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MEMORANDUM

TO: Helena/Lewis and Clark County Consolidated Planning Board and Board of County Commissioners

FROM: George Thebarge AICP

DATE: October 12, 2016

SUBJECT: Response to Public Comments & Questions on Amendments to the County Subdivision Regulations

On June 21, 2016 and September 20, 2016, Helena-Lewis and Clark County Consolidated Planning Board held public hearings regarding draft amendments prepared by the Community Development and Planning Staff (staff) to the December 19, 2013 Subdivision Regulations.

This memorandum is intended to provide the Board, Commissioners and the public with a staff response to questions and comments on the draft documents made during the public hearing and also that were submitted in writing outside of the public hearing.

COMMENTS FROM MARK SIMONICH OF THE HELENA ASSOCIATION OF REALTORS 6-21-2016

HAR COMMENT #1: A prior draft submitted for review included proposed language changes on the section dealing with Exemptions from Requirements for an Environmental Assessment to make references to the new Helena Valley Area Plan, which the Helena Realtors supported. That section has now been removed entirely. We understand the desire to have a valley infrastructure plan and zoning adopted prior to including those conditions in the subdivision regulations but are concerned with how long it will take to get an infrastructure plan and zoning adopted. We request that the existing section be kept in the regulations and that language referring to the Helena Valley Area Plan be amended to this section.

Staff Response #1 – These comments and the Helena Association of Realtors (HAR) ask for changes to the existing language in the Subdivision Regulations on exemptions for subdivisions in areas covered by an infrastructure plan and zoning. Subdivisions meeting the requirements of Section 76-1-601(4)(c), MCA are not required to do an environmental assessment, go through a public hearing, or prepare documentation on potential impacts to agriculture, agricultural water user facilities, natural resources, local services, wildlife, wildlife habitat, and public health, safety, and general welfare. This would result in significant time and cost savings to applicants.

Planning staff sent an earlier draft for review by HAR and HBIA that included the following language changes to the current regulations that would bring them closer to implementation of the recommendations of the recently adopted Helena Valley Area Plan for the Urban Growth Area:

Page III-7, Lewis and Clark County 2013 Subdivision Regulations

4. Exemptions from Environmental Assessment, Public Hearing, and Review under Some Subdivision Review Criteria

~~The following major subdivisions shall not be required to submit an environmental assessment:~~ Subdivisions located in the Urban Growth Area of the Helena Valley Area Plan that meet the requirements of this section qualify for certain exemptions from the requirements of these regulations.

~~1.~~ The Helena Valley Area Plan provides for expedited reviews of a ~~A~~ subdivision that satisfies all of the following criteria (Section 76-3-616(2), MCA):

a. The proposed subdivision is entirely within an area inside or adjacent to an incorporated city or town where the governing body has adopted a growth policy that includes the provisions of Section 76-1-601(4)(c), MCA for an infrastructure plan; and,

b. The proposed subdivision is entirely within an area subject to zoning adopted pursuant to Sections 76-2-203 or 76-2-304, MCA that avoids, significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of Section 76-1-601(4)(c), MCA; and,

c. The subdivision proposal includes a description, using maps and text, of future public facilities and services that are necessary to efficiently serve the projected development.

Subdivisions located in such areas shall not be required to comply with the following requirements:

e. Submit an environmental assessment;

f. Undergo a public hearing; or

g. Be subject to review for potential impacts on the criteria listed in Section III. A. 4 of these regulations and Section 76-3-608 (3)(a), MCA.

In addition to meeting with stakeholders like HAR and HBIA to discuss the draft amendments to the Subdivision Regulations, County Planning staff also met in April with City Planning staff and received the following comments about these proposed amendments:

CITY PLANNING STAFF COMMENT 4-18-2016 - The only properties that qualify for the described process are those inside or adjacent to the city. MCA also states adjacent to an incorporated city or town where the governing body has adopted a growth policy that includes the provisions of 76-1-601(4)(c). The city growth policy has several components of 76-1-601(4)(c) but does not include all of the provisions of 76-1-601(4)(c) . MCA also requires the area be zoned; much of the area adjacent to the city is not zoned. Section 4 also includes language that is not in MCA 76-3-616. The phrase "adopted a growth policy that includes the provisions of 76-1-601(4)(c)" is the language in 76-3-616; the county subdivision regulation has added the phrase "for an infrastructure plan" which is confusing. The phrase "for an infrastructure plan" should be

clarified. The term *located in the Urban Growth Area of the Helena Valley Area Plan* is unnecessary and should be removed.

County Planning staff responded to the City comments back in April by observing that until an infrastructure plan for the Urban Growth Area is prepared and zoning adopted, no expedited subdivision reviews under this section can take place. The draft amendments were an attempt to clean up this section of the existing County Subdivision Regulations and move it closer to a form and content that could be applied to subdivisions proposed in the Urban Growth Area once the plan is fully implemented. At a meeting with City Planning staff to address their concerns, we provided three options for consideration:

> Option 1: Drop the proposed amendments to Section III.B.4 and leave the current language in place until the Helena Valley implementation steps are taken and the needed infrastructure plan and zoning are in place.
>
> Option 2: Go forward with the proposed amendments to Section III.B.4 and do further revisions upon completion of the Helena Valley Area Plan implementation steps.
>
> Option 3: Delete Section III.B.4 in its current form and adopt a new subsection once the Helena Valley Area Plan implementation steps are completed.

At a meeting between County and City Planning staff, the City expressed its preference for Option 3, deleting current references to exemptions for subdivision reviews in an urban growth area, and we revised the draft in response to their preference. Mark Simonich of HAR has now indicated his organization's support for Option 2 out of concern for the potential of time lost on implementation of the Helena Valley Area Plan.

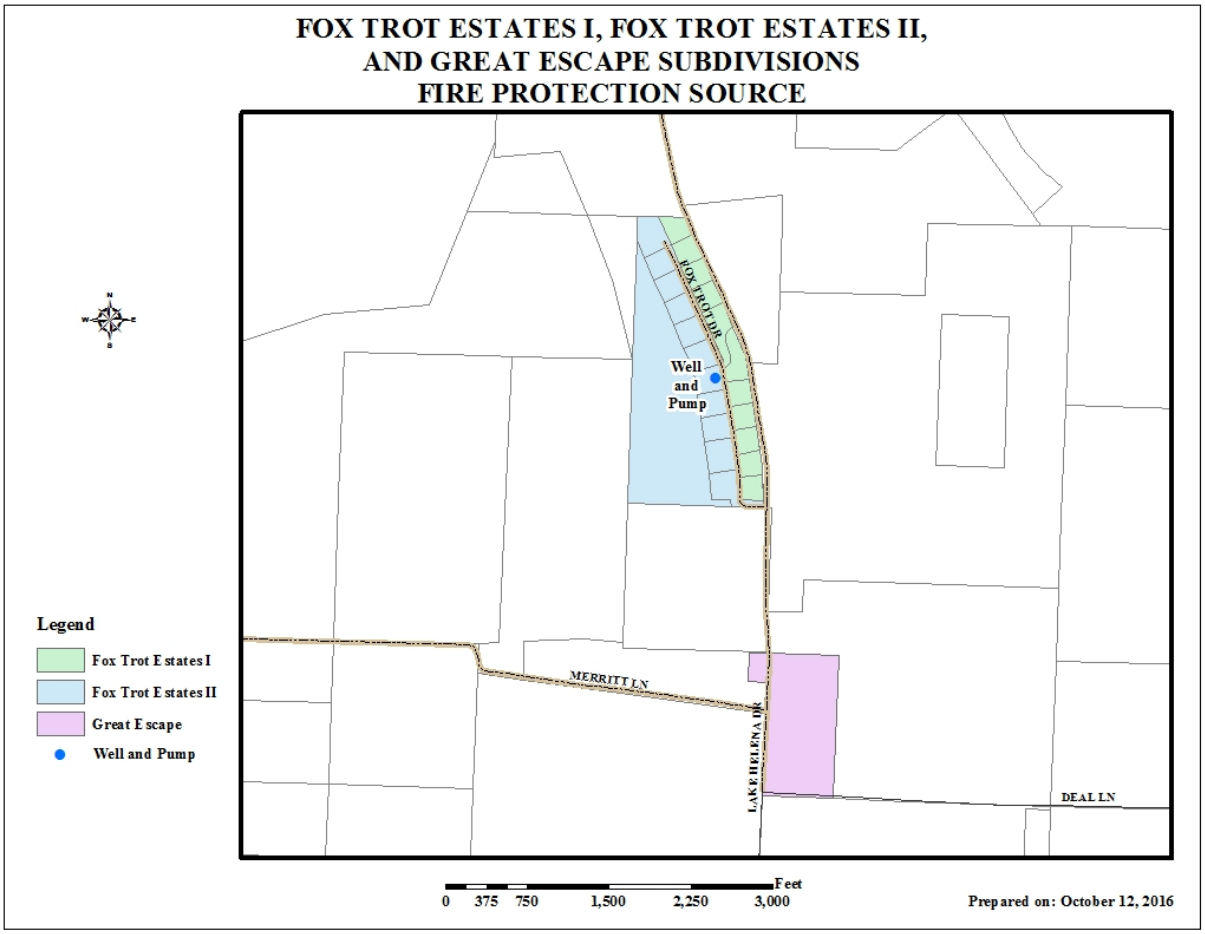
At this point it is really a policy decision for the Commission to decide which option is best for the County. All three options are viable and there are no serious consequences for any of them until such time as the County and City pursue preparation of the infrastructure plan and zoning for the Urban Growth Area.

COMMENTS FROM MARK SIMONICH OF THE HELENA ASSOCIATION OF REALTORS 9-20-2016

HAR COMMENT #2: The second item we will address is the proposed change to Section 18-4.6 Off-Site Water Supply System. We understand the concern that multiple subdivisions drawing from the same water source could be problematic if numerous fires were to occur in a short time frame. However, it is unclear from the proposed amendments what elements the analysis must include to demonstrate the cumulative use of the system. Is it the total volumetric capacity of the well or is it recharge time to produce a certain quantity of water. Each fire protection authority may have different equipment capacities. How will these capacities be factored into a cumulative analysis? Unfortunately, on the surface it appears the subdivision regulations do not provide enough detail as to what needs to be included in such an analysis. We suggest that if a cumulative analysis is going to be required that the regulations also clearly state the factors and parameters that must be included in the analysis.

Staff Response #1 – A recent minor subdivision (Great Escape) came before the County Commission requesting approval to use an off-site water supply for fire protection. The water supply in question currently serves two major subdivisions (Foxtrot I & II). The system is a Class II fire protection water supply that produces 250 gallons per minute (gpm) flow volume for a period of two hours. The two subdivisions using the water supply qualify to use a Class II system if considered individually, but the

combined total of lots in the two adjacent subdivisions that bear the same name require a larger, Class I system under the Subdivision Regulations.



The proposed addition of a third subdivision onto the system that may be undersized for current use led staff to raise the question of whether the use of that system for a third proposed subdivision was permissible under the Subdivision Regulations, and staff planner Greg McNally wrote a memo the Board to that effect on June 30, 2016.

The parameters for and limitations of Class II fire protection water supplies are presented in Table 1:

TABLE 1 – Parameters for Class II System Allowance

Density of Development	Lot Limit without Setbacks	Lot Limit with min. 15' Setback
5 Acre Lots or Larger	19	19
1 Acre Lots to 5 Acre Lots	14	19
½ Acre Lots to 1 Acre Lots	4	19
¼ Acre Lots to ½ Acre Lots	4	9
Less than ¼ Acre Lots	4	4

Section 18-4.6.3 of the Lewis and Clark Subdivision stipulates that utilization of an off-site water supply can be considered under the condition that:

> Use of an existing off-site water supply system does not diminish the fire protections provided the subdivision it was originally built to serve or it is upgraded and/or expanded to provide volume, pressure, and distribution in accordance with these regulations for both subdivisions.

The existing Class II system with a flow rate of 250 gpm meets specifications for all three subdivisions as stand-alone projects, but the combined use of such a system for three separate subdivisions fails to meet the intent and the requirements for fire protection under the regulations. If the lots in these three subdivisions were proposed as a single subdivision, a Class I fire protection system producing 750 gpm would be required. Building the lots in three separate subdivisions does not diminish fire protection needs, it actually increases them because of the greater distances over which water must be transported to reach the housing.

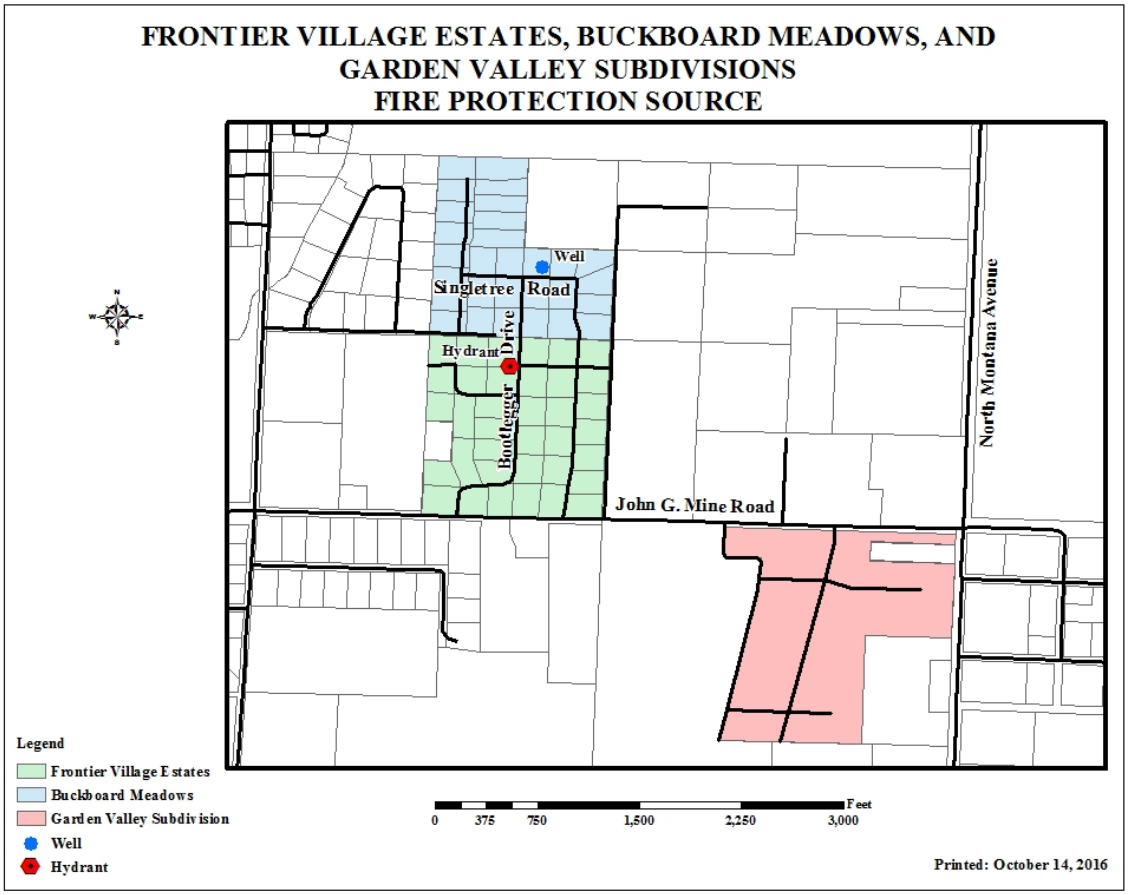
While it is clear that the allowance for using a smaller Class II fire protection water supply system to serve multiple subdivisions that in total require a Class I system is a loophole in the regulations, there is vagueness in the current wording that stipulates use of an off-site system is only allowed if it "does not diminish the fire protections of the subdivision it was originally designed to serve."

To eliminate the vagueness and close the loophole, staff has proposed adding language to the regulation that will require the same analysis of a fire protection water supply for use by multiple subdivisions as would be required if the combined total of lots were in a single subdivision. The specific wording to be added is:

> "For the purposes of determining whether fire protection will be diminished for the prior subdivision(s), an analysis shall be submitted with the subdivision application to determine what class of fire protection is needed as indicated in Sections 18-4 and 18-4.1 for the cumulative use of the system;"

The concern expressed by the Helena Association of Realtors is that adding this language could expose applicants to unspecified analysis of water availability and fire department capacity. This possibility is precluded, however, by the specific reference to Sections 18-4 and 18-4.1. Under the proposed language, no more analysis could be required for proposed use of an off-site fire protection water supply than can be required of an on-site supply. This language simply requires that same analysis.

The effects of the proposed amendment and assurance that it will not subject applicants to unreasonable explorations can be illustrated by looking at a parallel example of three subdivisions using a Class I fire protection water supply system. The County approved the Frontier Village Estates major subdivision in 2010 and required a Class I fire protection water supply providing 750 gpm flow rate based on the number of lots and the development density (36 one-acre lots). The Buckboard Meadows major Subdivision was approved in 2013 on the adjacent land tract using that same water supply. The number of lots and density of that subdivision also required a Class I fire protection water supply (29 one-acre lots). In 2015, a third major subdivision, Garden Valley Estates, proposed using that same water supply as an off-site source for fire protection, again with a number of lots and density requiring a Class I water supply system (37 one-acre lots), which was again provided by the original system built for Frontier Village Estates. So upon final platting of Garden Valley Estates, there will be 102 lots claiming protection by that single water supply source.



The only analysis and testing that was required for any of these subdivisions was to demonstrate that the fire protection water supply was built to specifications and in fact produced a flow rate of 750 gpm or more for a duration of 2 hours as required by the regulations.

Table 2 provides the parameters for larger, Class I fire protection water supplies. Unlike Class II systems, there is no tie between the number of lots served and the flow rate of the water system. The only relevant design parameter is the density of development as determined by lot sizes. The density of development also affects the allowable mechanisms for providing water (System Source Options), and higher densities eventually require multiple hydrants and spacing of those hydrants reflecting urban development standards.

This analysis points to an inherent weakness of the current regulations in terms of the allowance for both on-site and off-site water supplies. Since there is no limit on the number of lots that can be served by a Class I fire protection water supply, a developer could create hundreds of lots in a single subdivision served by a single hydrant, and several developers could use the same single system to serve dozens of subdivisions over time. Even with the added language requiring cumulative analysis of the capacity of the system for use by multiple subdivisions, the only effect the amendment will be to limit the use of the smaller, Class II systems.

TABLE 2 – Parameters for Class I System Allowance

Density of Development	Flow Rate Required	System Source Options	Hydrant Spacing
20 Acre Lots or Larger	500 gpm for 1 hr	SS1, SS2, or SS3	1 Hydrant
5 Acre to 20 Acre Lots	500 gpm for 2 hrs	SS1 or SS2	1 Hydrant
1 Acre Lots to 5 Acre Lots	750 gpm for 2 hrs	SS1 or SS2	1 Hydrant
½ Acre Lots to 1 Acre Lots	1000 gpm for 2 hrs	SS1 or SS2	1 Hydrant
¼ Acre Lots to ½ Acre Lots	1000 gpm for 2 hrs	SS2	Hydrants at 1000 ft.
Less than ¼ Acre Lots	1500 gpm for 2 hrs	SS2 or SS4	Hydrants at 500 ft.

SS1 – Well and pump
SS2 – Water tank with a pressurized hydrant
SS3 – Dry hydrant installed on a pond, lake, or stream
SS4 – Pressurized hydrants connected to a public water supply system

This analysis of the allowance for and limitations of Class II water supplies for fire protection has exposed another weakness of the current Subdivisions Regulations. There is a limitation on the number of lots that can be served using a Class II system producing 250 gpm as indicated in Table 1. But there is no limit on the number of lots or the number of subdivisions that can use a Class I fire protection water supply. Since Class I systems are only regulated by density of development as indicated in Table 1, a single subdivision with 1000 lots or 10 subdivisions with 100 lots each in which the density did not exceed 1/2 acre lot sizes could theoretically use a single water supply and a single hydrant producing the requisite flow rate. The only requirements for multiple hydrants, and theoretically for multiple water supplies kick in when the density of development exceeds a minimum lot size of 1/2 acre.

Staff does not propose to address this loophole in the current round of amendments, but the Helena Valley Area Plan does call for a full review of fire protection needs in rural areas and this issue should be addressed in that review.

COMMENTS FROM RENEE LEMON OF MONTANA FISH, WILDLIFE, AND PARKS 6-16-2016

FWP Comment #1: The current subdivision regulations suggest that Montana Fish, Wildlife and Parks (FWP) will write the environmental assessment for subdivision applications, which includes providing fish and wildlife information, an impacts analysis, and proposed mitigation. FWP is happy to review and provide input on information already prepared by applicants. We appreciate being contacted early by developers. However, the applicant should draft the wildlife and wildlife habitat sections of the environmental assessment. Ideally, developers would compile available fish and wildlife data, complete field studies on the site to determine the wildlife and fish resources that may exist, analyze potential impacts of the subdivision on the resources, and propose measures to reasonably avoid, reduce, or mitigate adverse impacts. FWP biologists would then review that information and provide comments.

There is a vast amount of publicly available data for fish and wildlife in Montana. Several examples are FWP's big game winter range data and the Montana Natural Heritage Program's Montana Species of Concern reports. FWP's Fish and Wildlife Recommendations for Subdivision Development in Montana describes important species and habitats, describes the impacts of

development on these resources based on scientific studies, and outlines measures that could reduce impacts. Attached is suggested language.

Staff Response #1 – The clear concern behind the comments from FWP staff is that developers not expect that FWP will do the wildlife portions of the environmental assessment for them. Preparation of the environmental assessment is the responsibility of the applicant. FWP has responsibility to review that environmental assessment and to provide comments to the applicant and County reviewers. Current Subdivision Regulations do seem to indicate that FWP staff will provide this service:

> **5. Wildlife**
>
> a. Describe species of fish and wildlife that inhabit the area affected by the proposed subdivision.
> b. Describe the impacts of the proposed development on fish and wildlife *as identified by the Montana Department of Fish, Wildlife and Parks (MFWP)*. Provide a written statement outlining any recommendation provided by MFWP and any mitigation efforts to mitigate adverse impacts. [*Emphasis added*]

It is likely the authors intended that what FWP staff would identify is the general fish and wildlife data that is made readily available to the public, but one might interpret based on our language that FWP staff will describe the impacts of the proposed development on fish and wildlife. FWP staff has reported that, in fact, developers in the County have looked to them for the analysis of wildlife impacts for environmental assessments and that FWP lacks adequate resources to provide such services on a state-wide basis.

To more clearly establish the responsibility of applicants to compile the readily available data and to make their own analysis of potential impacts on wildlife and needed mitigation, FWP staff has offered the following requested changes to the County Subdivision Regulations:

> **5. Wildlife**
>
> a. Describe the species of fish and wildlife, including Montana Species of Concern, ~~that inhabit~~ which use the area affected by the proposed subdivision on a year-round, seasonal, or periodic basis. Attach a Montana Animal Species of Concern report from the Montana Natural Heritage Program.
>
> b. ~~Describe the impacts of the proposed development on fish and wildlife as identified by the Montana Department of Fish, Wildlife and Parks (MFWP).~~ Assess whether the proposed subdivision would contribute to population decline or displacement of one or more individual fish or wildlife species. Determine if the impacts would be significantly adverse.
>
> c. If there would be potentially significant adverse impacts, describe the measures that would reasonably minimize impacts on fish and wildlife.
>
> d. ~~Provide a written statement outlining any recommendation provided by MFWP and any mitigation efforts to mitigate adverse impacts.~~ Attach any comments from Montana Fish, Wildlife & Parks (FWP). Explain how comments are addressed in the subdivision design or application.

The changes proposed by FWP staff seek to clarify the responsibility of the applicant to do the environmental assessment of wildlife impacts and to more clearly spell out the analysis needed for that assessment. Adding the proposed language might, however, significantly increase the cost burden of applicants; as such assessments of effects on animal population "decline or displacement" can only be provided by qualified wildlife biologists. FWP staff does not expect that every subdivision application

would require the consulting services of a wildlife biologist, and there are relatively few qualified professionals that could provide that service in Montana.

A more workable approach to the issue of wildlife impacts assessment and mitigation might be to establish a parallel to the Level I and Level II environmental site assessment used to detect and respond to soil and groundwater contamination. The Level I environmental site assessment reviews public records and on-site indicators of past property uses that involved storage and handling of chemicals and other hazardous substances that could cause contamination. If those public records and visual observations yield positive indicators that contamination could be present, that triggers a more expensive Level II analysis involving soil and groundwater testing to determine the actual presence of contaminants and needed clean-up measures.

A similar approach to wildlife and wildlife habitat assessment could involve the review of public records on wildlife data and site observations to determine the need for specialized and more intensive analysis like that contained in the FWP proposed language. FWP staff could review that "Level I" wildlife analysis and make an independent determination of the potential for wildlife and wildlife habitat impacts based on their expertise and review of the data. Based on the initial "scan" provided by the applicant's consultant, FWP could either concur with the applicant's initial assessment of low or moderate potential for adverse impacts or indicate the need for more thorough analysis involving a qualified wildlife biologist hired by the applicant for cases where, in their professional judgment, there is high potential for significant adverse impacts. That consultant would prepare the higher level study of potential effects on animal population "decline or displacement" and propose mitigation measures of those effects for review by FWP biologists.

Even with a Level I wildlife assessment FWP biologists could still make recommendations for standard wildlife mitigation measures for projects with low or moderate potential for adverse impacts, such as providing bear proof garbage containers and fencing designed for passage of pronghorns. But redesign of a project because of concerns for effects on animal population decline or displacement would only happen as a result of peer-reviewed scientific analysis by qualified wildlife biologists in a "Level II" wildlife assessment.

Such a two-tiered approach could be instituted with the following framework of amendment:

5. Wildlife

a. Describe the species of fish and wildlife, including Montana Species of Concern, ~~that inhabit~~ that use the area affected by the proposed subdivision on a year-round, seasonal, or periodic basis. Attach a Montana Animal Species of Concern report from the Montana Natural Heritage Program. Provide field observations of general habitat types on the property and any evidence of use by fish and wildlife.

b. ~~Describe the impacts of the proposed development on fish and wildlife as identified by the Montana Department of Fish, Wildlife and Parks (MFWP).~~ Based on available fish and wildlife data and field observations, describe the potential for adverse impacts on wildlife. Provide the description to Montana Fish, Wildlife and Parks (FWP) and submit any comments from FWP as to the potential for adverse impacts, the need for more detailed analysis , or general mitigation measures for projects where a detailed analysis is not necessary.

c. Upon the recommendation of FWP of the need for more detailed analysis of wildlife impacts, the County may require an assessment by a professionally trained biologist as to whether the proposed subdivision would contribute to population decline or displacement of one or more individual fish or wildlife species. Determine if the impacts would be significantly adverse.

d. If there would be potentially significant adverse impacts, describe measures that would reasonably minimize impacts on fish and wildlife, attach any comments from Montana Fish, Wildlife & Parks (FWP) on the detailed wildlife analysis and proposed measures to reduce impacts. Explain how comments are addressed in the subdivision design or application. ~~Provide a written statement outlining any recommendation provided by MFWP and any mitigation efforts to mitigate adverse impacts.~~

6. Wildlife Habitat

a. ~~Locate on a plat overlay or~~ Describe and map ~~exhibit any known wildlife areas~~ fish and wildlife habitat using available data. ~~such as~~ Include water bodies, wetlands, riparian areas, big game winter range, wildlife migration routes, ~~waterfowl nesting areas, wetlands and habitat for threatened or endangered species (as identified by the Montana Department of Fish, Wildlife and Parks (MFWP) and the United States Fish and Wildlife Service (USFWS)~~ native grassland or native shrub habitats, areas with a potentially high level of human/bear conflict, and areas where Montana Species of Concern are known or predicted to occur.

b. Based on available data, describe the potential for adverse impacts on wildlife habitat. Provide the description to FWP and submit any comments from FWP as to the potential for adverse impacts, the need for more detailed analysis, or general mitigation measures for projects where a detailed analysis is not necessary.

c. Upon the recommendation of FWP of the need for more detailed analysis of wildlife habitat impacts, the county may require an assessment by a professionally trained biologist as to whether the proposed subdivision would contribute to the loss, fragmentation, or degradation of habitat. Determine if the impacts would be significantly adverse.

d. If there would be potentially significant adverse impacts, describe measures that would reasonably minimize impacts on fish and wildlife habitat. ~~Describe any proposed measures to protect wildlife habitat or to minimize degradation (e.g., keeping buildings and roads away from shorelines or setting aside marshland as undeveloped open space).~~

INTRODUCTION OF DEFINITION

Professionally Trained Biologist: An individual with a minimum of a bachelor's degree in a fisheries or wildlife-related field and professional experience in applying current biological knowledge to on-the-ground stewardship and management of the resource and its environment, or an individual meeting the requirements of a Certified Wildlife Biologist (by The Wildlife Society) or a Certified Fisheries Professional (by the American Fisheries Society).

COMMENTS FROM LEWIS AND CLARK COUNTY SURVEY REVIEW COMMITTEE 6-15-2016

Survey Review Committee Comment #1: Section A. 2. - This section currently requires the Committee provide written findings and notification of all decisions made within 10 working days of receiving an application. Mr. Thebarge proposes to increase the time to 20 working days. Just as Mr. Thebarge proposes, the Committee requests additional time to review applications, to allow us sufficient time to ensure the application complies with the law. We also request the Committee's current procedure of requesting additional information be solidified in writing. Frequently, the Committee must ask for additional information to ensure the survey complies with the requirements of Subdivision and Platting Act. Additionally, any decision to deny a survey should be accompanied by written findings from the Committee explaining why the application was denied. It is not necessary for the Committee to issue findings for approvals of surveys because all information supporting the approval should be contained in the application.

Staff Response #1 – During general Planning staff review of the draft Subdivision Regulations amendments, the issue of the length of time available for the Survey Review Committee to prepare draft findings and conclusions came up. After much discussion, the group recommendation was to offer the proposed change to extend the length of time for a written decision from ten working days to twenty working days. Upon reviewing the proposed change, the Survey Review Committee asked that additional changes be made to clarify that the Committee can make a determination that inadequate information has been submitted by an applicant and the Committee can request additional information before rendering a decision. They have also proposed that the Subdivision Regulations only require written findings and conclusions in the case of denial of an application and not for approval of an application. To implement these changes and clarification, the Survey Review Committee offered the following language amendments:

2. A Review Committee, ~~appointed by the Board of Commissioners (Board) and~~ consisting of the Clerk and Recorder, Planning Director, and County Attorney (or their designees), shall review evidence submitted by the applicant on the basis of the criteria set forth in these regulations and in other pertinent law. Within ~~ten (10)~~ twenty (20) working days after submission of the required documents, the Committee shall ~~make written findings and shall notify the applicant in writing of the Committee's determination~~ make a determination on the application or, if necessary, request additional information from the applicant. If the Committee denies the application the Committee will notify the applicant in writing of the decision, including the Committee's reasoning.

Survey Review Committee Comment #2: Section A. 3. - An application is submitted for either approval or concept approval. Concept approval is generally required prior to the Committee's review of a survey. Concept approval ensures an applicant does not waste time and money on a survey that does not meet the statutory requirements. Most applicants file their surveys within a reasonable amount time after approval is granted; however the Committee has recently encountered a number of surveys that were granted concept approval over 10 years prior to the request to file a survey. This is very concerning to the Committee. The legislature meets every two years and possibly makes changes to the Subdivision and Platting Act, including the exemptions. The Committee requests the addition of a sentence notifying applicants that approvals expire two years from the date the approval is signed by the Committee.

Staff Response #2 – The Survey Review Committee comments are self-explanatory and accompanied by the following requested language amendments:

3. If the Committee determines that the applicant is eligible for the claimed exemption under these criteria and if the certificate of survey complies with all other applicable statues and regulations, the certificate of survey may be filed. The certificate of survey must be filed within two (2) years of the initial approval date, or the application must be resubmitted with the applicable fess and documentation.

Survey Review Committee Comment #3: Section A. 4 & A.5. - Since the Committee is requesting additional time to review applications, the Committee thinks it is only fair to offer applicants a longer timeframe as well.

Staff Response #3 – The Survey Review Committee comments are self-explanatory and accompanied by the following requested language amendments:

4. If the Committee determines that the applicant is not eligible for the claimed exemption, it shall notify the applicant by certified mail of the reasons for the denial. The applicant shall

have ~~ten (10)~~ twenty (20) working days from the date of denial to provide the Committee any additional evidence to prove the applicant is eligible for the exemption. The Committee shall have ~~ten (10)~~ twenty (20) working days to review any new evidence. In accordance with Section B. below, the applicant may also within ~~ten (10)~~ twenty (20) working days from the date of denial, withdraw the application or submit to the Board a written request to appeal the decision of the Committee and to hold a hearing. An appeal request must include a copy of the Committee's written findings.

5. If the applicant provides additional evidence and the Committee reaffirms that the applicant is not eligible for an exemption, it shall notify the Board and notify the applicant by certified mail of the Committee's reasons for its determination. Thereafter, the applicant may withdraw the application or, within ~~ten (10)~~ twenty (20) working days from the date of denial, submit to the Board, a written request to appeal the decision of the Committee and to hold a hearing. An appeal request in this instance must include a copy of the Committee's written findings.

Survey Review Committee Comment #4: Section B.3 - The Board of County Commissioners is currently required to hold a hearing within 15 working days of receiving an appeal of the Committee's denial. While this standard works to ensure the applicant is heard in a timely fashion, it does not work for every applicant. The Committee requests the addition of a clause allowing the hearing to be set further out than 15 working days if requested by or agreed to by the applicant.

Staff Response #4 – The Survey Review Committee comments are self-explanatory and accompanied by the following requested language amendments:

3. The Board shall approve or disapprove the proposed exemption within fifteen (15) working days of the receipt of the request for hearing, unless the applicant agrees to a hearing date beyond fifteen (15) working days. The Board shall provide written notification of its decision and the reasons therefore, to the applicant and the Clerk and Recorder.

Helena Association of REALTORS®

Comments on Proposed Amendments to Lewis & Clark County Subdivision Regulations

September 20, 2016

The Helena Association of REALTORS® appreciates the opportunity to present these comments on the proposed amendments to the Lewis & Clark County Subdivision Regulations. There are two items that our comments will focus on.

The first item that we are asking your consideration of is the section on Exemptions from Environmental Assessment. This is actually found in two separate places in the regulations. Planning Department staff have presented two options for your consideration, either delete or update existing language. We support Option B to update the existing language.

Option B takes a proactive approach to begin to update the subdivision regulations to accommodate development in areas where zoning has occurred. This is an area that was touted as a benefit during the public discussions of the proposed Helena Valley Growth Plan. Updating the existing language shows good faith to the public that the county intends to live up to what it proclaimed during the public growth policy discussions. We understand the desire by some in government to have a valley infrastructure plan in place and zoning adopted prior to including these conditions in the subdivision regulations but we also have seen how long it takes to amend subdivision regulations and we can only imagine how long it will take to get an infrastructure plan and zoning adopted. We never ever thought it would take six years to resolve the driveway access issue. Notwithstanding best intentions, amending regulations such as these always takes longer than one plans on.

No harm has been done by having the existing language in place, and surely no harm will be done by updating it now. In fact, the county will be showing its good faith intentions in a most positive manner. We respectfully request that Option B updating the existing sections on Exemptions from Environmental Assessment to include the language referring to the Helena Valley Area Plan be selected.

The second item we will address is the proposed change to Section 18-4.6 Off-Site Water Supply System. We understand the concern that multiple subdivisions drawing from the same water source could be problematic if numerous fires were to occur in a short time frame. However, it is unclear from the proposed amendments what elements the analysis must include to demonstrate the cumulative use of the system. Is it the total volumetric capacity of the well or is it recharge time to produce a certain quantity of water. Each fire protection authority may have different equipment capacities. How will these capacities be factored into a cumulative analysis? Unfortunately, on the surface it appears the subdivision regulations do not provide enough detail as to what needs to be included in such an analysis. We suggest that if a cumulative analysis is going to be required that the regulations also clearly state the factors and parameters that must be included in the analysis.

Thank you for the opportunity to present these comments.

Helena Association of REALTORS®

Comments on Proposed Amendments to Lewis & Clark County Subdivision Regulations

June 21, 2016

HAR would like to commend the Planning Board and county planning staff on its effort to put together this particular set of amendments to the county subdivision regulations. It has obviously taken a great deal of time and energy to compile this document. We particularly appreciate the effort to consolidate the regulations so they are easier to read and less cumbersome.

It was six years ago this September that HAR and HBIA jointly submitted a petition to the Lewis & Clark County Board of Commissioners requesting that the subdivision regulations be amended to repeal the provision regarding paving of driveway approaches. Some meaningful work has certainly been done on this particular subject over the past year or so, but it will also be nice to finally see the subdivision regulations amended and the road standards moved into the public works manual.

The one item that we would like to ask your consideration of is the section on Exemptions from Environmental Assessment. When these proposed amendments were sent out in March of this year for public review the current regulations contained proposed amendments that would have simply updated them to include references to the newly adopted provisions of the Helena Valley Area Plan. We commented verbally to the planning staff at the time that we particularly appreciated the effort to bring the new Area Plan into the subdivision regulations. Now we see that the reference to the Helena Valley Area Plan has not only been removed but this entire section of existing subdivision regulations is proposed for elimination.

We understand the desire by the county to have a valley infrastructure plan in place and zoning adopted prior to including these conditions in the subdivision regulations but we also have seen how long it takes to amend subdivision regulations and we can only imagine how long it will take to get an infrastructure plan and zoning adopted. We never ever thought it would take six years to resolve the driveway access issue. Notwithstanding best intentions amending regulations such as these always takes longer than one plans on.

We respectfully request that the existing section on Exemptions from Environmental Assessment be kept in the subdivision regulations and that the language referring to the Helena Valley Area Plan be amended into this section.

Thank you for the opportunity to present these comments.

Montana Fish, Wildlife & Parks

June 15, 2016

LEWIS & CLARK COUNTY

JUN 16 2016

PERMIT OFFICE

Greg McNally
Community Development and Planning Office
Lewis and Clark County
316 North Park Avenue
Helena, MT 59623

RE: Proposed Amendments to the December 19, 2013 Subdivision Regulations

Dear Mr. McNally:

Thank you for the opportunity to provide comments on the Lewis and Clark County Subdivision Regulations. Please consider modifying Appendix C(1), Sections (C)5 and (C)6, to clarify how fish and wildlife information is compiled for the environmental assessment.

The current subdivision regulations suggest that Montana Fish, Wildlife and Parks (FWP) will write the environmental assessment for subdivision applications, which includes providing fish and wildlife information, an impacts analysis, and proposed mitigation. FWP is happy to review and provide input on information already prepared by applicants. We appreciate being contacted early by developers. However, the applicant should draft the wildlife and wildlife habitat sections of the environmental assessment.

There is a vast amount of publicly available data for fish and wildlife in Montana. Several examples are FWP's big game winter range data and the Montana Natural Heritage Program's Montana Species of Concern reports. FWP's *Fish and Wildlife Recommendations for Subdivision Development in Montana* describes important species and habitats, describes the impacts of development on these resources based on scientific studies, and outlines measures that could reduce impacts. While this document is mainly intended as an internal guide for FWP biologists reviewing subdivisions, it could also be helpful for developers.

Ideally, developers would compile available fish and wildlife data, complete field studies on the site to determine the wildlife and fish resources that may exist, analyze potential impacts of the subdivision on the resources, and propose measures to reasonably avoid, reduce, or mitigate adverse impacts. FWP biologists would then review that information and provide comments.

Attached is suggested language. Please contact me at 444-3738 if you have any questions.

Sincerely,

Renee Lemon

Renee Lemon
Land Use Planner

C. Jenny Sika (FWP Wildlife Biologist), Eric Roberts (FWP Fisheries Biologist)

Appendix C(1), Section C of the Lewis and Clark County Subdivision Regulations

5. Wildlife

    a. Describe the species of fish and wildlife, including Montana Species of Concern, which use the area affected by the proposed subdivision on a year-round, seasonal, or periodic basis. Attach a Montana Animal Species of Concern report from the Montana Natural Heritage Program.

    b. Assess whether the proposed subdivision would contribute to population decline or displacement of one or more individual fish or wildlife species. Determine if the impacts would be significantly adverse.

    c. If there would be potentially significant adverse impacts, describe the measures that would reasonably minimize impacts on fish and wildlife.

    d. Attach any comments from Montana Fish, Wildlife & Parks (FWP). Explain how comments are addressed in the subdivision design or application.

6. Wildlife Habitat

    a. Describe and map fish and wildlife habitat, including water bodies, wetlands, riparian areas, big game winter range, wildlife linkages, native grassland or native shrub habitats, areas with a potentially high level of human/bear conflict, and areas where Montana Species of Concern are known or predicted to occur.

    b. Assess whether the proposed subdivision would contribute to the loss, fragmentation, or degradation of fish and wildlife habitat. Determine if the impacts would be significantly adverse.

    c. If there would be potentially significant adverse impacts, describe the measures that would reasonably minimize impacts on fish and wildlife habitat.

    d. Attach any comments from FWP. Explain how comments are addressed in the subdivision design or application.

Greg McNally, Planner II
Community Development and Planning Department
316 N. Park Ave., Room 230
Helena, MT 59601

June 15, 2016

Re: Proposed Amendments to the December 19, 2013 Subdivision Regulations, Appendix I

Dear Mr. McNally,

The Lewis and Clark County Survey Review Committee (Committee) is a committee comprised of members from the Clerk and Recorder's Office, Community Development and Planning Department, and the County Attorney's Office. We review surveys filed in Lewis and Clark County. Christal Ness, Ombudsperson, staffs the committee, collecting surveys and presenting them to us for our review. Lewis and Clark County Subdivision Regulations Appendix I sets out the criteria and process for our review.

George Thebarge prepared one change to Appendix I, but the Committee requests additional changes. Additionally, our comments clarify the staff comment attached to the current proposed amendments. The Committee recommends these changes to bring the regulations in line with the Committee's current procedure and correct issues we recently discovered.

(1) Section A. 2. – This section currently requires the Committee provide written findings and notification of all decisions made within 10 working days of receiving an application. Mr. Thebarge proposes to increase the time to 20 working days. Just as Mr. Thebarge proposes, the Committee requests additional time to review applications, to allow us sufficient time to ensure the application complies with the law. We also request the Committee's current procedure of requesting additional information be solidified in writing. Frequently, the Committee must ask for additional information to ensure the survey complies with the requirements of Subdivision and Platting Act. Additionally, any decision to deny a survey should be accompanied by written findings from the Committee explaining why the application was denied. It is not necessary for the Committee to issue findings for approvals of surveys because all information supporting the approval should be contained in the application. The Committee requests the following alterations to Section A. 2.:

> 2. A Review Committee~~, appointed by the Board of Commissioners (Board) and~~ consisting of the Clerk and Recorder, Planning Director, and County Attorney, ~~(~~or their designees~~)~~, shall review evidence submitted by the applicant on the basis of the criteria set forth in these regulations and in other pertinent law. Within ~~ten (10)~~ twenty (20) working days after submission of the required documents, the Committee shall ~~make written findings and shall notify the applicant in writing of the Committee's determination~~ make a determination on the application or, if necessary, request additional information from the applicant. If the Committee denies the application the Committee will notify the applicant in writing of the decision, including the Committee's

reasoning.

(2) Section A. 3. – An application is submitted for either approval or concept approval. Concept approval is generally required prior to the Committee's review of a survey. Concept approval ensures an applicant does not waste time and money on a survey that does not meet the statutory requirements. Most applicants file their surveys within a reasonable amount time after approval is granted; however the Committee has recently encountered a number of surveys that were granted concept approval over 10 years prior to the request to file a survey. This is very concerning to the Committee. The legislature meets every two years and possibly makes changes to the Subdivision and Platting Act, including the exemptions. The Committee requests the addition of a sentence notifying applicants that approvals expire two years from the date the approval is signed by the Committee. The Committee has reviewed Appendix I and feels the following change to Section A. 3. helps solve this issue:

> 3. If the Committee determines that the applicant is eligible for the claimed exemption under these criteria and if the certificate of survey complies with all other applicable statues and regulations, the certificate of survey may be filed. The certificate of survey must be filed within two years of the initial approval date, or the application must be resubmitted with the applicable fess and documentation.

(3) Section A. 4. and Section A. 5. – Since the Committee is requesting additional time to review applications, the Committee thinks it is only fair to offer applicants a longer timeframe as well. The Committee requests the following changes to Sections A. 4. and A. 5.:

> 4. If the Committee determines that the applicant is not eligible for the claimed exemption, it shall notify the applicant by certified mail of the reasons for the denial. The applicant shall have ~~ten (10)~~ twenty (20) working days from the date of to provide the Committee any additional evidence to prove the applicant is eligible for the exemption. The Committee shall have ~~ten (10)~~ twenty (20) working days to review any new evidence. In accordance with Section B. below, the applicant may also within ~~ten (10)~~ twenty (20) working days from the date of denial, withdraw the application or submit to the Board a written request to appeal the decision of the Committee and to hold a hearing. An appeal request must include a copy of the Committee's written findings.
>
> 5. If the applicant provides additional evidence and the Committee reaffirms that the applicant is not eligible for an exemption, it shall notify the Board and notify the applicant by certified mail of the Committee's reasons for its determination. Thereafter, the applicant may withdraw the application or, within ~~ten (10)~~ twenty (20) working days from the date of denial, submit to the Board, a written request to appeal the decision of the Committee and to holding a hearing. An appeal request in this instance must include a copy of the Committee's written findings.

(4) Section B. 3. – The Board of County Commissioners is currently required to hold a hearing within 15 working days of receiving an appeal of the Committee's denial. While this standard works to ensure the applicant is heard in a timely fashion, it does not work for every applicant.

The Committee requests the addition of a clause allowing the hearing to be set further out than 15 working days if requested by or agreed to by the applicant. To accomplish this, the Committee requests the following changes to Section B. 3.:

> 3. The Board shall approve or disapprove the proposed exemption within fifteen (15) working days of the receipt of the request for hearing, unless the applicant agrees to a hearing date beyond fifteen (15) working days. The board shall provide written notification of its decision and the reasons therefore, to the applicant and the Clerk and Recorder.

Thank you for your consideration. If you have any questions regarding the requested changes do not hesitate to contact the Committee through Christal Ness, Ombudsperson, at 406-447-8579 or cness@lccountymt.gov.

Sincerely,

Brenda Hasselbacher
Clerk and Recorder Designee

K. Paul Stahl
County Attorney Designee

Kevin Hamilton
Planning Director Designee

Christal Ness
Ombudsperson