

# **FORT HARRISON URBAN GROWTH AREA ZONE DISTRICT**

Exhibit – A to Resolution 2019-21

## **1. GENERAL PROVISIONS**

### **1.1 Title**

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

### **1.2 Authority**

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

### **1.3 Purpose**

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

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

### **1.4 Applicability**

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

### **1.5 Compliance Required**

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

### **1.6 Conflict with Other Laws & Severability**

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

### **1.7 Vested Rights**

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

### **1.8 Continuation of Non-conforming Uses**

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

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

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

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

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

A non-conforming structure or use that is destroyed or substantially damaged by fire, flood, or other natural disaster may not be restored as a non-conforming structure or use unless initiation of the restoration process occurs within 24 months of the damage having occurred. Said restored structure or use shall occupy the same physical footprint and is used for the same purpose(s) as the original non-conforming structure or use; unless the expansion changes the structure or use into full compliance with these regulations. When determining if a non-conforming structure or use shall be considered to be substantially damaged, the same standards as set forth in the Lewis and Clark County Floodplain Regulations, as amended shall be applied.

### **1.9 Private Agreements**

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

### **1.10 Interpretation**

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

### **1.11 Minimum Requirements**

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

## **2. ZONE DISTRICT AND MAP**

### **2.1 Zone District**

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

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

## 2.2 Zone District Map

The FHUGA Zone District Map attached hereto and incorporated herewith as Exhibit A shall be the official zone district map and is adopted by reference as a part of these regulations. The official zone district map shall be recorded at the office of the Lewis and Clark County Clerk and Recorder.

## 2.3 Zone District Boundaries

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

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

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

## 2.4 Zone District Regulations

### a. Minimum Parcel Size

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

### b. Land Use

All land uses that are not otherwise prohibited are allowable in the FHUGA District, provided that such uses(s) are in compliance with the performance standards in these regulations and with all other local, State and Federal laws and regulations. Only one principal use is allowed on each residential parcel.

#### 1. Prohibited Land Uses

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

## 2.5 Cluster Development

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

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

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

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

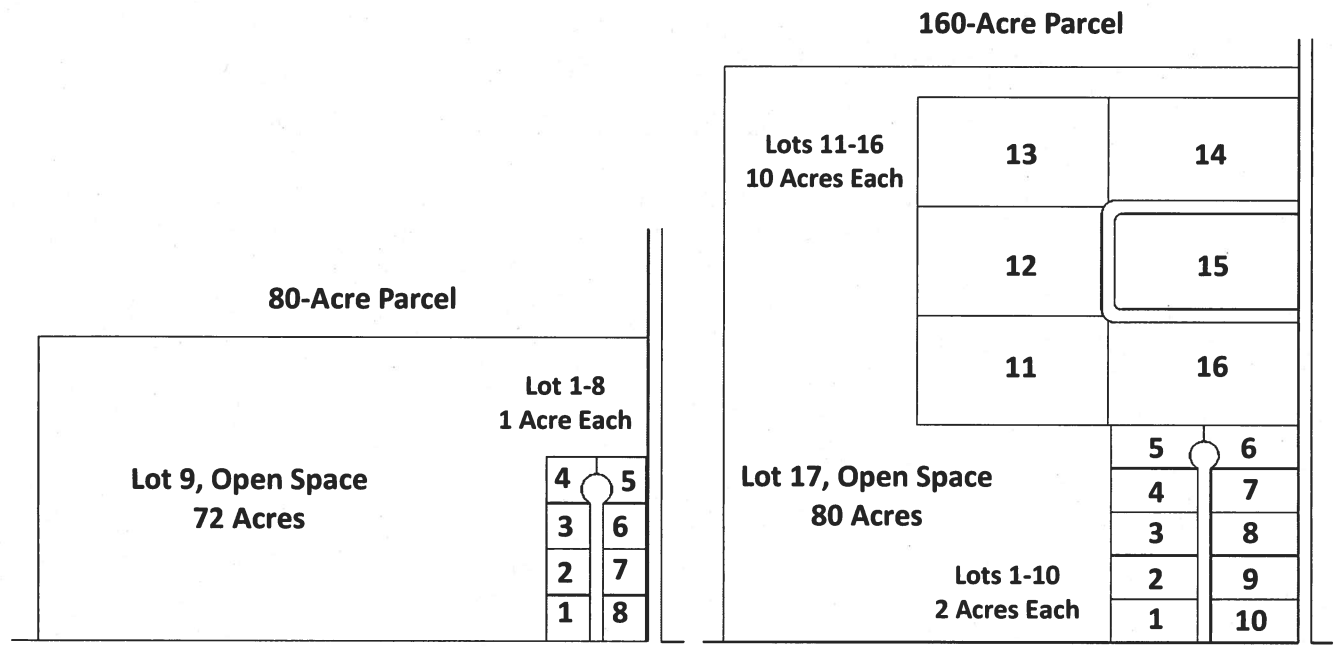


Figure 1 – Alternative layouts for clustered development.

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

## **2.6 Park Dedication Requirement**

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

## **2.7 Exemption from Requirements for Environmental Assessment and Review of Impacts**

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

## **3. ADMINISTRATION**

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

### **3.1 Variances**

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

- a. The applicant shall submit to the CD&P department, a properly completed application form, the required supporting materials including a narrative which evaluates the variance request under the review criteria (Section 3.1.f, Review Criteria), and the required application fee.
- b. When an application is submitted, the Zoning Administrator shall determine whether the application form and supporting materials are complete and sufficient. When an application is determined to be incomplete or insufficient, the Zoning Administrator shall provide written notice to the applicant indicating what information must be submitted for the review to proceed.
- c. When an application is deemed complete and sufficient, the Zoning Administrator shall schedule a public hearing on the agenda of the next available meeting of the Lewis and Clark County Board of Adjustment (BOA) for which notice requirements can be met and providing fifty (50) calendar days for processing of the application materials. Notice shall be published at least once in a newspaper of general circulation and mailed to all adjacent landowners at least fifteen (15) calendar days prior to the public hearing. Notice shall, at a minimum, include the nature of the request and the time and place of the public hearing.
- d. The Zoning Administrator shall prepare a report that describes the proposed variance, its site, its context, and an evaluation of the request under the variance criteria in Section 3.1.f, Review Criteria.
- e. The BOA shall conduct a public hearing on the proposed variance. Following the public hearing, the BOA may review the particular facts and circumstances of the proposed variance and

develop findings and conclusions in support of its decision or continue the meeting to a new date prior to making its decision.

- f. Review Criteria. The BOA may approve a variance only upon finding that:
  - 1. The need for a variance results from physical limitations or unique circumstances related to the lot or parcel on which the variance is requested;
  - 2. The failure to approve the variance will result in an undue hardship because without a variance, strict compliance with the terms of these regulations will limit the reasonable use of the property and deprive the applicant of rights enjoyed by other properties similarly situated in the District;
  - 3. The alleged hardship has not been created by an action(s) of the owner(s) or occupant(s);
  - 4. Approval of the variance will not have a substantial adverse impact on neighboring properties or the public; and,
  - 5. Granting of the variance will observe the spirit of these regulations and provide substantial justice.
- g. Development related to a variance must be initiated within one (1) year of the variance's issuance and shall be completed within three (3) years of that issuance.
- h. Conditions may be attached to the approval of any variance in accordance with the following:
  - 1. Conditions shall be clearly designed to ensure compliance with one or more specific requirements of these or other applicable adopted regulations;
  - 2. Conditions shall be directly related to any anticipated impacts of the applicant's proposal; and/or
  - 3. Conditions shall be roughly proportional to any anticipated impacts of the applicant's proposal.
- i. The Zoning Administrator shall notify the applicant of the decision within 30 calendar days. Such notification shall include the following:
  - 1. The decision of the BOA;
  - 2. The findings that support the decision;
  - 3. Any adopted conditions of approval; and
  - 4. A statement that the decision may be appealed to the Court of Record.

### **3.2 Amendments**

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



**a. Amendment Process**

1. The applicant shall submit, to the CD&P department, a properly completed application form, the required supporting materials, including a narrative which evaluates the request under Section 3.2.b, Amendment Criteria, and the required application fee.
2. The Zoning Administrator shall determine whether the application and supporting materials are complete and sufficient. When an application is determined to be incomplete or insufficient, the Zoning Administrator shall provide written notice to the applicant indicating what information must be submitted for the review to proceed.
3. When the application is determined to be complete and sufficient, the Zoning Administrator shall schedule a public hearing for the application on an agenda of the Planning Board meeting for which notice requirements can be met, and providing one hundred twenty (120) calendar days for processing of the application materials.
4. The Zoning Administrator shall publish notice of the public hearing in a newspaper of general circulation in Lewis and Clark County at least fifteen (15) calendar days prior to the Planning Board's public hearing.
5. The Zoning Administrator shall prepare a report that describes the proposed amendment and how it complies, or fails to comply, with the amendment criteria contained in Section 3.2.b, Amendment Criteria.
6. The Planning Board shall conduct a public hearing on the proposed amendment. Following the public hearing, the Planning Board may determine whether the proposed amendment meets the amendment criteria or continue the meeting to a new date prior to making a recommendation to the BoCC. As a part of this recommendation, the Planning Board shall review the particular facts and circumstances of the proposed amendment and develop findings and conclusions that support its recommendation for approval, approval with modifications, or denial.
7. The Zoning Administrator shall convey the Planning Board's recommendation and public comments to the BoCC and place a public hearing on the agenda of the next regular meeting for which notice and posting requirements can be met, and at which time allows for its proper consideration.
8. The Zoning Administrator shall publish notice of the amendment once per week for two (2) weeks in a newspaper of general circulation and submit a copy of the proposed regulations to the Lewis and Clark County Clerk and Recorder's office to be available for public inspection. Notice shall include the information required in Section 76-2-205(1), MCA. The Zoning Administrator shall also post notice not less than forty-five (45) days before the public hearing in at least five public places, including, but not limited to, public buildings and adjacent to public rights-of-way within the District.
9. The BoCC shall conduct a hearing on the proposed amendment. After the public hearing, the BoCC shall review the proposals of the Planning Board and make any revisions or amendments that it determines to be proper.
10. The BoCC may pass a resolution of intention to amend the zone district map and/or these regulations. If the BoCC passes a resolution of intention, it shall publish notice of passage

of the resolution of intention once a week for two (2) weeks in a newspaper of general circulation. The notice must include the elements required in Section 76-2-205(5), MCA.

11. No less than thirty (30) calendar days following the first publication of notice, the BoCC may pass a resolution to amend the regulations and/or map.
12. At the conclusion of the amendment process, the Zoning Administrator shall notify the applicant within thirty (30) calendar days.

**b. Amendment Criteria**

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

**3.3 Appeals**

**a. Administrative Appeals**

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

1. The appellant shall submit a properly completed notice of appeal and supporting materials to the Zoning Administrator within thirty (30) calendar days after the determination was issued. The issuance date is the date the determination is mailed to the appellant.
2. The Zoning Administrator shall schedule a hearing for the appeal on the agenda of the next available meeting of the BOA for which notice requirements can be met and providing fifty (50) calendar days for processing of the application materials. Notice shall be published at least once in a newspaper of general circulation and mailed to all adjacent landowners at

least fifteen (15) days prior to the public hearing. Notice shall, at a minimum, include the nature of the request and the time and place of the hearing.

3. The Zoning Administrator shall prepare a summary report that includes the determination and surrounding circumstances, and forward it to the BOA.
4. The BOA shall conduct a hearing on the appeal following the procedure established in the BOA's bylaws. Following the public hearing, the BOA may decide whether the determination being appealed is in compliance with these regulations, and affirm, modify, or overturn that determination accordingly or continue the meeting to a new date prior to making a decision. The BOA's decision shall be in writing and contain a summary of the facts relied on as the basis for its decision.
5. The Zoning Administrator shall notify the applicant of the BOA's decision.

**b. Appeals to Court of Record**

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

**3.4 Enforcement**

- a. The Zoning Administrator is charged with enforcing these regulations.
- b. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of these regulations, the County may institute any appropriate action or proceedings to:
  1. prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
  2. restrain, correct, or abate a violation;
  3. prevent the occupancy of the building, structure, or land; or
  4. prevent any illegal act, conduct, business, or use in or near the premises.
- c. For the purposes of enforcing this section, the County shall attempt to obtain voluntary compliance at least 30 calendar days before filing a complaint for a violation of this part that is subject to the penalties under Section 76-2-211, MCA.
- d. A violation of these regulations is a misdemeanor and shall be punishable by a fine not to exceed \$500 or imprisonment in the county jail not exceeding 6 months or both. Each day constitutes a separate violation.

**4. Performance Standards**

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

**4.1 Accessory Uses and Buildings**

- a. Home occupations are an allowable accessory use provided they comply with Section 4.3, Home Occupations.
- b. One accessory dwelling unit per residential parcel, or non-residential parcel with a minimum of ten acres, is allowed.
- c. Accessory uses must comply with all other applicable local, State and Federal regulations.

#### **4.2 Communication Towers, Antennas, Wind Turbines and Other Similar Structures**

- a. No tower, antenna, wind turbine or structure shall exceed a height of 200 feet above ground level (the maximum allowable height shall be calculated to include all warning/safety beacons/similar devices; and specific to wind turbines, the maximum allowable height shall be the outer most portion of a blade tip in the vertical upright position )
- b. All towers, antennas, wind turbines or similar structures shall be properly licensed and comply with regulation of the Federal Aviation Administration and all other State and Federal agencies with jurisdiction over such structures.
- c. All towers, antennas, wind turbines or similar structures shall be located and constructed so that there is no immediate hazard to safe flying operations.

#### **4.3 Home Occupations**

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

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

Agricultural activities are exempt from these requirements.

#### **4.4 Outdoor Lighting Standards**

- a. Purpose. It is the purpose and intent of these regulations to encourage lighting practices and systems that will minimize light pollution, glare, and light trespass, while maintaining nighttime safety, utility, and security.
- b. Applicability. All outdoor lighting systems shall conform to the provisions of this title, the latest adopted versions of the State building code, national and State electrical codes, and all other applicable laws. If there are conflicts between any code requirements, the more restrictive requirements will apply.
- c. Outdoor Residential Lighting. All exterior light fixtures shall be of a full-cutoff design.
- d. Outdoor Commercial Lighting. All light fixtures shall be of a full-cutoff design. Light fixtures attached to a pole may not exceed a height of thirty-four (34) feet from the ground to the bottom of the fixture. Any existing fixtures out of compliance with this regulation shall be brought into conformance at the time of the replacement of the pole. 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.

- e. 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.
- f. 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.
- g. Exemptions:
  1. Fixtures producing two thousand eight hundred fifty (2,850) average lumens (equivalent of a 150-watt incandescent bulb) or less.
  2. American Flag illumination.
  3. Temporary Construction Sites. Lighting for nighttime security, provided the owner submits a lighting mitigation plan for approval that includes the duration, number, location, and height of each light source, and hours of operation.
  4. Seasonal Lighting. Seasonal lighting used for the celebration of commonly acknowledged holidays and special events; provided such lighting is not illuminated for a period of more than 1 month before and after said holiday and special event.
  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.
- h. Prohibited Lighting. The following types of lights are prohibited within the FHUGA:
  1. The installation of any mercury vapor light fixture, lamp or replacement bulb for use as an outdoor light.
  2. Lighting that could be confused for a traffic control device.
  3. Other outdoor lighting or glare that can cause distraction, flash blindness, vision impairment, or visual interference while piloting or navigating an aircraft or using night vision devices. This includes, but is not limited to, series, lines, rows, or patterns of lights, whether supported by cables or other physical means, or laid upon a ground or building that may resemble navigational or flight safety aids, landing pads, or lighting common to general or military aviation.
  4. Lighting designed for the creation of sky glow to attract attention, in excess of the lighting used to provide safety, security, and utility.
  5. When projected above a horizontal plane, beacons, laser source lights, strobe lights, or any similar high intensity light used for promotional or entertainment purposes.
  6. Any lamp or bulb when not within a luminaire and which is visible from the property boundary line of the parcel on which it is located, except for landscape ornamental lighting.

## 5. DEFINITIONS

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

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

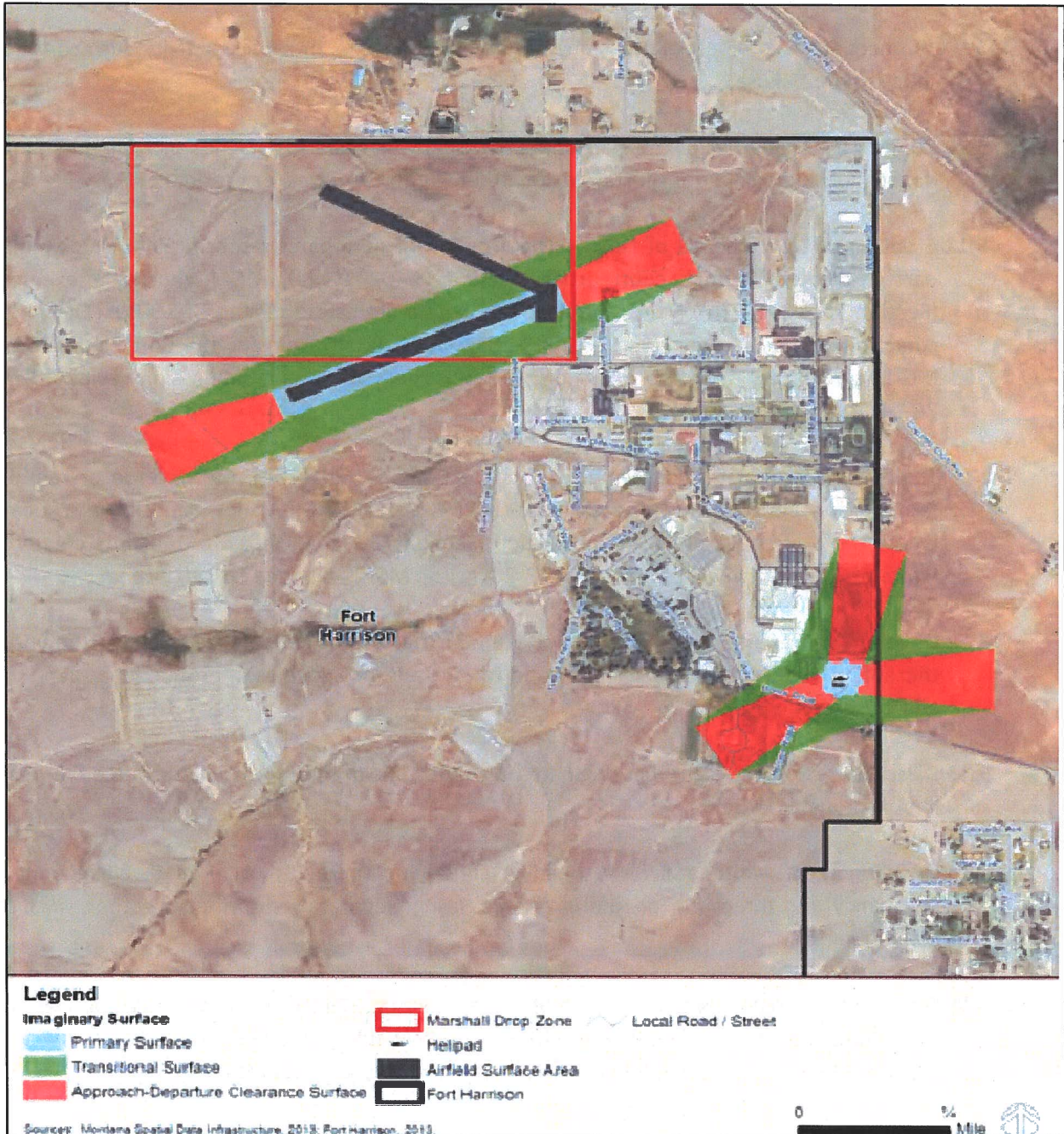
**5.3 Accessory Use** - A use, building, or structure that is incidental and subordinate to and customarily found with the principal use.

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

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

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

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



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

**5.7 Changeable Copy or Animated Sign** - See “Electronic or Digital Sign.”

**5.8 Cluster Development** – Cluster development means a subdivision with lots clustered that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

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

**5.10 Congregate Living Facility** - Apartments, dwellings or licensed facilities providing communal dining, housekeeping, transportation and other support services for residents.

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

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

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

**5.13 Direct Glare Source** - Light that originates in a direct line of sight from a light source that results in objectionable glare.

**5.14 Dwelling Unit, Multi-Family** - A building containing three (3) or more dwelling units for occupancy by three (3) or more groups living separately from each other, including condominiums.

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



- 5.16 Fixture** - The assembly that holds the lamp in a lighting system. It includes the elements designed to give light output control, including, but not necessarily limited to, such items as a reflector (mirror) or refractor (lens), the ballast housing, and the attachment parts.
- 5.17 Full-Cutoff Light Fixture** - Fixture with shielding that is directed and angled so that no light is visible above a 90-degree angle measured from a vertical line from the center of the lamp.
- 5.18 Glare** - The sensation produced by a light source that is sufficiently brighter than the level to which the eyes are adapted causing annoyance, discomfort, or loss in visual performance and visibility. The magnitude of glare depends on such factors as the size, position, brightness of the source and on the brightness level to which the eyes are adapted.
- 5.19 Light Emitting Diode (LED)** - A diode of semiconductor material, such as gallium arsenide, that emits light when a forward bias is applied, the color of which will depend upon the semiconductor material.
- 5.20 Light Pollution** - Any adverse effect of manmade light including, but not limited to, light trespass, uplighting, the distraction to the eye, or any manmade light that diminishes the ability to view the night sky.
- 5.21 Light Source** - Artificial light emitted directly from a fixture lamp, lens, or mirror. Light which is reflected after leaving the fixture does not constitute a light source.
- 5.22 Light Trespass** - Any form of artificial illumination emanating from a light fixture that penetrates other property and creates a direct glare source that exceeds 0.5-foot-candles in a vertical plane at the subject property line.
- 5.23 Lot** – *See Definition for Parcel of Land.*
- 5.24 MCA** – Montana Code Annotated, the laws of the State of Montana.
- 5.25 Military Facilities and Military Uses** - Includes, but are not limited to, military airports, military installations, intercontinental ballistic missile alert facilities or control centers, missile locations, access roads to missiles or missile related facilities and sites used for military training or formerly used for military training that may be contaminated with hazardous wastes or explosive ordnance.
- 5.26 Non-Conforming Parcel** - Any parcel that at the time of creation conformed to existing rules and regulations, but is now inconsistent with the applicable regulations.
- 5.27 Non-conforming Use** - An existing use that was lawful prior to the adoption or amendment of these regulations, but is no longer considered an allowed use.
- 5.28 Parcel of Land** – An individual tract of record, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the

records of the Lewis and Clark County Clerk and Recorder's office. The terms Parcel and Lot are used interchangeably in these regulations.

- 5.29 Parent Parcel** – The original tract or tracts of record from which new parcels are created.
- 5.30 Person** – Any individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.
- 5.31 Principal Use** – The dominant, main, or primary use of a parcel of land.
- 5.32 Residential** - A property or structure dwelling unit(s) that is used primarily as a dwelling place.
- 5.33 Shielded** - See definition for Full Cut-Off Light Fixture.
- 5.34 Site Preparation** - Improvements on a site that are preparatory to construction, which include, but are not limited to, staging construction equipment, leveling terrain, establishing internal roads/streets, placement of temporary construction trailers, security fencing, signs, landscaping, parking, and impervious surface coverage.
- 5.35 Solar Farm** - A collection of photovoltaic solar panels that can be categorized as a utility-scale solar application. (NOTE: If a solar application primarily powers a residence or business, then it is not a utility-scale application, even if it sells back any excess electricity through net metering.)
- 5.36 Solar Panel** - A collection of solar (or photovoltaic) cells that are used to absorb the sun's rays and convert them into electricity or heat.
- 5.37 Structure** - An object or building constructed or installed by man, including, but not limited to, buildings, towers, antennas, wind turbines, smoke stacks, and overhead transmission lines.
- 5.38 Tower, Communication** - A mast, pole, monopole, guyed tower, lattice tower, free-standing tower or other structure designed and primarily used to support antennas. A ground or building mounted mast greater than ten (10) feet tall and six (6) inches in diameter supporting one or more antenna, dish arrays, etc., shall be considered a communication tower.
- 5.39 Utility-Scale Solar Application** - Generates solar power and feeds it into the grid, supplying a utility with energy.
- 5.40 Utility Sites** – Parcels of land specifically designed and used to provide a public or quasi-public service subject to special governmental regulations. Such services would typically include, but are not limited to, water tanks, electrical substations, and communications facilities.
- 5.41 Wind Turbines** - An alternate energy device which converts wind energy by means of a rotor to mechanical or electrical energy. A wind generator may also be deemed a windmill.

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