

The Planned Development Overlay Zone District is hereby adopted. Detailed regulations to be adopted with a future amendment.

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SECTION 22 RESERVED.

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SECTION 23 RESERVED.

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SECTION 24 SUBDIVISION EXEMPTIONS; VESTED RIGHTS

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2402 Subdivisions and Exemptions.....24-2
2403 Private Agreements 24-2
2404 Termination.....24-2

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2401 Intent

This section defines vested rights relating to specific approvals and recorded documents approved and/or recorded prior to the effective date of these Regulations.

2402 Subdivisions and Exemptions

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.

2403 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.

2404 Termination

Any right to carry out the preliminary plat of a subdivision or approval of an exemption from subdivision review which was submitted or approved prior to the adoption of these Regulations shall terminate upon the expiration of any such approvals unless extended by prior approval by the BoCC.

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SECTION 25 BOARD OF ADJUSTMENT

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2502 Membership 25-2
2503 Powers 25-2
2504 Operations 25-2

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2501 Board of Adjustment

The Lewis and Clark County Board of Adjustment (BOA) exists by statutory authority in accordance with Section 76-2-221, MCA.

2502 Membership

2502.01 The BOA shall consist of five (5) members appointed by the Board of County Commissioners.

2502.02 BOA members shall serve without compensation, other than reimbursement for approved budgeted expenditures incurred in carrying out the functions of the BOA.

2502.03 BOA members shall be appointed for a term of two (2) years.

2503 Powers

2503.01 The powers and duties of the BOA, including hearing Conditional Use Permits, Variances, and Appeals, are set forth in Sections 76-2-221 through 76-2-228, MCA, and as also set forth in these Regulations in Sections 14, 19, and 20.

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SECTION 26 CONSOLIDATED CITY AND COUNTY PLANNING BOARD

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2602 Powers 26-2

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2601 Planning Board

The City of Helena and Lewis and Clark County Consolidated City and County Planning Board (CCCPB), formed pursuant to Section 76-1-101, et seq., MCA shall have the powers and duties as set forth in this section.

The CCCPB for Lewis and Clark County may also be referred to as the "Planning Board".

2602 Powers

2602.01 In addition to its powers and duties as may be set forth in its governing documents and statutory authority, the Consolidated City and County Planning Board shall hold public hearings and make recommendations to the Board of County Commissioners on all matters relating to the creation and amendment of zoning districts and the regulations to be enforced therein.

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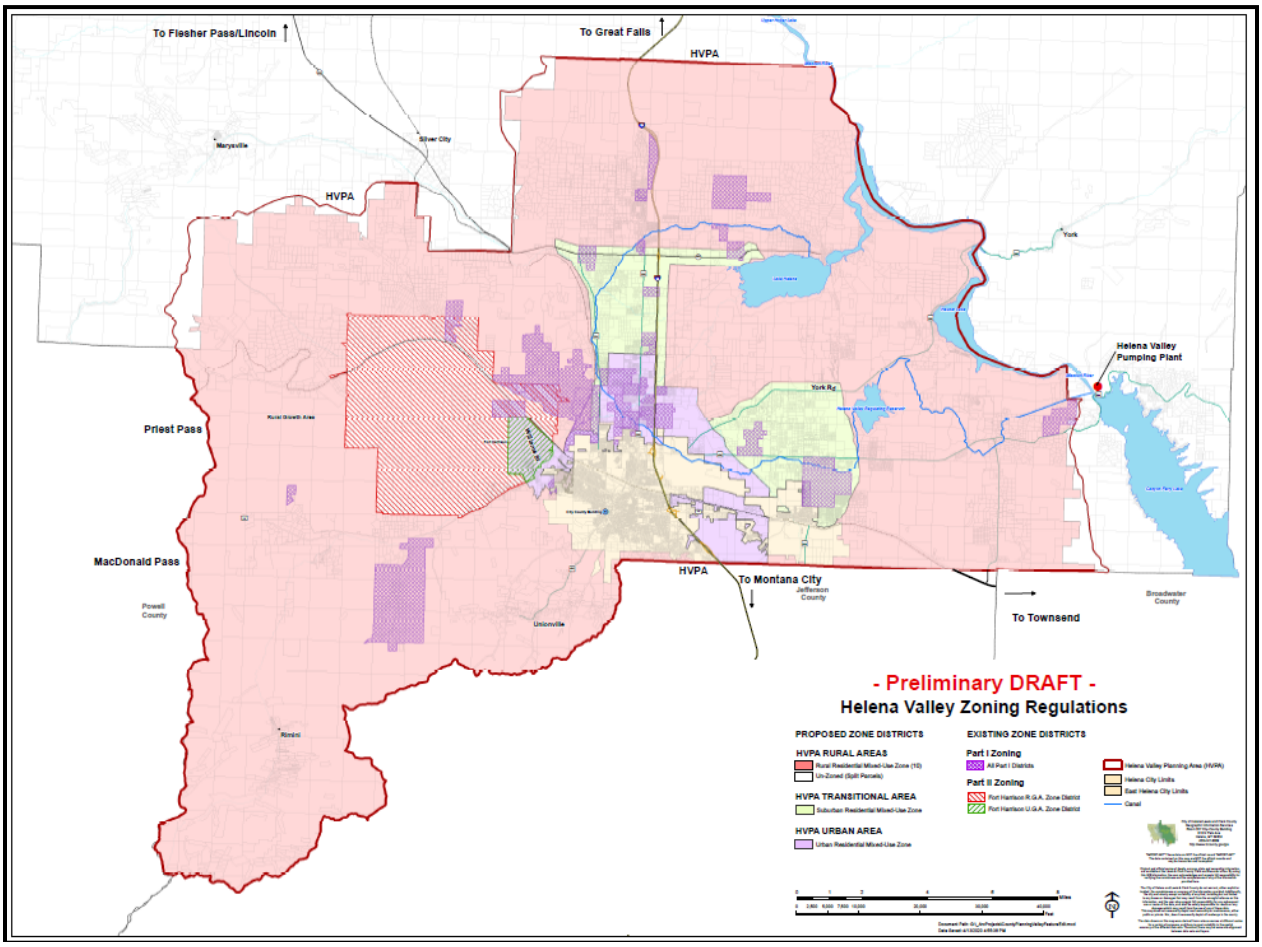
APPENDIX - A HELENA VALLEY ZONING REGULATIONS DISTRICT MAP

The official Helena Valley Zoning Regulations map can be accessed on-line at the following location: https://www.lccountymt.gov/cdp/zoning.html.

An unofficial version of the map is shown below:



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APPENDIX – B CITIZEN INITIATED (PART -1) ZONING DISTRICTS

The enclosed existing Part-1 zoning documents were each previously approved as shown within each such document. Their inclusion here is merely for the convenience of the user of this document and their existing status in no way is affected by the adoption of these Helena Valley Zoning Regulations. Nothing contained within each of these Part-1 zoning documents apply to these Helena Valley Planning Area (Part-2) Zoning Regulations or the existing Fort Harrison (Part-2) regulations, and vice versa.

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APPENDIX – C PLANNING AND ZONING COMMISSION (*PART-1 ZONING ONLY*)

The Lewis and Clark County Planning and Zoning Commission exists by statutory authority in accordance with Section 76-2-102, MCA. It has no purview over these Part-2 zoning regulations for the Helena Valley, or for the Fort Harrison Part-2 zoning districts, and its reference is merely contained here for convenience purposes relative to the Part-1 zoning regulations contained in Appendix-B.

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