Appendix A

Public Meetings and Comments





OVERVIEW

OF

RESPONSE TO PUBLIC COMMENTS

The following narrative responds to the numerous public comments and concerns received during the public comment period of the Malmstrom AFB Joint Land Use Study (JLUS). Most of the public comments received were submitted in a letter or email format and referred to similar issues and concerns. Therefore, in order to ensure members of the public understood how their comments were addressed in the Final Malmstrom AFB JLUS, the following response system was developed. The most common issues and concerns were summarized by a single statement, numbered, and boldfaced and responses to these issues and concerns were provided underneath.

1. Acquisition or zoning of private property located near Malmstrom AFB, Launch Facilities (LFs) or Missile Alert Facilities (MAFs) without just compensation to landowners is a "taking".

Acquisition of private property without just compensation is considered a "taking". To clarify, the Draft Malmstrom AFB JLUS did not advocate the acquisition of property without just compensation to landowners. Rather, because this document was not intended to be an implementation plan, the JLUS report did not identify exactly how landowners would be compensated for the purchase of future easements. Every recommendation contained within the Malmstrom AFB JLUS would comply with all relevant federal, state, and local laws and none of the recommended actions would entail the "taking" of private property. Any actions proposed would follow existing jurisdictional processes, open hearings, and public comment prior to any final implementation.

The claim that zoning, the regulation of land uses for the purpose of protecting public health and safety, is a "taking" is inaccurate. Zoning is an authorized method of protecting the welfare of the public according to Montana State Law (MCA, Title 76, Chapter 2), which requires Montana cities to enforce zoning regulations and provides Montana counties with the choice of enforcing zoning regulations. However, downzoning or other regulatory actions that might deny a private property owner all development rights such that the property in question has no economic value may qualify as a regulatory taking, if the landowner is not justly compensated. The recommendations contained in the Malmstrom AFB JLUS do not aim to take private property, but to regulate uses, within the existing legal framework, to ensure public safety.

2. I do not agree that all of the zoning designations on land within one-mile of MAFB are all incompatible.

The one-mile area around MAFB was selected because it encompasses the geographic area of the known existing and potential future military operational impacts (e.g. safety, noise, erosion, vertical obstructions). Per decisions made by the Policy Committee the final report contains a description and analysis of the permitted and conditional uses of the zoning designations within this area. However, unlike the draft version of the document the analysis of the compatibility of these zones was changed to

indicate that the existing zoning designations are largely compatible, with a few possible exceptions that can be mitigated.

3. The prohibition of development within the Clear Zones (CZs) and Accident Potential Zones (APZs) limits opportunities for economic development and limits the rights of landowners.

The purpose of the Malmstrom AFB JLUS is to consider all impacts generated by and on the existing and potential future military missions and make recommendations that simultaneously protect the viability of a future mission and the safety of the public, while respecting the rights of landowners. Since the CZs and APZs are defined safety hazard zones (per Federal Aviation Administration regulations), certain types of development in these areas could be a danger to the public. Therefore, development in CZs and APZs should be regulated to ensure the safety of the public. In the case of Malmstrom AFB, the runway is not currently operational. Thus, the purpose of protecting these areas from certain types of development (e.g. high density residential, arenas, and commercial shopping centers) is to allow for the viability of a future mission at Malmstrom AFB. Cascade County and the City of Great Falls are interested in retaining the viability of a future air mission at Malmstrom AFB because it could bring additional jobs and federal spending to the region, and serve as an economic catalyst for other industries. However, since there are no specific known plans to reactivate the runway at this time, the Malmstrom AFB JLUS aims to strike a balance between avoiding certain types of development in key areas and limiting economic development by other industries. For example, some of the recommendations contained in Chapter 4 indicate that they should not be implemented until a future air mission is confirmed and the Malmstrom AFB runway is reactivated.

The objective of the Malmstrom JLUS is not to prevent economic development in this region but to enhance opportunities for economic development by preserving the viability of a future air mission at Malmstrom AFB, while allowing for other industries to thrive. The approach is to identify where certain types of development should be avoided to allow for a future air mission and subsequently identify where other industries (e.g. wind energy development) should be located. By coordinating these efforts, the goal is to promote a more diversified and sustainable economy in which numerous industries are able to co-exist.

4. The absence of countywide zoning makes it impossible to enforce certain proposed strategies.

All of the strategies recommending increased land use controls around LFs and MAFs are based on the authorities granted to counties in the recently passed Montana law SB 417. SB 417 provides the Missile Counties with the option of establishing Military Affected Areas (MAAs) in the existing 1,200 foot safety arcs around these facilities. Once these areas are formally designated as MAAs by the Missile Counties, they can choose to apply permitting standards to these areas so as to protect military operations and public safety. Zoning does not have to be in place for this law to take effect or for the Missile Counties to establish permitting requirements.

5. Expansion of the 1,200 foot safety arc around LFs will have an adverse impact on existing uses and landowner rights.

The Draft Malmstrom AFB JLUS mentioned that the Air Force may be interested in expanding the existing 1,200 foot safety arc area surrounding LFs to 1,200 meters (3,936 feet) around some or all of the LFs. There is NO plan for extension of the buffer to 1,200 meters across all the missile field's LFs. The Final Malmstrom AFB JLUS clarifies this issue and states that the Air Force is actually only looking to expand the area in which they have a Right-of-Entry (ROE). The difference is that the current 1,200 foot safety arcs are held in easements through agreements with each of the landowners and these agreements limit the type of development that can be located in this area. The ROE agreements, on the other hand, only grant military personnel access to private land, they do not restrict development in these areas. The ROE agreements are mutual agreements; therefore landowners will have to consent to the expanded access to their property. In conclusion, increased access to private property will not impact landowner development rights. The military has stated that they will negotiate with mutually agreeable landowners where necessary.

Chapter: Public

Response	it See overview and int ented iffe life life sarea	and Noted	ot See overview to ent ent
Concerns/Comments	I am very concerned about the use of the land around Malmstrom and the potential effect it could have for quality of life for those families living and working on the base. The Great Falls City Commission is considering allowing the siting of the Montana Advanced Biofuels ethanol plant and the Montana Specialty Mills into the proposed GFDA Agri-Tech Industrial Park next to the base. Both of these projects would result in offensive odors being released into the air that would affect the quality of life for MAFB residents. Ethanol plants give off distinct odors from processing the grain which many find offensive. Montana specialty Mills also produces a bad odor. One can smell this odor (a smell of burnt broccoil) at the State Fair each year, and employees at the Staybridge Suites have commented that they will be very glad to see it leave. Why do we want to bring these odors near military housing areas? As a former Air Force group commander, I know the emphasis that is placed on quality of life issues (especially at Malmstrom). Why would the city place two plants near the base that would adversely affect quality of life? If the land around MAFB is to be zoned for commercial use, let it be for operations that do not detract from the quality of life that many airmen come to Montana to experience. There may be other locations in the Great Falls area that seem to be better suited for these projects. The area near the malting plant just off the Havre highway may be one possibility.	[See "Hard Choices: Responsible Defense in an Age of Austerity" October 2011 by the Center for New American Security] is one of many studies out there. BRAC [is] out there for real, and DOD/USAF looking at everything, so having active runway a plus for Malmstrom and Air Guard, and even possible hybrid active/reserve aviation like they do in Idaho Good effort with JLUS and I hope Airport Authority realizes the situation As I'm still involved with DOD business with joint services and the Army, the resource challenges very real	To restrict the land use for future development may serve the wish list of some but does not provide a fair opportunity for the land owners. By freezing out any development you have punished some landowners unfairly. Either purchase the property or use eminent domain to take it but at least landowners will get some value for their land. By freezing all development activity, you are forcing some land owners to make a sacrifice that prohibits their investment and livelyhoods. If the county wants this JLUS to be implemented they need to make the sacrifice and purchase the land around Malmstrom AFB.
JLUS Document Location			
Date Rcvd	2/22/10	10/07/11	10/21/11
Organization			
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#	Organization	Date	JLUS Document Location	Concerns/Comments	Response
4		10/14/11		Anyhow, I want to voice my input concerning the Malstrom JLUS Project. I am located about 1/4 mile from the missile site B3, thus puts me right in the middle of this projects projected plans of expanding the boundaries of right away for the site.	
				Our family bought this property here where we live, back in 1927, and continues living here, 3 generations later, 1/4 of a mile from the B3 missile site. Will be interesting to further learn how Malstrom plans on purchasing additional property for the planned bounty enlargement. Since the site for B3 should have been researched way back then when located here, concerned public housing before any missile site should have been located right next door to someone's home.	
				We have no plans on our part, to relocate our buildings of our farmstead and locating elsewhere.	
22		11/1/11		The argument that the military need our private property for public safety during their training has no basis in fact. There has no flying mission for 16 years.	See overview
9		11/1/11		Runway has been closed for 16 years because of a statutory act of Congress. There evidence that the BRAC decision has changed. Documentation of the reopening of the runway must be made available or the reference to the runway as an asset should be changed.	See overview
7		11/1/11		Encroachment is not preventing civilian use of the Malmstrom runway.	Noted
∞		11/1/11		Use of private property by landowners does not equate to encroaching.	Noted
6		11/1/11		Consult public real estate records to determine if clear Zones or Accident Potential Zone are recorded on private property. There have been multiple studies examining the need to or possibility of acquiring land in CZs and APZs. There have been moratoriums on development. The JLUS claims to acquire land through zoning without compensating owners.	Accomplished
10		11/1/11		The residents of Great Falls and Cascade County do not want real estate disclosures or deed restrictions to be imposed in a Military Overlay District (16 miles in diameter), Height District or Noise District.	Noted
		11/1/11		The referendum in 2008 illustrated that voters do not want to protect CZs and APZs for a closed runway.	Noted
12		11/1/11		I don't agree with the supposition that all of the zoning within one-mile of the base is incompatible.	Noted

#	Organization	Date Rcvd	JLUS Document Location	Concerns/Comments	Response
13		11/1/11		The government has to compensate landowners for land takings. There is no public necessity premise for the land takings proposed in the JLUS.	See overview
14		11/1/11		The JLUS has no right to call the 48 acre Industrial parcel incompatible.	Noted
15		11/1/11		References to the airfield crash potential of areas over private land has a negative effect on the value of these private lands.	Noted
16		11/1/11		Proposals to develop land in the CZs and APZs have been obstructed. This is in part due to studies like the JLUS.	Noted
17		11/1/11		The concept of preventing development within the imaginary surfaces defeats the idea of economic development.	Existing FAA regulations
18		11/1/11		There are no aircraft operations to create public safety risks, noise or to require the regulation of vertical obstructions. There haven't been any for 16 years.	Noted
19		11/1/11		Only half of Malmstrom AFB is developed so the idea that they do not have any buffer or area in which to expand is false.	Noted
20		11/1/11		Private landowners have no idea of the threats posed by the JLUS.	Noted
21		11/1/11		There are structural limitations of the MAFB runway that were part of the basis of the closure that are not disclosed in the report.	Noted
22		11/1/11		The claim that the MAFB runway remains open because it is used by helicopters is absurd.	Noted
23		11/1/11		The City and County Commission resolutions to adopt recommendations in the JLUS suggest that these commissions have to adopt the creation of a Military Overlay Airport District, real estate disclosures and declare zoning within 1-mile of Malmstrom incompatible. Commissioners could not have known what they were agreeing to adopt.	Noted
24		11/1/11		The creation of a no-development zone means no tax revenue will be brought in.	Noted
25		11/1/11		The recommendations in the JLUS are not consistent with due process laws. For example the JLUS recommends the seizure of property rather than eminent domain.	See Overview

Response	y zones of an unopened Noted	arry out their mission so I do Noted to Irain.	important engines include – Noted sakage, institutional, health	FB on the Whitmore Ravine Noted and the study.	at Falls giving consideration to at I am not in support of the ings of is not for the greater is lawsuits and dead-ending e and understand the need to quirements. I also realize how to feel that it is being very to ucr City would perish – we any other assets and would do ren greater economic stability. Backs taking place in the ms for the City and County. County and the City of Great and upfront manner regarding the affected property owners ell advertised. and backing for the adoption of and backing for the City and county is as city and cell and elected officials were any worder is answered?
Concerns/Comments	The idea of using zoning to restrict development within the safety zones of an unopened runway is not legally defensible.	Malmstrom has not informed me that they need my property to carry out their mission so I do not believe the claim that my land is needed for them to be able to train.	Malmstrom is not the only economic engine in the region. Other important engines include – agri-processing, energy development, tourism, and trade area leakage, institutional, health care.	The study only cursorily addresses the impacts of Malmstrom AFB on the Whitmore Ravine area. The scale of erosion is significant and needs to be captured in the study.	This letter is in response to Cascade County and the City of Great Falls giving consideration to adopt the Joint Land Use Study (JLUS). I will begin by saying that I am not in support of the JLUS study being adopted by the County or the City as I feel doing so is not for the greater good of our fair City and County as it is opening both up to future lawsuits and dead-ending development for all. That being said, I am in full support of Malmstrom Air Force Base and understand the need to keep options open and available in order to meet future base requirements. I also realize how the base economically contributes to our City and County but I do feel that it is being very shortsighted and narrow minded to think that without Malmstrom our City would perish – we need to remember that Great Falls and Cascade County have many other assets and would do well to work equally as hard to develop those other assets for even greater economic stablity. Given the present economic condition of our country and the cutbacks taking place in the military budget, we would be wise to look at other revenue streams for the City and County. I would ask the County Commissioners and City officials to consider the following: Have the property owners and citizens of Cascade County and the City of Great Falls been given notified and the public meetings have not been well advertised. Have the County and City received written support and backing for the adoption of the JLUS from the department of defense and Malmstrom AFB? Have the County and City received written support and backing for the adoption of the JLUS from the department of defense and Malmstrom AFB? If placing land use restrictions on property within the City and County is as important as Commissioner. Joe Briggs is claiming it to be – why would we not be making sure that our news media and elected officials were getting the information out?, and why the rush to get this study adopted, if it is truly good for the City and County wor't it still be after the questions the tax
JLUS Document Location					
Date Rcvd	11/1/11	11/1/11	11/1/11	11/1/11	12/05/11
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#	Organization	Date Rcvd	JLUS Document Location	Concerns/Comments	Response
				JLUS could that be looked at as a "taking" of property and rights without adequate compensation?	
				5. If Malmstrom AFB does need a runway in the future, would the current runway that has not been in use for many years, require so much work and money to make it functional that it would be cost prohibitive?Have we considered that if the need ever arose for a runway in the future we have the airport as well as the Air Guard?	
				6. Why would we even consider adopting a study that would limit growth and development in our area when Malmstrom AFB as well as the United States Department of Defense have both been more than upfront about the base closures, budget cuts and downsizing that will take place on bases within the country?	
				I would hope that all involved in making the decision as to whether or not this study is given any more consideration than just to say we have had it done and have it on file – will give serious thought to whether the implementation of it will do more harm than good to the City, County and citizens of Great Falls and Cascade County. Thank you.	
31	Eddies Comer, Inc.	12/2/11	AF-A1 Pg. 4-35	Within reasonable limits, the natural growth of vegetation should be tolerated within the MAA. Each site should be evaluated on a case by case basis. Manmade structures within MAA should be permitted so long as they comply substantially with originally permitted structures. Lack of County Zoning further complicates any enforcement of this mandate.	No blanket application. Must be site specific.
32	Eddies Comer, Inc.	12/2/11	LU-A1-5 Pg. 4-40	Lack of County Zoning makes this impossible to enforce.	Regulate and evaluate on site specific basis.
33	Eddies Comer, Inc.	12/2/11	LU-B1, B3 Pg. 4-41	Impossible without county-wide zoning.	Noted
34	Eddies Comer, Inc.	12/2/11	LU-C1, C2 Pgs. 4-42, 43	Should apply to all MAA's. Provides flexibility to cooperate with landowners for periodic review and adjustments based upon changed circumstances and increased density of development on lands adjoining LF's.	Noted.
35	Eddies Comer, Inc.	12/2/11	LU-C3 Pg. 4-43	Increased restriction or expansion of MAA's around LF's call for compensation for additional loss of landowners' rights and value.	See overview
36	Eddies Comer, Inc.	12/2/11	LU-D Pg. 4-43	Expansion of 1,200 foot safety arc requires complete condemnation and/or additional compensation for loss of landowners' rights and interests.	See overview It is a right of entry area for support training for access only; no land taken.
37	Eddies Comer, Inc.	12/2/11	LI-A1 Pg. 4-45	Not appropriate. Must be left to discretion of each county as to issue of adopting county-wide zoning or not.	Noted

#	Organization	Date Rcvd	JLUS Document Location	Concerns/Comments	Response
38	Eddies Comer, Inc.	12/2/11	LI-B1 Pg. 4-45	Dependent upon County's adoption of county-wide zoning.	Noted
39	Eddies Comer, Inc.	12/2/11	LG-A1 Pg. 4-46	MAA's and LF's where adjoining commercial, municipal development have expanded significantly should be eliminated/decommissioned.	Noted
40	Eddies Corner, Inc.	12/2/11	SA-A1, A2, A3 Pg. 4-47	Each MAA adjoining LF to be reviewed on a site specific basis for necessary adjustment to easement. Any increased restriction must be compensated accordingly.	See overview
41	Eddies Comer, Inc.	12/2/11	VO-B1, B2 Pg. 4-50	Impossible in absence of county-wide zoning.	Noted
42	Cascade County Landowner	12/5/11		The study avoids or ignores the direct impact to the landowners/property business owners. Appropriate notification regarding the general understanding and the impact of this concept has not taken place. It appears property owners surrounding the impacted area of MAFB will be blindsided regarding the restrictions that will be affixed to their property deed.	Noted
43	Cascade County Landowner	12/5/11		Commissioner Briggs presentation during the 11/21/11 during the Great Falls Chamber of Commerce meeting did not expose the large expansion of land recommended for the JLUS for o restricted zoning. The land encircling 165 missile silos would increase 10 times or from 100 acres to 1,000 per site. A total of 164,000 additional acres of private land would be taken by the federal government. The land on MAFB would expand 3,000 feet on the east and west boundaries which is more than ½ mile per side and 8 miles from north to south boundaries.	Noted and some items are covered in overview
				What do these recommendations do to landowners? Any existing homes or businesses within this overlay will be affected. Any parcel of land being bought or sold will have to disclose within the title policy the expansion of military installation operations, which is a negative loss of value. Any property presently zoned agriculture will remain agriculture and will not be rezoned for future development. This property is prime real estate for the growth of Great Falls which will generate tax revenue. This course of action will devour thousands of acres of additional private land "millions of extra dollars". During one of the JLKUS public meetings Matrix stated that finding a way to compensate landowners for the expansion of buffers was an important part of the discussion. However this issue has been evaded and Commissioner Briggs has stated that there are no funds available.	
44	Cascade County Landowner	12/5/11		In 2009 when a bill was introduced by missile supporters regarding the expansion of buffer zones the Montana legislature and commissioners clearly stated that landowners could not be asked to give up more of their land without just compensation.	Correct
45	Montana Building Industry	12/5/11		MBIA represents over 1500 home building and light commercial construction small businesses. We are disappointed by the negative tenor the JLUS took towards the current land use regulations in place in Cascade County. The JLUS does not focus on the positive laws,	Noted

#	Organization	Date Rcvd	JLUS Document Location	Concerns/Comments Response	93
	Association (MBIA)			relationships or communications that currently exist. These laws are necessarily flexible. In the past MAFB has worked with the local community to resolve issues that have surfaced through existing regulations. The JLUS would begin the process of eliminating that flexibility. We recommend the JLUS be redrafted to focus on the flexibility of Montana land use laws and the positive cooperative relationship between Malmstrom and the surrounding residents.	
46	Montana Building Industry Association (MBIA)	12/5/11		We oppose the following recommendations: LU-84 and LU B5 The J LUS does not indicate how far-reaching building code inspections by Cascade County would be. This recommendation would take multiple years and would cost taxpayers. It would increase the cost of new homes by \$5000 to \$8000. LU-41 and SA-44 The growth policy does not need to be amended. It is non-regulatory and protects a broad range of interests. FF-B2, LU-42, LU-43, LU-44, LU-46, LU-47, LU-48, LU-49, LU-86, VO-46, SA-44 Cascade County zoning maps do not need to be amended-changes are costly and burdensome on landowners. These issues can be addressed through subdivision regulations. Coning changes will create a fit between landowners and MA-FB. LU-410, LU-81, LU-82, LU-83, LU-83. LU-93 The stale of Montana endows local governments with a great deal of authority in the development of subdivision regulations. Subdivisions are reviewed on a case-by-case bias. MCA 76-3-504 states that subdivisions must: • Provide for the identification of areas that because of natural or human made causes are unsuitable for subdivision application by affected public utilities and those agencies are unsuitable for subdivision application by affected public utilities and those agencies of the local, state and federal government leantified during the prepaptication consultation conductor by approved construction techniques or other miligation measures. Provide for the local, state and federal government leantified during the prepaptication consultation conductor greated business and a or those having a substantial interest in a proposed subdivision. We believe Cascade County and the City of Great Falls have the tools necessary to resolve	
47		12/16/11		I am a property owner in Wheatland county that is would be devastated by an increase in the buffer zone around the silos. My property would be almost entirely inclusive in such an easement. I am very concerned that the property owners affected were not informed of this	

Response		See overview	Noted		
Concerns/Comments	proposal. I have just recently learned of this terrible proposal much too late to interject any of my concerns with this land grab. I have never been contacted by our local representative who is odd as I am without question very affected by this new proposal. I own 236 acres of a small ranching operation with a silo on my property. If the zone is increased it would envelope more than two thirds of my entire property and prevent me from any and all future expansion, development and or investment opportunities that may arise in the future. This proposal would be crippling to my future and I cannot see how I could be placed in this position without proper compensation. I would very much appreciate a phone call or email from my representative to discuss where we are at to date and what my options are.	Since our parcel of land has been specifically targeted for restricted use by the JLUS it is no surprise that we do not support the recommendations of the JLUS as they apply to us. Two years ago we applied for and were granted I-2 (Heavy Industrial) zoning for our land. Realizing the many features our land has for industrial development, Cascade County actually encouraged our zoning application (see enclosed county document). Subsequently we have been in discussions with potential businesses that could locate on our land and provide real economic development. Any attempt to restrict our use of the property at this point will be viewed by us as a taking of our property rights.	While we have respect for MAFB's past and current contribution to Great Falls we also view the future of MAFB as questionable at best. The runway was closed in 1997 and the first rounds of missiles were removed in 2010. It is obvious that MAFB is winding down. Thinking the runway will be reactivated via a future flying mission is absurd. Nevertheless much of the JLUS is based on the premise that the MAFB may/will have a future flying mission. This is a fanltasy that is supported by a very small minority. A minority that for years has been obsessed with returning the base to its former World War II and post-WWII days. This group of backward thinkers has thwarted many economic development efforts' if all the work that has been put into this issue were directed at real economic growth, and then we might have gotten some place. There is not one shred of evidence that shows the base runway will be re-opened; indeed we've had at least two governors and four of our Congressmen (ta representative and three senators) discuss this issue with the Air Force, to no avail.	We should be encouraging and taking advantage of any economic development opportunity that is either locally or externally initiated. Our planning board recently provided a good example of backward thinking when it recommended against building a second Wal-Mart here. One needs only to drive by our existing Wal-Mart with its full parking lot to see that the citizens of Great Falls do not agree with this diffident thinking. Our real focus should not be on some mythical future mission at MAFB but rather on fostering real economic growth. By attracting Wal-Marts. Costcos, and Lowes, we can turn Great Falls into a regional trading center and destination that will benefit the entire community.	For years there has been much speculation about why Great Falls grows so slowly or not at all. Part of the answer to this question can be found in retrogressive thinking, like returning MAFB to its past glory, and part of the answer can be found in the small town xenophobic attitude of some of planners and policy makers.
JLUS Document Location					
Date Rcvd		11/10/11	11/10/11		
Organization					
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Organization	Date Rcvd	JLUS Document Location	Concerns/Comments	Response

Joseph G. Aline

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November 23, 2011

To whom it may concern:

The following are some of my thoughts and concerns relating to the JLUS study.

The JLUS Study is trying to establish Codes for parameters that are ever changing and may never be. This should be a living document to address the present and future knowns. It cannot be a hard and fast document and code.

Areas in the study are labeled incompatible (Fig 3.1-3). I do not concur with this label. Remember that this is a Joint Land Use Study. Not all for one entity and nothing for anyone else. It is supposed to be mutual and with consensus.

MAFB itself, could not meet 50' height restrictions (ex. coal fire heating plant, water towers, 3 bay hangar, radar towers etc.).

Other objects exceeding the 50' height restriction, include facilities from the biggest economic driver from our area. Agriculture. Facilities exceeding the 50' height restriction are grain and fertilizer handling elevators and silos.

In the wind turbine No Build Area (Fig. 3.1-11) Height restrictions are being touted, yet no one has noted that there are currently wind turbines and projected wind farms within the proposed no build zone. United Materials, Cascade County, Moodie implement, MSU Great Falls College of Technology and many others already have turbines in the proposed height MOD. I believe these can, will and do coexist with a flying mission (i.e. - MT Air National Guard planes and Homeland Security helicopters).

If the study is going to label property as incompatible, then a mechanism to reimburse the affected landowners should be put in place. The study has identified several of these mechanisms (i.e. - conservation easements, transfer of development rights, etc.) but has not addressed how to put them in place. Trying to unravel the loss of property rights after the fact, will be next to impossible and expensive. It must be addressed prior to approval of this study.

The Study has reiterated that it is not regulatory and not enforceable. However, it has also stated that the final draft

will be prepared for acceptance and adoption by participating jurisdictions. This is where my heartburn begins. Once the study is adopted by a jurisdiction, property owners will be zoned right out of their property rights.

How many runways have been closed?

How many runways that have been closed, have reopened?

Can we see the actual recorded documents regarding the CZ and APZ?

Prior to final enactment of the JLUS study, I would like to see the actual signed documents and distances establishing the clear zones and accident potential zones.

This isn't an us or them. It is a Joint Land Use Study. The study purports to provide a study that is consensual and mutually beneficial. However entities and persons have been admonished for their candor and perceptions relating to the study.

All of the solutions that have been listed are a burden on the vast majority of Great Falls and surrounding property owners and puts no onus on the military.

As the sole representative of the affected property owners, I cannot in good conscience support or advocate the approval, or adoption of this study. I fear that this document, while it is a study, will be adopted as policy and set in stone without any hard mechanisms in place to protect landowners for the loss of their property rights. In essence property owners will be zoned right out of their property rights. Zoning without a just cause is a taking.

A further modified draft should be provided, after receiving all of the comments. That draft should again go through this review process. A document of this magnitude should not be approved or be limited to one revision.

Therefore I cannot approve the study without further modification.

P.S. - Please forward me all the written public comments received from the committees and the public.

Sincerel/

Joe Aline, Landowner Policy Committee Member

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JAMES L. STOGSDILL

KRIS A. BIRDWELL

December 2, 2011

MAFB JLUS Project Manager Cascade County Planning Division 121 4th St N. Ste. 2H/I Great Falls, MT 59404

Re:

Malmstrom Air Force Base Joint Land Use Study (JLUS)

Submission of written comments on behalf of Eddies Corner, Inc., Moore, Montana

To Whom It May Concern:

Attached/enclosed herewith I am submitting written comments on behalf of my client, Eddies Corner, Inc., in response to the JLUS draft report. If you have any questions of me or my client, or if you need any further documentation or clarification regarding their response and comments, please feel free to call me. You can also make direct contact with the officers and directors of Eddies Corner, Inc. as follows:

Eddies Corner, Inc.
64960 U.S. Hwy. 87
Moore, Montana 59464
Richard Bauman, President
Joseph Bauman, Vice President
(406) 846-2207
(406) 374-2471

Thank you for your assistance and careful consideration of the Stakeholders' concerns and responses regarding the JLUS draft report and its impact on their businesses, real property and various other valuable interests. On behalf of Eddies Corner, Inc., we look forward to being kept advised of all developments in this planning process.

Respectfully Submitted,

STOGSDILL LAW OFFICE, P.C.

y: JAMES L. STOSDILI

JLS/tgp enc. December 3, 2011

MAFB JLUS Project Manager Cascade County Planning Division 121 4th Street North, Suite 2H/I Great Falls, Montana 59401

> RE: Malmstrom Air Force Base Joint Land Use Study Cascade County Planning Department

Please accept this information and recommendations in your JLUS study and final report.

The comments in this letter are in response to a recent study that has been taking place in the Great Falls, Montana area regarding expanding the radius of the buffer zones surrounding missile silos and Malmstrom Air Force Base.

On October 11, 2011, The Great Falls Tribune stated and I quote "Cascade County and the Air Force should go slow on the idea of tripling the radius of buffer zones around missile sites scattered across Northcentral Montana". This message should be expanded to include the proposed restricted expansion surrounding MAFB that is being spearheaded by Commissioner Joe Briggs and the Joint Land Use Study, or JLUS.

The Malmstrom Joint Land Use Study is being drafted by Matrix Design Group of Texas for Cascade County Planning Department. The study consists of 280 pages all of which point toward the need for expanding buffers and restricted easements around missile silos and MAFB. The study describes encroachment or by definition, "trespassing", and it refers to future "flying missions" at MAFB which we haven't had for twenty years. It was brought to the attention of Briggs and the Matrix Group at a meeting in October that it would require Congress to reinstate the runway.

The study describes acquisition of property, zone changing, construction limitations, land use limitations, deed restrictions and other limits prescribed to the landowners. The study avoids or ignores the direct impact to the landowners/property and business owners. The report indicates the need for communication between the landowners and those involved in promoting this concept. Appropriate notification regarding the general understanding and the impact of this concept to individual property and landowners has not taken place. It appears that property owners surrounding the impacted area of MAFB will be blindsided regarding the restrictions that will affixed to their property deeds.

On November 31, 2011, I attended the Great Falls Chamber of Commerce meeting to listen to Commissioner Joe Briggs' presentation on the JLUS document. The essence of Mr. Briggs' report included;

- Opening the lines of communication between property owners surrounding restricted lands and MAFB
- o The importance of the future of MAFB to Great Falls and Central Montana
- o How very little is known about the future of MAFB or the Montana Air National Guard (MANG) in the years to come.

Briggs stated that presently The Red Horse Engineering Squadron, the Minutemen Missiles, and the MANG F-15s are all in jeopardy. He emphasized to the group that "We as members of the community need to look at the Joint Land Use Study and work together to improve our position from future military cut-backs.

Commissioner Briggs' presentation did not expose the large expansion of land recommended by the JLUS for restricted zoning. The land encircling 165 missile silos would increase 10 times or from 100 acres to 1,000 per site. A total of 164,000 additional acres of private land would be taken by the federal government.

The land bordering MAFB would expand 3,000 feet on the east and west boundaries which is more that ½ mile per side and 8 miles in length from south to north boundaries.

What does that do to each property owner? Any existing homes or businesses within this overlay will be affected. Any parcel of land being bought or sold will have to disclose within the title policy the expansion of military installations and operations, which is a negative and loss of value. Any property presently zoned agriculture (all potential land that borders MAFB to the south, west and north) will remain as agriculture and will not be able to be rezoned or used for any future development. This property is prime real estate for the growth of Great Falls which will generate tax dollars. This course of action will devour thousands of additional acres of private land and to quote the Great Falls Tribune, "After five decades of no problem, is the extra comfort zone really worth millions of extra dollars".

County Commissioner Joe Briggs did not disclose any information on how the county government would implement the JLUS recommendations and how restricted zoning would play into the future of Great Falls. It is imperative Mr. Briggs, as an elected official of this community, disclose not only information of his personal bias but all information both, pros and cons regarding this issue.

At a meeting held to discuss potential problems and recommended solutions suggested in the Joint Land Use Study conducted by the Matrix Design Group. It was reported that the issue of how to help the military with the expanding the buffer zones and finding a way to compensate landowners and developers was a significant factor in the discussions. It was also reported by the Great Falls Tribune that the Matrix Group evaded the compensation issue. At a previous meeting, Mr. Briggs was asked what compensation will be given to the affected land owners. He stated "There are no funds available" In 2009 when a bill was introduced by missile supporters regarding the expansion of buffer zones, the Montana Legislature and out laying commissioner stated clearly that land owners could not be asked to give up more use of their land without compensation.

An important fact that needs to be put in the equation is if the Joint Land Use Study is accepted, the land for future development at the east end of Great Falls is dead. It is difficult to comprehend that people in the community that have worked a lifetime to obtain property, homes and businesses are expected to relinquish significant rights to their assets without any compensation for something that has no guarantees.

Sincerely,
Rick Hickords

Rick Higgins

Cascade County Property Owner

For comments, tips or corrections: Call Managing Editor Gary Moseman, 406-791-1465 or 800-438-6600, or email the editorial board at tribletters@greatfallstribune.com

VIEWPOINTS

Editorial board (our opinion)

» Jim Strauss, Publisher

» Gary Moseman, Managing Editor
» Jo Dee Black, Business Editor

Enlarged missile buffers raise costly questions

Cascade County and the
Air Force should go slow on
the idea of tripling the radius
of buffer zones around the
missile sites scattered across
northcentral Montana.

The topic arose last Tuesday at a meeting of govern-

ment officials, landowners and wind energy developers to brainsform potential problems and solu-

problems and solutions suggested in the final draft of the Malmstrom Air Force Base Joint Land Use Study, or JLUS.

The study focused mainly on issues such as placing cell towers or wind turbines too close to missile facilities, and folks in attendance generally

are abead of time so that the mile. Described that way, it and private parties may not seem like much, but could accommodate each when you do the math to compute areas, the new zones.

The livelier discussion at the meeting revolved around the Air Force's desire, first voiced at the Legis-latine a comble of

TRIBUNE years ago, to conyert the missile
facilities' buffer
zones flow 1,200

a little more than 3,900 feet.
On several levels, the size of the additional buffer zones seems prohibitive.

Seems pronublive.
In effect, the Air Force
wants to go from the just
under a quarter of a mile to

almost three-quarters of a works out to almost 164,000 mile. Described that way, it multiconal acres. Talk about a may not seem like much, but federal land grab when you do the math to For figuring purposes, take

To wit: A circle with a quarter-mile radius takes in a little less than 104 octes, pretty close to the size of the present siles and launch facility buffer zones.

would be aimast 10 times bis

A circle with the proposed new radius takes in 1,096 acres — mar than a section and a half.

facilities - including some in

the Highwoods, Little Belts

and on eastward - are on

prime real estate, near

amaze outsiders. Some of the

That means the officials are proposing an increase of more than 992 area not situated the control facilities, so that

em. Take that into account and

pretty soon you're talking

creeks, in the woods and so

works out to almost 164,000 Over the roughly half cendiditional acre. Tall about tury since the missile facilities were built, homes, sumfor figuring purposes, take an agricultural land price of ings have been built outside some of the old buffer zones, and you're talking \$104 mil.

County Commissioner Joe Briggs said impending reduction of the nation's intercontinental ballistic missile force by 50 missiles could hold an answer to at least some of the problem.

have been worked into the

The degree to which nuclear missile facilities landscape of northcentral

Montana probably would

If the politically preferred option of removing 15-20 missiles from each of the three U.S. missile bases — Malmstrom, F.E. Warren AFB, Wyo., and Minot AFB, N.D. — it's possible the facilities with the most pressing encroach.

in- ment issues could be the chosen for abandonment.

We don't pretend to be

defense experts, so we ca account for why after 50 years in the ground aroun here, the K BMn have an defance-hased med for m pace around them. If you can't safely land a helicop on 103 acres, can you do much better on 1,096?

compensation for the loss use of thousands of additional publish OR from some limitations. I have decaded of not after five decaded of not lien, to the extra comfort cone really worth million extra dollars?

2901 FOURTH AVENUE NORTH GREAT FALLS, MONTANA 59401 31 OCTOBER 2011

MAFB JLUS PROJECT MANAGER
CASCADE COUNTY PLANNING DIVISION
121 4TH STREET NORTH, SUITE 2H/I
GREAT FALLS, MONTANA 59401

RE: MALMSTROM AIR FORCE BASE

JOINT LAND USE STUDY

CASCADE COUNTY PLANNING DEPARTMENT

DRAFT REPORT

PLEASE ACCEPT THE INFORMATION AND RECOMMENDATIONS HEREIN AND INCORPORATE THEM IN YOUR JUSY STUDY AND FINAL REPORT.

THE PREMISES OF THE JLUS STUDY ARE:

THAT "ENCROACHMENT" IS PREVENTING MALMSTROM AFB FROM ACCOMPLISHING ITS MISSION. THE PREMISE IS WRONG
WE OWN OUR PRIVATE PROPERTY. THERE ARE NO AIRFIELD DEED RESTRICTIONS NOW NOR HAVE THERE EVER BEEN.
THE ARGUMENT THAT THE MILITARY NEEDS ANY PART OF OUR PROPERTY FOR PUBLIC SAFETY DURING THEIR TRAINING
OR OPERATIONS HAS NO BASIS IN FACT. THEY HAVE NEVER TRAINED NOR OPERATED ON OUR PRIVATE PROPERTY IN
THEIR 66 YEAR EXISTENCE AS OUR NEIGHBOR. IN THE PAST, THEY HAD A LARGER MISSILE FIELD AND THEY HAD
NUMEROUS AIRCRAFT OPERATIONS. TODAY, THE MISSILE FIELD IS REDUCED AND IN DOUBT FOR THE FUTURE. THERE
IS NO FLYING MISSION NOW AND HAS NOT EXISTED FOR 16 YEARS.

THAT "ENCROACHMENT" IS PREVENTING MALMSTROM AFB FROM REOPENING ITS RUNWAY CLOSED IN 1996. THE PREMISE IS WRONG. THE RUNWAY AT MALMSTROM HAS NOT REOPENED DURING THE 16 YEARS IT HAS BEEN CLOSED BECAUSE A STATUATORY ACT OF CONGRESS DURING BASE REALIGNMENT AND CLOSURE PREVENTS ITS REOPENING. AN ACT OF CONGRESS WOULD BE REQUIRED TO REOPEN THE DETERIORATED AND OUTDATED RUNWAY. ANONYMOUS "VOICES" FROM THE PENTAGON ARE TOLD TO US THAT BRAC HAS BEEN CHANGED AND THE RUNWAY CAN BE REOPENED, THERE IS NO EVIDENCE OF SUCH AND WE ARE TOLD THAT THE SOURCE OF THIS INFORMATION MUST REMAIN CONFIDENTIAL, THE ONLY CHANGE IN BRAC. AS PRINTED IN THE FORMAL BRAC COMMISSION REPORT FOR 2005, IS THAT THE SECRETARY OF THE AIR FORCE HAS DISCRETION TO MOVE AIRCRAFT AMONG THE VARIOUS CURRENT OPERATING AIRFIELDS. THERE IS NO POSSIBILITY THAT BY MOVING ANY AIRCRAFT A PREVIOUSLY CLOSED AIRFIELD CAN BE REOPENED. THERE ARE NO OTHER BRAC CHANGES. THE AUTHORS OF THE JLUS STUDY KNOW THIS FOR A FACT, "VOICES", IF ANY, MUST BE DOCUMENTED, IF NOT, REMOVE THE SUPPOSITIONS THAT ARE INCLUDED IN THE REPORT ON SUCH DUBIOUS ORIGIN. THIS IS, INDEED, THE ONLY FEEBLE EXCUSE FOR REFERENCING THE CLOSED RUNWAY AS AN ASSET AS THE "STUDY" HAS DONE. THE STUDY IS SUPPOSED TO CHART A PATHWAY TOWARD ECONOMIC VITALITY AFTER A MILITARY INSTALLATION LOSES A MISSION(S). AFTER ALL, THE FUNDS ARE FROM THE "OFFICE OF ECONOMIC ADJUSTMENT", A DOSE OF REALITY FOR THIS STUDY IS IN ORDER. THE RUNWAY IS CLOSED, IT IS NOT AN ASSET. THERE ARE NO "VOICES" THAT CAN BE RELIED UPON EVEN IF THEY PROFESS TO "KNOW". AN ACT OF CONGRESS HAS NOT BEEN FORTHCOMING IN 16 YEARS OF EFFORTS, THE JLUS "STUDY" MUST BE FACTUAL, NOT IMAGINED. OUR ECONOMIC FUTURE, WHICH THEY PROPOSE TO ASSESS, DESERVES MORE THAN ANONYMOUS SUGGESTION WITH ABSOLUTELY NO DERIVATION FROM CONGRESS. THE ONLY ENTITY THAT CAN CHANGE THE EXISTING LAW!

THAT "ENCROACHMENT" IS PREVENTING MALMSTROM AFB FROM SECURING "CIVILIAN USE" OF THE CLOSED RUNWAY. THE PREMISE IS WRONG
A CIVILIAN USE OF THE MALMSTROM RUNWAY WOULD ALLOW NON-MILITARY AIRCRAFT TO OPERATE ADJACENT TO THE NUCLEAR
WARHEAD AND ROCKET FUEL ASSEMBLY AREA. OUR SECURITY WOULD NOT ALLOW SUCH OPERATIONS. IN THE EVENT THAT
MALMSTROM IS CLOSED BY FORCE REALIGNMENT, THE FUTURE USE OF MALMSTROM FACILITIES WOULD BE DETERMINED AT SUCH
TIME.

THAT OWNERS OF PRIVATE PROPERTY IN THE VICINITY OF MALMSTROM AFB ARE "ENCROACHING" UPON MAFB. READ THE DICTIONARY TO

LEARN THE MEANING OF THE WORDS "ENCROACH" AND "TRESPASS". YOUR PREMISE IS WRONG.

WE ARE ONLY USING OUR PRIVATE PROPERTY UPON WHICH WE PAY TAXES. YOUR CONTINUED USE OF THE WORD ENCROACH IS

ACCUSATORY AND OFFENSIVE EVEN AFTER YOU ARE ASKED TO STOP SUCH DEROGATORY RHETORIC. THE SYNONYM FOR

ENCROACH IS TRESPASS. IF YOU HAVE A TRESPASS GRIEVANCE, BRING IT ON OR HOLD YOUR CARELESS TALK. A JLUS STUDY IS NOT

THAT AICUZ CLEAR ZONES AND ACCIDENT POTENTIAL ZONES ARE DEED RESTRICTIONS UPON PRIVATE PROPERTY IN THE VICINITY OF MAILMSTROM AFB. YOUR PREMISE IS WRONG.

SUFFICIENT TO TAKE OUR PRIVATE PROPERTY FROM US. YOUR COMMMENTS DEFAME OUR CHARACTER, STOPI

THIS JLUS "STUDY" SHOULD CONSULT PUBLIC REAL ESTATE RECORDS AT THE COURT HOUSE TO DETERMINE IF THERE ARE ANY CLEAR ZONE OR ACCIDENT POTENTIAL ZONES RECORDED UPON OUR PROPERTY. IF NOT, CEASE AND DESIST THE CONTINUED DISINFORMATION THAT IS SHOWN THROUGHOUT THE JLUS DRAFT, AND BLITHELY SAID BY PRESENTERS AT PUBLIC HEARINGS. YOU HAVE NO RIGHT AND, IN FACT, ARE TO BE CONDEMNED FOR DEPICTING SUCH ZONES UPON OUR CLEAR TITLE PROPERTY. STOP!

THE AIR FORCE CONDUCTED A COMPATABILITY STUDY IN 2007. THIS STUDY GIVES AN EXPIRATION DATE FOR CONSIDERATION OF AIRFIELD RESTRICTIONS AS JULY 2011. THE JLUS "STUDY" KNOWS THIS, BUT FAILS TO DISCLOSE THE STATEMENT.

FOR 16 YEARS WE HAVE STRUGGLED TO PRESERVE OUR RIGHT TO DEVELOP OUR PROPERTY TO ITS HIGHEST AND BEST USE. WE HAVE HAD OUR DEVELOPMENT PLACED IN A FORMAL MORATORIUM. THERE HAVE BEEN MULTIPLE STUDIES THAT TRIED TO DEFINE A PUBLIC NECESSITY TO ACQUIRE OUR PROPERTY RIGHTS. WITHOUT THE REOPENED RUNWAY, THERE IS NO NECESSITY. NOW, JLUS PURPORTS TO ACQUIRE OUR PROPERTY BY ZONING FOR THE CLOSED AIRFIELD. THIS REQUIRES PRIVATE PROPERTY TAKING TO IMPOSE THE ACCIDENT POTENTIAL ZONES WHERE NONE EXIST. THIS THEY PROPOSE TO DO WITHOUT LANDOWNER COMPENSATION. THIS THEY WILL NOT ACCOMPLISH.

- THAT THE ENTIRE CITY OF GREAT FALLS AND BEYOND, A COMMUNITY OF MORE THAN 60,000 CITIZENS, WANT A DEED RESTRICTION AND REAL ESTATE DISCLOSURE COVENANT FOR A "MILITARY OVERLAY AIRPORT DISTRICT", "HEIGHT DISTRICT" AND "NOISE DISTRICT" RECORDED UPON THEIR PROPERTY. DOES ANYONE REALIZE THAT THE MILITARY OVERLAY IS EVERYTHING WITHIN A CIRCLE AROUND MALMSTROM AIR FORCE BASE 18 MILES IN DIAMETERIII FOR THOSE SEEKING DEVISIVE ISSUES, THIS IS PERFECT. YOUR PREMISE IS TERRIBLY WRONG!
- THAT THE ENTIRE CITY OF GREAT FALLS AND BEYOND, A COMMUNITY OF MORE THAN 60,000 PEOPLE, ARE WILLING TO ACCEPT THAT

 THE REASON FOR THE "MILITARY OVERLAY AIRPORT DISTRICT" DEED RESTRICTION IS THAT THE RUNWAY AT MAFB WILL

 BE REOPENED AFTER BEING CLOSED 16 YEARS, SO FAR, YOUR PREMISE IS WRONG. 20,000 VOTERS SAID SO IN 2008 ON

 A BALLOT ISSUE ASKING THE SAME QUESTION. YOUR PREMISE IS WRONG.
- THAT PRIVATE PROPERTY WITHIN A CLOUD ONE MILE, REPEAT ONE MILE, FROM MALMSTROM AFB FENCE LINE IS TO BE DEEMED POTENTIAL INCOMPATIBLE ZONING AROUND MAFB. THIS IS ANOTHER DEED RESTRICTION AND REAL ESTATE DISCLOSURE REQUIREMENT. THIS CALLS INTO QUESTION THE VALIDITY OF ALL THE LAND USE, DUE PROCESS DECISIONS. YOUR PREMISE IS WRONG.
- THAT DEED RESTRICTIONS AND REAL ESTATE DISCLOSURE REQUIREMENTS THAT A "MILITARY OVERLAY DISTRICT" AND "POTENTIAL INCOMPATIBLE ZONING" ENHANCE THE VALUE OF THE PRIVATE PROPERTY, YOUR PREMISE IS WRONG.
- THAT THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION DOES NOT APPLY TO THE TAKING OF PRIVATE PROPERTY BY

 THE GOVERNMENT.WITHOUT PAYING JUST COMPENSATION TO THE OWNER. THERE ARE QUESTIONS OF INVERSE

 CONDEMNATION ARISING FROM A 16 YEAR MORATORIUM. AGAIN, THERE IS NO DEMONSTRABLE PUBLIC NECESSITY.

 AGAIN, 20,000 VOTERS IN 2008 REJECTED THE PROPOSAL TO TAKE THE DEVELOPMENT RIGHTS IN ORDER TO ATTEMPT

 TO REOPEN THE CLOSED RUNWAY. WHAT RIGHT EXISTS TO DENY THOSE VOTERS THEIR VOICE? YOUR ACTIONS IN THIS

 JLUS STUDY ARE TERRIBLY WRONG!

I BELIEVE THAT EMINENT DOMAIN IS APPROPRIATE FOR TAKING OF PRIVATE PROPERTY FOR PUBLIC NECESSITY,

EMINENT DOMAIN CONDEMNED THE 48 ACRES THAT MALMSTROM BUILT NEW HOUSING UPON. THEY PAID FAIR

MARKET VALUE FOR THE TAKING. THE JLUS STUDY TRIES TO CREATE BIZARRE MEANS OF TAKING MY PRIVATE PROPERTY.

EMINENT DOMAIN WILL PREVAIL. THERE IS NO PUBLIC NECESSITY. THERE WILL BE NO TAKING.

THE JLUS EVEN ASSERTS THAT THE 48 ACRES OF PROPERTY CONDEMNED FOR MAFB HOUSING WHEN THE ADJACENT PROPERTY WAS ZONED HEAVY INDUSTRIAL HAS CREATED "INCOMPATIBLE USE". THEY HAVE NO RIGHT TO MAKE SUCH AN ACCUSATION.

THE CONTINUOUS CHARACTERIZATION OF OUR PROPERTY ADJACENT TO MALMSTROM AS SUBJECT TO AIRFIELD CRASH ZONES AND SUSPENSION OF OUR PETITIONS TO ANNEX TO THE CITY OF GREAT FALLS, WHICH IS CONTIGUOUS, HAS A CHILLING EFFECT UPON THE VALUE OF OUR PROPERTY. WE PETITION NOW FOR RELIEF.

C & W DEVELOPMENT ON 10 NOVEMBER 2005 APPLIED TO THE CITY OF GREAT FALLS FOR ANNEXATION FOR RESIDENTIAL HOMESITES. THEY WERE IN CONTRACT WITH MYSELF TO DO SO, FROM THAT DATE UNTIL NOW WE HAVE BEEN OBSTRUCTED. THERE IS A SUBSTANTIAL RECORD OF THESE OBSTRUCTIONS.

THE MORATORIUM CONTINUES TO THIS DAY BECAUSE OF THESE PREDATORY STUDIES, NOW ESPECIALLY JLUS, THAT WOULD ACQUIRE PROPERTY WITHOUT DUE PROCESS. AGAIN, A MORATORIUM THAT GRINDS ON FOR 16 YEARS IS INVERSE CONDEMNATION.

- THAT THE RECENT ELIMINATION OF 50 MISSILES FROM THE MAFB MISSION CALLS FOR THE ECONOMIC LOSS TO BE RECAPTURED BY IMPOSING AN AIRFIELD, NO-DEVELOPMENT SECTOR 6 MILES, REPEAT 6 MILES LONG BY 3000 FEET FOR THE ABANDONED RUNWAY THEREBY STERILIZING THE ORDERLY PRIVATE SECTOR GROWTH OF THE EASTERN PERIMETER OF OUR FAIR CITY, YOUR PREMISE IS UNKNOWING, UNCARING AND INSENSITIVE.
- THAT THERE IS NECESSITY FOR PUBLIC SAFETY TO BE PROTECTED FROM AIRCRAFT CRASHES, AIRCRAFT NOISE, AIRCRACT VERTICAL

 DANGERS WHEN THERE ARE NO MAFB AIRCRAFT OPERATING NOW AND HAVE NOT OPERATED FOR 18 YEARS. THE JLUS

 STUDY USURPS LOCAL GOVERNING AUTHORITY, DO THE WRITERS THEREOF SAY THAT THE CITY OF GREAT FALLS IS

 INCAPABLE OF DISCERNING PUBLIC SAFETY ISSUES ON BEHALF OF ITS CITIZENS. DOES THIS TAKE US BACKWARD IN

 INTERGOVERNMENT COOPERATION BETWEEN THE CITY AND CASCADE COUNTY? THE PREMISE IS DIVISIVE AND WRONG.
- THAT MALMSTROM HAS NO LAND THAT IS CURRENTLY USED FOR SECURITY OF SENSITIVE AREAS, FOR SEPARATION OF AREAS THAT

 HAVE UNDESIRABLE FUNCTIONAL RELATIONSHIPS AND RESERVES FOR FUTURE DEVELOPMENT. IN FACT, ONLY HALF OF

 MAFB IS DEVELOPED. THEY HAVE 3,278 ACRES AND HAVE SOME 1639 ACRES UNDEVELOPED NOW. YOUR PREMISE IS WRONG.
- THAT THIS JLUS STUDY HAS INCLUDED THE PRIVATE SECTOR COMMUNITY, BUSINESS LEADERS, STAKEHOLDERS AND THE CITIZENS

 OF GREATER GREAT FALLS AREA THAT HAVE NO IDEA WHAT IS HAPPENING TO THEIR RIGHT TO QUIET POSSESSION,

 PEACEFUL USE, HIGHEST AND BEST USE OF THEIR PROPERTY, AND ACCESS TO ORDINARY AND USUAL DUE PROCESS.

 THIS PREMISE IS WRONG.
- THAT JLUS IS NOT REGULATORY, JLUS IS THE REGULATORY PROCEDURE THAT LEADS TO A REGIME OF JOINT MILITARY AND MUNICIPAL DETERMINATIONS OF YOUR PROPERTY, YOUR LAND USE, NOW THAT YOU ARE "JOINTLY" INCLUDED IN THE "MILITARY OVERLAY AIRCRAFT DISTRICT". THIS ALLEGATION IS DISINFORMATION. THE WORD "JOINT" IN THE STUDY TITLE IS DISINFORMATION AT BEST. WHERE IS THE "JOINT LAND USE DECISION" VALUE FOR PROPERTY OWNERS? PRIVATE PROPERTY OWNERS HAVE ABSOLUTELY NO IDEA THAT THIS TAKING IS HEADED THEIR WAY. THIS PREMISE IS DELIBERATELY MISLEADING AND WRONG!
- THAT JLUS IS TO PROMOTE COMMUNITY GROWTH THAT SUPPORTS MILITARY TRAINING AND OPERATIONAL MISSIONS. THE MILITARY
 HAS BEEN TRAINING AND OPERATING MILITARY MISSIONS SINCE 1942 IN OUR COMMUNITY. THERE HAS NEVER BEEN A
 A"MILITARY OVERLAY AIRPORT DISTRICT" DURING THAT TIME. THE JLUS PREMISE IS THAT THE RUNWAY AT MAFB WILL
 ARISE FROM THE CONGRESSIONAL MANDATE OF BASE REALIGNMENT AND CLOSURE. THIS WILL, NOT HAPPEN.

THIS JLUS IS THE ANTI-THESIS TO COMMUNITY GROWTH. WE WILL HAVE TO HOLD OUR BREATH FOR HOWEVER LONG IT TAKES FOR THE COMMUNITY TO REALIZE THE 18 YEAR HISTORY IS DEFINITIVE. THE PREMISE IS WRONG.

- THAT THE CLEAR ZONE AND ACCIDENT POTENTIAL ZONES AT GREAT FALLS INTERNATIONAL AIRPORT ARE THE VERY SAME AS AT MALMSTROM'S CLOSED RUNWAY. MAFB SEEKS 15,000 FEET AT EACH END OF THE CLOSED RUNWAY. GREAT FALLS INTERNATIONAL FAA CATEGORY III RUNWAY HAS 3000 FEET AT EACH END AND IT IS WIDELY CONSIDERED THE BEST RUNWAY IN THE BUSINESS. STATEMENTS HAVE BEEN MADE THAT THE AIRFIELD RESTRICTIONS AT GREAT FALLS INTERNATIONAL AIRPORT ARE THE SAME AS THE RESTRICTIONS PROPOSED FOR MALMSTROM. THEY INTENTIONALLY MEAN TO JUSTIFY THEIR QUEST IN SO SAYING. INTENTIONAL DISINFORMATION! THE PREMISE IS WRDING.
- THAT THE CLOSED RUNWAY IS USABLE. THE AIRFIELD PAVEMENT IS DETERIORATING, THERE IS NO CONTROL TOWER AND ARE NO AVIONICS. THE BASE REALIGHNMENT AND CLOSURE REPORT STATED, "THERE IS CONCERN ABOUT OPERATING LIMITATIONS FOR THE MALMSTROM-BASED AIRCRAFT WHICH WERE UNABLE TO TAKE OFF FULLY LOADED BECAUSE OF THE 3500 FOOT ELEVATION AND 11,000 FOOT RUNWAY LENGTH." THIS FACT IS WELL KNOWN TO THE .

 AUTHORS OF THIS STUDY AND SHOULD HAVE BEEN DISCLOSED. THIS PREMISE AND ALL THESE OTHERS CAST DOUBTS UPON THE INTEGRITY OF THIS STUDY.
- THAT THE ACCUSATION OF POTENTIAL INCOMPATIBLE USE CAN BE CASUALLY USED DESCRIBING PROPERTIES THAT HAVE BEEN CLASSIFIED AND ZONED BY DUE PROCESS OF THE CITY OF GREAT FALLS. TO DECLARE THE MUNICIPAL DECISIONS OF THE HOST COMMUNITY AS INCOMPATIBLE IS UNACCEPTABLE COOPERATIVE BEHAVIOR. THE PREMISE OF THE ACCUSATION IS WRONG.
- THAT THE USE OF EIGHT HELICOPTORS AT THE MALMSTROM AIR FORCE BASE HELIPORT CONSTITUTES AN OPERATING "RUNWAY"

 ACCORDING TO A COUNTY LAWYER'S READING OF MONTANA STATE LAW. GREAT FALLS HAS HELICOPTER OPERATIONS

 BY HOMELAND SECURITY, MERCY FLIGHT, CROP SRAYERS, ETC. NONE OF WHOM ARE UNABLE TO PERFORM

 THEIR DUTIES WITH OUT RUNWAYS. THIS PREMISE IS ABSURD. THE RUNWAY HAS BEEN CLOSED BY ITS OWNER.

 THIS JLUS STUDY AND THE LAWYER SHOULD DIFFERENTIATE BETWEEN A HELIPORT AND A RUNWAY. THE BIAS OF

 THE AUTHORS OF THIS STUDY CALL INTO QUESTION THE INTEGRITY OF THE STUDY. THE PREMISE IS WRONG.

THE JLUS STUDY MAKES ASSUPTIONS:

IN ORDER TO OBTAIN THE FEDERAL FUNDS, THE OFFICE OF ECONOMIC ADJUSTMENT, DEPARTMENT OF DEFENSE, REQUIRED THE CITY OF
GREAT FALLS AND CASCADE COUNTY TO PRODUCE RESOLUTIONS AUTHORIZING PARTICIPATION IN THE JLUS WHICH THEY DID.
THE RESOLUTIONS SAY "WHEREAS AGREEMENT IN PRINCIPLE TO THE CONCEPT OF A JLUS AND PLEDGE OF THE CITY OF
GREAT FALLS SUPPORT AND PARTICIPATION IN THE PROCESS." CITY OF GREAT FALLS RESOLUTION 9799, DATED 5 NOVEMBER 2008.
THE CASCADE COUNTY RESOLUTION IS DIFFERENT STATING, "WHEREAS AGREEMENT IN PRINCIPLE TO THE CONCEPT OF A JLUS
IS A PRESEQUISITE TO THE COUNTY'S SUPPORT AND PARTICIPATION IN THE PROCESS".

THE OFFICE OF ECONOMIC ADJUSTMENT JOINT LAND USE STUDY PROGRAM GUIDANCE MANUAL, NOVEMBER 2008, AT PAGE 3 SAYS, RESULTS ARE EXPECTED FROM A JLUS PROJECT. COMMUNITIES ARE ASKED TO MAKE GOOD FAITH COMMITMENTS BEFORE THE THE PROGRAM IS FUNDED THAT STUDY RECOMMENDATIONS WILL BE ACCEPTED AND INCORPORATED INTO LOCAL PLANNING AND DECISION MAKING PROCESSES.

THE ASSUMPTION IS THAT THE CURRENT CITY OF GREAT FALLS COMMISSIONERS WILL ADOPT THIS STUDY. I DO NOT BELIEVE THAT THERE IS ANY OBLIGATION TO ADOPT ANY SUGGESTION AT ANY TIME THAT IS CONTRARY TO THE BEST INTERESTS OF THE CITIZENS OF GREAT FALLS. I DO NOT BELIEVE THAT THE GREAT FALLS COMMISSIONERS HAD ANY IDEA THAT THEY WERE OBLIGATED SOMEHOW TO ADOPT A "MILITARY OVERLAY AIRPORT DISTRICT" FOR A CLOSED RUNWAY THAT IS A DEED RESTRICTION AND DISCLOSURE OBLIGATION FOR EVERY PIECE OF PROPERTY IN GREAT FALLS. THIS ACTION WOULD INCLUDE DETERMINATIONS OF "INCOMPATIBLE ZONING" WITHIN ONE MILE OF THE MAFB FENCE.

THE ASSUMPTION IS THAT THE CITY OF GREAT FALLS COMMISSIONERS WILL ADOPT THE JLUS STUDY THAT SEEKS TO STERILIZE THE

DEVELOPMENT OF ALL PROPERTY ALONG THE EAST PERIMETER OF OUR FAIR CITY. THIS WOULD BE A STRIP OF LAND EIGHT

MILES BY 3000 FEET WIDE. THIS IS 120 MILLION SQUARE FEET OR 2,750 ACRES. NO DEVELOPMENT ZONE MEANS NO PROPERTY TAX

REVENUE. JLUS DIRECTS THAT THIS LAND BE HELD UNTIL THE RUNWAY CLOSED BY AN ACT OF CONGRESS, A STATUTE,

ARISES FROM BEING CLOSED, SOME 16 YEARS SO FAR.

I BELIEVE THAT SUCH RESOLUTIONS TO AGREE TO A STUDY THAT HAS NOT BEEN WRITTEN IS ABROGATION OF DUTY.

I BELIEVE THAT IT IS WELL INSTITUTIONALLY AGREED THAT NO GOVERNING BODY CAN OBLIGATE A SUCCEEDING GOVERNING BODY REQUIRING ACCEPTANCE THEREOF.

I BELIEVE THAT TWO MEMBERS OF THE CASCADE COUNTY COMMISSION WHO WERE NOT MEMBERS AT THE OUTSET OF THE JUS "STUDY", WILL AGREE THAT THE FINE CITIZENS OF CASCADE COUNTY DO NOT WANT IT'S TROUBLES.

I BELIEVE IT IS OUTRAGEOUS THAT THE PERPETRATORS OF THIS "STUDY" WOULD TAKE ADVANTAGE OF THIS EFFORT TO OBTAIN FEDERAL FUNDS TO STUDY OUR FUTURE ECONOMIC GROWTH IN THE WAKE OF THE LOSS OF MISSION AT MALMSTROM AFB. A FEDERAL DECISION.

THE ASSUMPTION IS THAT THE CREATION OF ACCIDENT PROTECTION ZONES AND CLEAR ZONES WILL BE ACCOMPLISHED BY IMPOSING REGULATIONS THAT ARE MANDATED BY JLUS AND ZONING. THE AIRFIELD DEED RESTRICTIONS ARE CALLED FOR BY ASSERTING PUBLIC NECESSITY. THAT IS TO MEAN THE CONTINUING PRESENCE OF MAFB, WHICH IS BY NO MEANS ASSURED.

MEANWHILE, A MORATORIUM HAS BEEN PLACED ON DEVELOPMENT OF THE PRIVATE PROPERTY FOR RESIDENTIAL AND COMMERCIAL USE. USE THAT WOULD GENERATE MORE THAN \$2 MILLION PER YEAR IN PROPERTY TAX REVENUE.

JLUS IS TO BE A "LAND USE STUDY" PAID FOR BY FEDERAL "OFFICE OF ECONOMIC ADJUSTMENT" FUNDS. THE AUTHORS OF THIS STUDY ARE SO BLINDED BY THEIR PURSUIT OF "MILITARY OVERLAY AIRPORT DISTRICT" RESTRICTIONS THAT THEY PROVIDE NO ALTERNATIVE LAND USES SUCH AS RESIDENTIAL AND COMMERCIAL. THIS IS UNFORGIVABLE AMONG OTHER EXPLANATIONS.

I DO NOT BELIEVE THAT THE COMMISSIONERS OF THE CITY OF GREAT FALLS AGREE THAT THE RUNWAY AT MALMSTROM WILL BE REOPENED. I DO NOT BELIEVE THAT THE CITY OF GREAT FALLS INTENDS TO EXTEND THE MORATORIUM ANY LONGER.

I BELIEVE THAT THE CITY OF GREAT FALLS WILL NOT ADOPT JLUS IN ANY FORM. THE DUE PROCESS CURRENTLY IN PLACE IN OUR CITY CAN COPE WITH VERTICAL OBSTRUCTIONS FOR HELICOPTER OPERATIONS AND MALMSTROM CAN CONTINUE ITS TRAINING AND OPERATIONS IN SUPPORT OF ITS MISSIONS AS THEY HAVE FOR DECADES.

I DO NOT BELIEVE THAT THE CITY WILL IMPOSE THE "MILITARY OVERLAY AIRPORT DISTRICT" WHICH JLUS CALLS FOR. THE MILITARY OVERLAY IS NOT NECESSARY AND WILL NOT BE WELL RECEIVED.

THE ASSUMPTION THAT JLUS WOULD NOT IMPOSE ONEROUS AND UNWIELDY PLANNING PROCESSES WHICH WOULD OBSTRUCT OUR
USUAL AND ORDINARY LAND USE DECISIONS THAT OUR CITY OFFICIALS HAVE MADE FOR YEARS IS WRONG. IF WE HAVE
LEARNED ANYTHING FROM OUR CURRENT SLOW ECONOMY, WE HAVE LEARNED TO BE EFFICIENT AND REASONABLE
IN ORDER TO KEEP OUR ECONOMY GROWING, JLUS PROVIDES NO BENEFIT FOR OUR COMMUNITY THAT WE CANNOT PROVIDE
FOR OURSELVES.

THERE ARE OTHER SERIOUS CONSIDERATIONS ABOUT THE JLUS STUDY:

THE JLUS "STUDY" ADVOCATES THE SEIZURE OF PRIVATE PROPERTY BY ZONING RATHER THAN THE DUE PROCESS METHOD OF EMINENT DOMAIN.

A PREVIOUS STUDY, DATED SEPTEMBER 28,2007, ENTITLED EXACTLY THE SAME AS THIS "JLUS STUDY", AT PAGE 2-14, "ZONING HAS BEEN USED EXTENSIVELY
IN THE PROTECTION OF CIVILIAN LAND OUTSIDE OF MILITARY INSTALLATIONS, AND AN OVERWHELMING LEGAL BASIS HAS BEEN BUILT FOR THIS USE OF ZONING IF
IT IS DONE PROPERLY. HOWEVER, THE CASE OF MAFB IS UNIQUE, IN THAT THE LAND BEING RESTRICTED IS NOT IMPACTED BY ANY CURRENT ACTIVE FLYING

MISSION BUT RATHER DESIRED FUTURE FLYING MISSIONS. IN THIS SITUATION, THE LEGAL BASIS FOR THE USE OF ZONING TO PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE IS NOT AS WELL-DEFINED AND MAY BE SUBJECT TO LEGAL CHALLENGES." FAIR MARKET COMPENSATION FOR LANDS TAKEN TO "PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE" WAS CERTAINLY PAID. THESE WORDS FALL FROM THE FIFTH AMENDMENT TO OUR CONSTITUTION. THERE IS NO LEGAL BASIS, NOR SHOULD THERE BE, FOR TAKING LANDS ADJACENT TO CLOSED RUNWAYS.

THIS 2007 LAND USE COMPATIBILITY STUDY WAS ADMINISTERED BY THE GREAT FALLS DEVELOPMENT AUTHORITY FOR WHOM I HAVE THE HIGHEST REGARD.

MEANWHILE, THE 62ND MONTANA STATE LEGISLATURE, MEETING THIS YEAR, PASSEO THE MILITARY AREA COMPATIBILITY ACT, SB417. SECTION 5, (2), (a), SAYS CLEARLY "MILITARY AFFECTED AREA REGULATIONS MUST BE LIMITED TO ADDRESSING CURRENT AND KNOWN FUTURE MILITARY USES."

ADVOCATES OF SB417 NOW SAY THAT IT IS NARROWLY APPLICABLE TO THE MISSILE FIELD ONLY. IN PUBLIC HEARINGS REGARDING THE MISSILE FIELD, COMPENSATION HAS BEEN OFFERED FOR LAND ACQUISITION REQUIRED BY JLUS.

I BELIEVE THE LANGUAGE IN SB417 WILL BE FOUND TO BE APPLICABLE TO CONSIDERATION OF ALL PRIVATE PROPERTY ACQUISITIONS IN THE NAME OF JLUS.
THE FRAMERS OF THE SB417 LANGUAGE SAY THAT SINCE CASCAGE COUNTY HAS COUNTY-WIDE ZONING IT CAN
TAKE MY PROPERTY DEVELOPMENT RIGHTS BY ZONING, I DO NOT BELIEVE THEM.

SB417 REQUIRES THAT "MILITARY AFFECTED AREA REGULATIONS MUST BE LIMITED TO ADDRESSING CURRENT AND KNOWN FUTURE MILITARY USES."

DOES THIS SOUND THE SAME AS "EMINENT DOMAIN REQUIRES A COURT DETERMINATION OF NECESSITY FOR PUBLIC PURPOSES", I THINK SO.

THERE IS NO PUBLIC NECESSITY TO PROTECT A CLOSED RUNWAY.

BE ADVISED, THERE ARE NO, REPEAT NO, "CURRENT AND KNOWN FUTURE MILITARY USES" FOR MY PRIVATE PROPERTY. THE LAST FLYING MISSION AT MALMSTROM AFB WAS ENDED IN 1995, 16 YEARS AGO.

IN THE 16 YEARS OF MORATORIUM, THERE HAVE BEEN MAJOR MISSION ASSIGNMENTS TO GREAT FALLS. THE MONTANA AIR NATIONAL GUARD F-15 MISSION WAS ASSIGNED TO GREAT FALLS INTERNATIONAL AIRPORT, AS WAS THE DEPARTMENT OF HOMELAND SECURITY MISSION, NOT TO MALMSTROM AFB. THE REASON IS CLEAR, GREAT FALLS INTERNATIONAL AIRPORT HAS THE BEST RUNWAY IN THE BUSINESS.

REGRETABLY, THE MONTANA AIR NATIONAL GUARD IS SCHEDULED TO LOSE ITS F - 15 FLYING MISSION. HOPEFULLY, THE PROMISE OF FOUR NEW C-27 CARGO AIRCRAFT IN THE FUTURE IS REALIZED.

IT MUST BE SAID THAT THE RECORD HAS SEVERAL INSTANCES OF STATEMENTS ATTRIBUTED TO MALMSTROM AFB THAT APPEAR TO CREATE THE NEED FOR THE U.S.A.F TO ACQUIRE MY PROPERTY. I AM CERTAIN THAT IF THIS WERE TRUE, MALMSTROM WOULD HAVE THE COURTESY TO INFORM ME THAT THEIR MISSION REQUIRED MY PROPERTY. THEY HAVE NOT DONE SO. I SAY NOW THAT THE ATTRIBUTION OF SUCH STATEMENTS IS A FABRICATION BY THOSE WHO PURPORT TO KNOW MORE ABOUT FORCE DEPLOYMENT THAN THE U.S.A.F. THERE HAS NOT BEEN ONE SHRED OF SUPPORT OR ENCOURAGEMENT BY THE AIR FORCE TO IMPOSE A RUNWAY PROTECTION ZONE FOR THE CLOSED RUNWAY.

THE MISSION OF MALMSTROM AFB HAS BEEN REDUCED RECENTLY. FIFTY OF THE 200 ACTIVE MISSILE SITES HAVE BEEN DE-ACTIVATED. THIS IS A 25 % MISSION LOSS, THE NEWLY AGREED NUCLEAR ARMS REDUCTION FROM 1600 LAUNCH VEHICLES TO A RANGE OF 500 TO 1100 MAY WELL CAUSE ADDITIONAL MISSION LOSS. THE MONTANA AIR NATIONAL GUARD F -15 MISSION AT GREAT FALLS INTERNATIONAL AIRPORT IS TO BE TAKEN AWAY.

U.S.A.F. HAS DIRECTED ITS INSTALLATIONS TO REDUCE THEIR FACILITY SQUARE FOOTAGE BY 20 %. .

THE INTEGRATED NATURAL RESOURCES MANAGEMENT PLAN FOR MALMSTROM AIR FORCE BASE DATED JULY 2011 SAYS AT PAGE 4 THAT

"APPROXIMATELY 50 % OF THE PROPERTY AT MALMSTROM AFB HAS BEEN DEVELOPED IN SUPPORT OF THE MILITARY MISSION. THE REMAINING
50 PERCENT IS USED AS A BUFFER FOR SECURITY OF SENSITIVE AREAS, SEPARATION BETWEEN AREAS THAT HAVE UNDESIRABLE FUNCTIONAL
RELATIONSHIPS, AND RESERVES FOR FUTURE DEVELOPMENT". MALMSTROM HAS 3278 ACRES OR OVER FIVE SQUARE MILES.

THIS IS THE PLACE THAT I NEED TO SAY THAT I SERVED ON ACTIVE DUTY IN THE UNITED STATES AIR FORCE AS A CIVIL ENGINEER FOR 3 1/2 YEARS.

I AM COVERED IN AIR FORCE PATRIOTIC BLUE PAINT. I AM NOT ONE BIT HAPPY ABOUT OUR MILITARY REDUCTIONS ESPECIALLY THE LATEST MISSILE DIS-ARMAMENT.

DO NOT MIS-UNDERSTAND, I SERVED SO THAT MY PRIVATE PROPERTY IS SAFE FROM GOVERNMENT TAKING.

IN THE ALTERNATIVE THAT THE EAST END OF GREAT FALLS IS NOT STERILIZED BY A DEVELOPMENTALLY DEAD ZONE 8 MILES NORTH/SOUTH BY A MINIMUM OF 3000 FEET WIDE AT THE NARROWEST PLACES, CONSIDER:

FROM THE GREAT FALLS PLANNING DEPARTMENT REVIEW OF MY PROPERTY, DATED FEBRUARY 26, 2008:

CONCLUSION:

FOR SEVERAL REASONS, THE SOUTHEAST AREA OF GREAT FALLS HAS BEEN SLOW TO DEVELOP OVER THE YEARS. A PRIMARY REASON HAS BEEN THE FINANCIAL CONSTRAINTS AND INABILITY TO EXTEND ADEQUATE INFRASTRUCTURE TO THE AREA SOUTH OF 10TH AVE. SOUTH. THE APPLICANT ASSOCIATED WITH THE DEVELOPMENT OF THE EAST GREAT FALLS RETAIL CENTER HAS THE CAPABILITY TO DO SO BASED UPON THE SIZE AND NATURE OF THE PROPOSED DEVELOPMENT PROJECT. THE DEVELOPMENT COULD SERVE AS A CATALYST AND INCENTIVE TO GENERATE OTHER SUBSTANTIAL COMMERCIAL AND RESIDENTIAL DEVELOPMENT IN SOUTHEAST GREAT FALLS. BASED ON STAFFS CONSIDERATION OF THE GREAT FALLS GROWTH POLICY, STATE STATUTES, CITY CODE GOVERNING SUBDIVISIONS, ZONING AND CONDITIONAL USE PERMITS, AS WELL AS LOCAL AND STATE REVIEW OFFICIAL COMMENTS, ETC. THE PROPOSED DEVELOPMENT WILL SUBSTANTIALLY MEET ALL APPLICABLE REQUIREMENTS,

YOU HAVE NO IDEA ABOUT THE PREPARATION NECESSARY TO RECEIVE THIS CONCLUSION IN THEIR PLANNING REVIEW REPORT.

THE CASCADE COUNTY COMMISSION APPEARED AT THE HEARING AND CONDEMNED THE FINDING, THE MORATORIUM THEN BECAME
DE-FACTO CONDEMNATION.

WHAT WOULD THE SOUTHEAST DEVELOPMENT HAVE PROVIDED?

\$1,000,000. + OF PROPERTY TAXES PER YEAR THEREAFTER FROM THE RETAIL CENTER.
\$1,000,000. + OF PROPERTY TAXES PER YEAR THEREAFTER FOR RESIDENTIAL HOME VALUES.

HUNDREDS OFJOBS, SAY 500 TO 800 JOBS, TO BUILD AND STAFF THE RETAIL AND RESIDENTIAL IMPROVEMENTS.

PROPERTY DEVELOPMENT TO ITS HIGHEST AND BEST USE CREATES PROPERTY TAX REVENUE AND JOBS,

LOCAL GOVERNMENTS REQUIRE PROPERTY TAX REVENUE TO PROVIDE FOR PUBLIC SERVICE.

GREAT FALLS HAS HAD SCHOOL DISTRICT LEVIES FAIL AND PUBLIC SERVICE LEVIES VOTED DOWN.

IF ONE-FOURTH OF THE PERIMETER OF OUR CITY IS STERILIZED TO DEVELOPMENT, THERE WILL BE NO PROPERTY TAX.

FROM THE EAST END OF GREAT FALLS, MALMSTROM AFB DOES NOT PAY PROPERTY TAX.

THERE ARE THOSE WHO SAY THAT MALMSTROM IS THE ECONOMIC ENGINE THAT DRIVES GREAT FALLS. THAT IS SIMPLISTIC.
THERE ARE MANY ENGINES OF ECONOMIC GROWTH IN CASCADE COUNTY:

GREAT FALLS DEVELOPMENT AUTHORITY SAYS THAT THERE ARE SIX INDUSTRY SECTORS THAT DRIVE GREAT FALLS GROWTH:

AGRI-PROCESSING, ENERGY DEVELOPMENT, TOURISM, TRADE AREA LEAKAGE, INSTITUTIONAL AND ENTREPRENEURSHIP.

BENEFIS HOSPITAL COMMISSIONED THE UNIVERSITY OF MONTANA, BUREAU OF BUSINESS AND ECONOMIC RESEARCH TO LEAD AN ECONOMIC IMPACT STUDY. THE RESULTS WERE:

HEALTH CARE IS RESPONSIBLE FOR 16 % OF NON-FARM EARNINGS IN CASCADE COUNTY.

THE MILITARY ACCOUNTS FOR 14 % OF NON-FARM INCOME IN CASCADE COUNTY.

THESE RESULTS WERE PUBLISHED IN THE GREAT FALLS TRIBUNE. THE AUTHORS OF THE JLUS "STUDY" ARE WELL AWARE OF THESE FINDINGS AND OMITTED THEM IN THEIR QUEST TO ASSERT THEIR PREDETERMINED FOCUS.

MY OPINION IS THAT THE PRIVATE SECTOR DRIVES THE GROWTH OF GREAT FALLS.. I ALSO BELIEVE THAT AGRICULTURE IS MONTANA'S LARGEST INDUSTRY SECTOR AND THAT THE GOLDEN TRIANGLE WITH GREAT FALLS AT THE BASE IS AN ENGINE... A GREAT BIG ENGINE!

JOBS AND INDUSTRY ECONOMIC HEALTH ARE AMERICA'S AND MONTANA'S AND GREAT FALLS' LARGEST PROBLEMS. IN THIS CONTEXT,
THE EAST END RETAIL AND RESIDENTIAL MORATORIUM IS UNTHINKABLE! MALMSTROM AFB CANNOT AND WILL NOT PROVIDE THE JOBS AND
ECONOMIC VIBRANCY THAT WE DESPARATELY NEED. WE NEED BOTH THE PRIVATE SECTOR STIMULUS AND MALMSTROM AFB. THEY ARE NOT

MUTUALLY EXCLUSIVE. WE KNOW THIS TO BE TRUE, END THE MORATORIUM AND STOP THIS EFFORT TO TAKE AWAY OUR EAST END ECONOMIC ENGINE.

THIS JLUS PURPORTS TO HAVE "STUDIED" THE ECONOMY SURROUNDING MALMSTROM AFB. DO NOT BELIEVE A WORD OF IT. CASCADE COUNTY IS THE ADMINISTRATOR OF THE JLUS STUDY AND HAS DIRECTED ITS CONCLUSION. THERE HAS BEEN NO STUDY, NO INVOLVEMENT OF FORWARD LOOKING PEOPLE AND THE FORMAT HAS CONVENIENTLY OVERLOOKED SALIENT INFORMATION SUCH AS YOU HAVE HEARD HERE. I REQUESTED THE CASCADE COUNTY PLANNING DIVISION TO BE A MEMBER OF THE STUDY COMMITTEE. I WAS TOLD THE LANDOWNER APPOINTEE WAS FILLED AND I WAS NOT ON ANY COMMITTEE. THE JLUS MANUAL TELLS HOW STAKEHOLDERS WILL BE INVOLVED. I WAS INTENTIONALLY NOT TO SERVE.

THE FINEST, THE PUREST, EXAMPLE OF OMISSION BY DESIGN IS THE WHITEWASH OF THE ENVIRONMENTAL STEWARDSHIP RECORD OF MALMSTROM AFB.

THE UNCONTROLLED STORM WATER RUN-OFF IS DISCHARGED FROM STORM WATER COLLECTION ON MAFB ONTO ITS NEIGHBORS TO THE NORTH. EROSIONS ARE 50 FEET DEEP, SEDIMENTATION IN THE MISSOURI RIVER IS DEVASTATING, EASEMENTS HAVE BEEN DISREGARDED.

NOT ONE MEMBER OF THE JLUS STUDY GROUP HAS VISITED WHITMORE RAVINE TO WITNESS THE DEVASTATION. YOUR JLUS DRAFT STUDY SAYS AT PAGE 3-67, "MALMSTROM AFB CONTRIBUTES STORM WATER PRIMARILY INTO THE EAST FORK OF WHITMORE RAVINE," THE CURSORY EFFORT TO MINIMIZE THE ENORMITY OF THE ENVIRONMENTAL DEGRADATION IS EVIDENT IN THIS WRONG CITATION OF THE DAMAGE, STILL AT PAGE 3-67, THE STATEMENT IS MADE THAT "THE EAST FORK HAS BEEN DETERMINED TO NOW BE STABLE", AS THOUGH MALMSTROM HAD ANYTHING TO DD WITH THAT. THE EAST FORK HAS ALWAYS BEEN STABLE, THE MIDDLE AND WEST FORKS OF WHITMORE RAVINE ARE FAR BEYOND "AREAS OF CONCERN" AS THE STUDY PUTS IT.

THE INTEGRATED NATURAL RESOURCES MANAGEMENT PLAN FOR MALMSTROM AFB, DATED JULY 2011. HAS THE FOLLOWING INFORMATION. NONE OF WHICH IS CONTAINED IN THIS SO-CALLED "JLUS STUDY".

PAGE 48. MALMSTROM AFB HAS PARTNERED WITH THE CASCADE COUNTY CONSERVATION DISTRICT, AFFECTED LANDOWNERS, AND OTHER STAKEHOLDERS TO DEVELOP A SOLUTION TO REDUCE OFF BASE EROSION CONSISTING OF PROJECTS SUCH AS A PIPELINE TO CONVEY STORM WATER AROUND THE ERODED PORTIONS OF THE WEST AND MIDDLE FORKS OF WHITMORE RAVINE.

EXCEPT THAT THERE IS NO SOLUTION AFTER DECADES OF MANUEVERING AROUND THE NEED TO STOP THE EROSION AND REPAIR THE DAMAGE. A MEMO FROM THE CIVIL ENGINEER OFFICE AT MALMSTROM AFB ON 31 AUGUST 2011 SAYS "THERE ARE A FEW TOUGH QUESTIONS THAT NEED TO BE ANSWERED BEFORE THE OFF-BASE PROJECT CAN ADVANCE. AN ORGANIZATION TO ADVOCATE FOR THE PROJECT MUST BE IDENTIFIED. A PIPELINE OWNER MUST BE IDENTIFIED, AND THE OPERATION AND MAINTENANCE OF THE PIPELINE NEEDS TO BE ADDRESSED. WHITMORE RAVINE EROSION CONTROL IS AT SQUARE ONE: I HAVE HOPED THAT MALMSTROM AFB WOULD BECOME THE "ORGANIZATION TO ADVOCATE FOR THE PROJECT, TO BE THE PIPELINE OWNER, OPERATOR AND MAINTAINER", THE AUTHORS OF THE JLUS STUDY KNOW, OR SHOULD HAVE DETERMINED THIS INFORMATION AND INCLUDED IT HEREIN.

THIS JLUS STUDY MAKES NO MENTION OF THE CIVIL ENGINEER OFFICE EVALUATIONS,

NO DETERMINATION OF A RECOMMENDATION TO SOLVE THIS DECADES OLD NASTY DILEMMA.

HEAR THIS, WHITMORE RAVINE IS ENCROACHMENT UPON ITS NEIGHBORS PROPERTY AND THE ULTIMATE DESTRUCTION THEREOF.

WHITMORE RAVINE IS TRESPASS OUT OF EASEMENTS WHICH ARE OVERLOADED AND WITHOUT THE MAINTENANCE REQUIRED BY THE EASEMENTS.

MALMSTROM'S OBLIGATIONS REQUIRED BY THEIR EASEMENTS ARE "A 50 FOOT WIDE EASEMENT FROM JOHN R. LOY AND CAROLYN B. LOY

TO THE U.S.A. FOR THE PERPETUAL AND ASSIGNABLE EASEMENT TO CONSTRUCT, MAINTAIN, REPAIR, OPERATE, PATROL, AND REPLACE A

DRAINAGE DITCH";

PAGE 48. THE RESOURCES MANAGEMENT PLAN SAYS THAT THE CASCADE COUNTY CONSERVATION DISTRICT PROPOSES TO CONSTRUCT A PIPELINE TO CONVEY STORM WATER AROUND THE ERODED PORTIONS OF THE WEST AND MIDDLE FORKS OF WHITMORE RAVINE. THIS IS NOT TRUE, THE CCCD DID NOT HAVE THE MEANS TO DO THIS WORK AND WITHDREW.

PAGE 48. DEGRADATION OF THE WHITMORE RAVINE IS A HIGH PRIORITY ISSUE.

PAGE 67. CURRENTLY, STORM WATER FROM MALMSTROM AFB DISCHARGES INTO THE WHITMORE RAVINE VIA A SERIES OF SIX STORM WATER OUTFALLS (PIPES) ON THE NORTH SIDE OF THE BASE. THE WHITMORE RAVINE THEN DISCHARGES INTO SEGMENT 13 OF THE MISSOURI RIVER. THIS SEGMENT OF THE RIVER IS LISTED AS AN IMPAIRED WATER BODY AND HAS BEEN SINCE 2004. TOTAL SUSPENDED SOLIDS WERE IDENTIFIED AS ONE CAUSE OF THIS IMPAIRMENT, ALONG WITH OTHER POLLUTANTS INCLUDING METALS AND POLYCHLORINATED BIPHENYLS.

PAGE 67. MALMSTROM'S GOALS AND OBJECTIVES ARE TO PREVENT SOIL EROSION, IMPLEMENT EROSION CONTROL MEASURES REQUIRED BY LAW AND RECOMMENDED BY WATERSHED ASSESSMENT.

THE FY 2011 WORK PLAN SETS THE PRIORITY LEVEL AT CRITICAL AND SHOWS PHASED APPROACH IN CONJUNCTION WITH OFFSITE PROJECTS COORDINATED BY CASCADE COUNTY CONSERVATION DISTRICT. THERE ARE NO SUCH ARRANGEMENTS.

THE WORK PLAN SAYS" IMPLEMENT EROSION CONTROL MEASURES REQUIRED BY LAW" AND RECOMMENDED BY THE WATERSHED ASSESSMENT.

AS TO THE MATTER OF "IMPLEMENT EROSION CONTROL MEASURES REQUIRED BY LAW, BE ADVISED:

"SWEEPING CLEAN WATER SETTLEMENT APPROVED FOR MONTANA."

"A FEDERAL JUDGE HAS APPROVED A FAR-REACHING SETTLEMENT GIVING MONTANA UNTIL 2014 TO CLEAN UP POLLUTED STREAMS AND LAKES IN 28 WATERSHEDS ACROSS THE STATE, CAPPING NEARLY 15 YEARS OF LEGAL BATTLES..."

"THE DEAL COVERS MORE THAN 17,000 MILES OF RIVERS AND STREAMS AND 461,000 SURFACE ACRES OF LAKES, REQUIRING THEM TO MEET WATER-QUALITY STANDARDS SET FOR USES SUCH AS DRINKING, SWIMMING AND FISHING, UNDER THE FEDERAL CLEAN WATER ACT."

"THE SETTLEMENT, SIGNED BY U.S. DISTRICT COURT JUDGE DONALD MOLLOY ON SEPTEMBER 27, 2011, ADDRESSES HUNDREDS OF TYPES OF POLLUTANTS, INCLUDING HAZARDOUS CHEMICALS LIKE POLYCHLORINATED BIPHENYLS, OR PCBs, AND HEAVY METALS SUCH AS MERCURY."

"THE DEAL STEMS FROM A 1997 LAWSUIT THAT SAID THE ENVIRONMENTAL PROTECTION AGENCY AND THE MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY HAD VIOLATED THE CLEAN WATER ACT BY PERMITTING CONTAMINANTS TO BE RELEASED INTO THE STATE'S ALREADY DEGRADED WATER."

"RICHARD OPPER, HEAD OF THE MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, CREDITED THE 14 YEAR OLD LAWSUIT BROUGHT BY ENVIRONMENTALISTS WITH MAKING THE STATE "GET ITS ACT TOGETHER."

REFERING FROM ABOVE TO PAGE 67 OF THE MALMSTROM INTEGRATED NATURAL RESOURCES MANAGEMENT PLAN, IT IS VERY CLEAR THE WHITMORE RAVINE DEVASTATION IS THE POSTER CHILD FOR THE COURT ORDER. THE MISSOURI RIVER IN SECTION 13 HAS BEEN DEEMED A "DEAD FISHERY" BY MONTANA FISH, WILDLIFE AND PARKS.

THE JLUS DRAFT STUDY BY THE DATE 5 OCTOBER 2011 OF ITS ROLL-OUT, SHOULD HAVE KNOWN ABOUT THE WHITMORE RAVINE INSTANCE, "STUDIES" FIND THIS INFORMATION, OR IN THE ALTERNATIVE ASK LANDOWNERS ABOUT LAND USE COMPATIBILITY.

1 RECEIVED NO INQUIRY OR COURTESY OF ANY KIND FROM THE AUTHORS OF THE JLUS "STUDY".

CERTIFIED LETTERS WITH RETURN RECEIPT REQUESTED WERE SENT TO:

JOE BRIGGS, CHAIRMAN

CASCADE COUNTY COMMISSION

CASCADE COUNTY COURTHOUSE ANNEX

GREAT FALLS, MT 59401

AND

PATRICK J. O'BRIEN, DIRECTOR

OFFICE OF ECONOMIC ADJUSTMENT

400 ARMY NAVY DRIVE, SUITE 200

ARLINGTON, VA 22202-4704

I REQUEST THAT THESE TWO LETTERS BE INCLUDED IN THE FINAL REPORT AS WELL AS THIS LETTER IN THEIR ENTIRETIES.

SINCEREI

DANA HUESTIS, PRESIDENT KYSO CORPORATION



December 5, 2011

Attn. Susan Conell
Cascade County Planning Department
121 4th St. N, STE 2H/I
Great Falls, MT 59401

RE: Draft Malmstrom Land Use Study

The Montana Building Industry Association (MBIA) represents over 1500 small businesses engaged in home building and light commercial construction. We have eight chapters in Montana, including the Home Builders Association of Great Falls (HBAGF). We appreciate the opportunity to comment on the draft Malmstrom Joint Land Use Study (JLUS).

Upon reviewing the draft JLUS, we are disappointed by the negative tenor the drafters took regarding the current land use regulations in place in Cascade County. One of the great advantages of Montana land use laws is that they are flexible enough to be adapted to local needs. Unfortunately the JLUS does not focus on the positive laws, relationships or communications that currently exist.

For several decades, Malmstrom Airforce Base and the surrounding community have enjoyed a strong relationship. In the past, when misunderstandings or minor issues have developed they have been remedied justly through existing regulations. Unfortunately, the draft JLUS is advocating for a significant departure from the course of action that has served all parties well. It appears that the JLUS drafters are promoting dozens of regulatory changes that will severely restrict even the most modest developments in areas adjacent to population centers around Malmstrom.

To be clear, we believe that current Montana land use laws, as well as the City and County ordinances, provide adequate and reasonable means for dealing with potential development conflicts surrounding Malmstrom Airforce Base. Adopting the draft JLUS will begin the process of eliminating the vitally important flexibility that currently provides the opportunity to find workable solutions on a site specific basis.

Our recommendation is that the JLUS be redrafted to focus on the flexibility of Montana land use laws and the positive, cooperative relationship between Malmstrom and the residents in the surrounding community.

Building Codes (WE OPPOSE RECOMMENDATIONS: LU-B4, LU-B5)

The JLUS advocates for starting a building code inspection process throughout Cascade County, though the drafters do not specify how this far reaching policy will reduce future conflicts.

All homes built in Montana must comply with the state building code. Currently Cascade County does not inspect residences to ensure compliance. Developing a building code inspection process within Cascade County will take multiple years and could cost County tax payers in excess of \$100,000 before the program becomes self sufficient. Additionally, the building inspection process will increase the cost of new homes by \$5,000 - \$8,000.

Growth Policy (WE OPPOSE RECOMMENDATIONS: LU-A1, SA-A4)

The growth policy is a non-regulatory guiding document, with which local governments consult when constructing local land use regulations (zoning and subdivision regulations).

The City of Great Falls and Cascade County have reasonable and flexible growth policies that protect a broad range of community interests, including those of Malmstrom Airforce Base. The JLUS should celebrate this document as a point of local strength.

The growth policy does not need to be amended. Additionally, amending it will not further the cause of bringing future missions to Malmstrom, as it is not a regulatory document.

Zoning (WE OPPOSE RECOMMENDATIONS: FI-B2, LU-A2, LU-A3, LU-A4, LU-A5, LU-A6, LU-A7, LU-A8, LU-A9, LU-B6, V0-A6, SA-A4)

The JLUS advocates for wide ranging, significant additions to the zoning maps of Cascade County and the City of Great Falls. These changes are unneeded and overly burdensome on surrounding landowners.

Stated simply, future conflicts can be properly addressed through subdivision regulations and the site specific development process.

The zoning changes mentioned in the JLUS will cause a great deal of consternation amongst area land owners, will lead to emotionally charged public hearings and could cause a significant rift between Malmstrom and the neighboring community.

Subdivision regulations (WE OPPOSE RECOMMENDATIONS: LU-A10, LU-B1, LU-B2, LU-B3, LU-D3)

The State of Montana provides a great deal of authority to local governments in the development of local subdivision standards. We believe the current development process provides an adequate method of protecting human safety as well as the means for the local governing body to address any future development conflicts between Malmstrom and surrounding landowners. This authority is granted through MCA 76-3-504 (emphasis added):

MCA 76-3-504. (1)The subdivision regulations adopted under this chapter must, at a minimum:

(e) provide for the identification of areas that, because of natural or humancaused hazards are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in the 50-60-901,

(i) provide for the review of subdivision application by affected public utilities and those agencies of the local, state and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

As referenced above, Montana law empowers local governments to review subdivisions and the impact of development, on a site by site basis. This review is extremely comprehensive and provides adequate protection of Malmstrom Airforce Base.

It is our sincere desire to see a new mission at Malmstorm. Future conflicts between the base and the citizens of Great Falls will serve no one. We believe that Cascade County and the City of Great Falls already have all of the tools needed to resolve future conflicts between landowners and Malmstrom. The passage of the JLUS, as drafted, is unneeded and unproductive. We strongly encourage the committee to redraft the document to highlight the strengths and flexibility of Montana's land use laws.

Respectfully submitted,

Dustin Stewart

Executive Director

Montana Building Industry Assocation



MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Public Meeting #3A Tuesday, October 4, 2011 6 – 7:30 PM

121 8th Ave South Lewistown, Fergus County

MEETING MINUTES

Parties Present:

Tucker Hughes, Judith Basin County Joe Briggs, Cascade County Russ Bentley, Gaelectric Carl Platten, Bureau of Land Management Susan Conell, Cascade County Katie Hervey

Issues Covered:

This meeting was one of three meetings that make up the third part of the outreach session for the Malmstrom Joint Land Use Study (JLUS).

The meeting began with a presentation given by the Matrix Design Group Team (Matrix Team), the consulting firm hired to facilitate the development of the Malmstrom JLUS. The presentation provided an overview of the JLUS Program, which is a Department of Defense, Office of Economic Adjustment funded effort to help communities achieve compatible development around military facilities. The main purpose of the presentation was to provide the public with an overview of the draft JLUS report, which was recently released for public review. The presentation discussed the layout of the document and explained the contents and purpose of the four chapters. The presentation also provided an overview of the recommended strategies for addressing the issues that are contained in the report. The strategies discussed at this meeting were specific to Missile Complex Study Area, which encompasses Cascade County, Chouteau County, Fergus County, Judith Basin County, Lewis and Clark County, Teton County and Wheatland County. After the presentation concluded the Matrix Team opened up the meeting for discussion. The following issues were discussed:

 The recently passed legislation, SB417, authorizes missile counties to establish Missile Affected Areas (MAAs) in the 1,200 foot area around LFs for the purpose of regulating land uses.



- This new legislation provides land use authorities that are similar to those held by Airports. Counties have an opportunity to manage development through tax abatement and impact fees.
- The military should help determine which sites should be designated MAAs.

Matrix Team concluded the meeting by mentioning that the public was being granted a 30-day period to review the draft JLUS report. Final comments are due no later than November 4, 2011.

MAFE Public MHG 3 Lewiston Sign In 2011 10.04 Joint Land Use Study Malmstrom AFB

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MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Public Meeting #3B Wednesday, October 5, 2011 6 – 7:30 PM

Cascade County Commission Chambers 325 2nd Ave N., Great Falls

MEETING MINUTES

Parties Present:

Rick Higgins, Property Owner Roger Doney, Property Owner Don Huestis, Property Owner Chris Huestis, Property Owner Joe Aline, Property Owner Gene Shumaker, Property Owner Kim Falcon, Property Owner Lisa King, Property Owner Russell Olson, Property Owner LT. COL Richard Liebert, Montana Strategic Biofuels Project Jane Weber, Cascade County Bob Corwin, C&W Development James Ployhar, Property Owner Maddie Krezowski, Exergy Katie Hanning, Home Builders Association Johnny Walker, Property Owner Cyndi Baker, Property Owner Joe Bauman, Property Owner Mike Haynes, City of Great Falls Dustin Stewart, Montana Building Association Bill Salina, Cascade County Ted Mitchell, Mitchell Development Melissa Anderson, Mitchell Development

Issues Covered:

This meeting was one of three meetings that made up the third part of the outreach session for the Malmstrom Joint Land Use Study (JLUS).



The meeting began with a presentation given by the Matrix Design Group Team (Matrix Team), the consulting firm hired to facilitate the development of the Malmstrom JLUS. The presentation provided an overview of the JLUS Program, which is a Department of Defense (DoD), Office of Economic Adjustment funded effort to help communities achieve compatible development around military facilities. The main purpose of the presentation was to provide the public with an overview of the draft JLUS report, which was recently released for public review. The presentation discussed the layout of the document and explained the contents and purpose of the four chapters. The presentation also provided an overview of the strategies for addressing the issues that are contained in the report. The strategies discussed at this meeting were specific to the Malmstrom AFB Study Area, which encompasses Cascade County and the City of Great Falls. After the presentation was concluded the Matrix Team opened up the meeting for discussion. The following issues were discussed:

- Q: Why was this study done? A: The JLUS was undertaken as an insurance policy to
 protect the military mission and the economic contributions of the military presence. The
 Malmstrom mission has changed over the past twenty years and as the host
 communities, Great Falls and Cascade County need to be responsive to these changes.
- Commissioner Briggs stated that the previous loss of 50 missiles was a multi-million dollar loss to the surrounding communities. The Air Force spends a great deal in the region that is taken for granted. For example the Air Force has spent approximately \$28 million in road upgrades throughout the Missile Complex since 2006. The concern is that the Air Force will relocate operations if facilities are being encroached upon by civilian development or uses. Malmstrom AFB is competing with two other missile bases to remain open. These other bases have not initiated JLUS.
- Within the Missile Complex easements around the military facilities exist, but awareness about the terms of these easements varies. Maintaining the security of the missiles is critical. The intent is not to change existing development but to to execute smart planning for future development.
- The Malmstrom JLUS looked at both current and possible future missions at Malmstrom and the sources of economic development in the region and attempted to strike a balance between the two.
- Q: Who is Matrix Design Group? Who paid for the JLUS? A: Matrix Design Group is the
 consulting firm hired by the Cascade County to facilitate the development of the JLUS.
 The JLUS is a DoD- funded study.
- Q: Is Part 77 of the FAA Regulations still relevatn even if the Malmstrom AFB runway is decommissioned?
- Q: What are the other two missile bases? A: Cheyenne AFB and FE Warren AFB.
- The SALT Treaty is requiring that the US eliminate 50 or more Intercontinental Ballistic missiles (ICBM) and deconstruct them abroad. The operational side of the Air Force wants to take 17 from each base in order to preserve the force structure, but Department of Defense policy makers have advised otherwise.
- Q: What role did the Policy and Technical Committees have in the development of the issues and strategies? A: They provided input. R: I called 6 members of the committee and they said that they did not provide input.



- Q; Are you going to limit land uses within the Agricultural zone to agricultural uses only?
 It is not advisable to take an eminent domain approach. A: No. The option for a typical rezone will exist.
- Q: Whose responsibility is it to make sure structures are not developed in the
 easements? A: The Air Force took the approach that landowners would honor the terms
 of the easements. There are 25,000 miles of easements so it is a challenge for the Air
 Force to ensure compliance with each easement.
- Q: What if I want to develop on my land? A: The JLUS provides guidance on how to make a smart decision. In the past there was no process for evaluating whether a certain type of development was wise or not.
- The JLUS will get more push back when it enters the regulatory /policy phase. To avoid that the JLUS process has focused on flexibility e.g. when to grant conditional approvals.
- Q: Has the Army National Guard been brought into this process? A: Yes, dialogue is ongoing.
- Q: Why should I have a 3,900 foot buffer on my land when the existing buffer has been working up to now? A: During the Technical Committee meeting yesterday the idea of creating a system of mutual agreement for the expansion of the buffer was discussed.
 R: At the A7 missile site gradual development is occurring and there are plans for this to continue. Expansion of the buffer to 3,900 feet would affect these plans.
- Political leadership has the opportunity to look backwards and forwards.
- Q: What was the purpose of the 2008 referendum? A: The goal was to see if citizens would support a \$5,000 to \$7,000/acre payment for land within the Accident Potential Zone. Voters opposed the idea 2 to 1.
- This project is taking away individual rights. A: That is not part of the JLUS. The goal is to provide better information.
- A landowner with property in Malmstrom's planning district (3,000 feet outside of the fence). The drawing in the plan shows 3,000 feet outside of the fence as an aviation easement.
- The JLUS is restricting growth over the east end of the County.
- Where are the minutes of the initial public meeting? Encroachment needs to be addressed. The issue is zoning vs. eminent domain. Zoning has been used to protect the Malmstrom, but the legal basis is not well-defined.
- Per SB417 the designation of Military Affected Areas must be limited to the existing mission.
 - The last flying mission at Malmstrom was in 1995.
- Land is in moratorium until the Air Installation Compatible Use Zone (AICUZ) study is updated. Some people are concerned about the AICUZ recommendations. The AICUZ has not been a regulatory document. The AICUZ expired in July 2011.
- The JLUS is an act of encroachment; it has had a chilling effect on my property.
- The JLUS recommendation to establish a Military Overlay Airport District would require disclosure.



- History of Malmstrom 20,000 voters voted to reject a bill that would entail acquisition of property in the Accident Potential Zones.
- Per the Natural Resource Management Plan, 50% of the property has been developed, the remainder is a buffer and reserved for future development.
- Great Falls conducted a review of my land in February 2006. In the staff report it stated
 that were several reasons to slow development such as a lack of funding for
 infrastructure expansion.
- The local economy is made up of six industries:
 - o Agri-processing
 - o Tourism
 - Wind Energy
 - o Retail
 - XXXX can't read see pg. 9 of the notes.
 - Military
 - o Health Care

The private sector drives the economy.

- The AICUZ is still in place as a regulatory document aviation easement.
- Q: Is the end goal for the city and county to adopt this report? A: No, it is a study.
- Q: Why has this study focused so much on a runway that may not be active? What is
 the reason for the runway being addressed in the study? A: The Secretary of the Air
 Force asked the Office of Economic Adjustment (OEA), who provided the financial
 support, to include the runway in the study because it may be used as an asset in the
 future. Analysis of the runway was included in the scope of work that OEA approved.
- Q: I have never been informed about public or technical meetings for this study. Can you extend the process so more people can have input? A: There was a press release in last week's paper and letters were sent to each missile easement owners.
- I was told by Cascade County that the draft was not available.
- The Matrix Team will compile all of the public comments and provide them in a document.
- Comment sheets are available on the website and should be sent to Susan Conell from Cascade County.
- Auctioned land and the lawyers requested that the language be put in the auction and lawyers saw that as a cloud that it would deter.
- Every LF has a 200 foot concrete pillar which extends out from the missile.
- Would the TV stations announce public meetings?
- Announcement of meetings are on the city and county websites but it on the Planning Department page not on the home page.
- The Matrix Team brings personal bias to this study e.g. Matrix bring lessons-learned, best practices, which are biased.
- Q: Does it come down to the three commissioners to make a decision on the JLUS?
- When the runway was decommissioned it was forbidden for the Air Force to consider Malmstrom for a future flying mission. Now there is instrument landing system at the base or ground control tower.



- All counties have been engaged throughout the process and they have no intention of implementing zoning as part of a strategy.
- Wind developers go to county 50% for 5-year Tax Abatement.
- The SALT treaty requires compliance within 7 years. Treaty was signed about a year ago.
- Do you plan on sending an announcement to all affected landowners? Cascade County
 will look at and identify affected property owners. Property tax announcements, utility
 bills, specific mailer with the County letterhead, post cards can be used for bulk mailers.
- The JLUS is a good document the issue of the public is property rights. The public fears
 that the document will be adopted in whole or in part. Cascade County wants a
 mechanism in place to be able to purchase any taking.
- Before the County adopts the document as guidelines, we need to give the public an
 effective amount of time to review the document. ARE THESE NOTES PART OF THE
 PUBLIC MEETING?
- This was a nice informational meeting and provided a good process for gathering information. The fear and concern is that JLUS will become the mindset of the local County government and the basis for restricting residential and commercial development.
- Please do not retard wind energy development. Clean energy development is essential.

Matrix Design Group concluded the meeting by mentioning that the public was being granted a 30-day review period of the draft JLUS report. Final comments are due no later than November 4, 2011.

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Joint Land Use Study Malmstrom AFB

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Malmstrom AFB Joint Land Use Study

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MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Public Meeting #3C Thursday, October 6, 2011 6 – 7:30 PM

17 Main St. Choteau, Teton County

MEETING MINUTES

Parties Present:

Dale Bauman Melody Martinson, Choteau Acantha Dick Stenson

Issues Covered:

This meeting was one of three meetings that make up the third part of the outreach session for the Malmstrom Joint Land Use Study (JLUS).

The meeting began with a presentation given by the Matrix Design Group Team (Matrix Team), the consulting firm hired to facilitate the development of the Malmstrom JLUS. The presentation provided an overview of the JLUS Program, which is a Department of Defense, Office of Economic Adjustment funded effort to help communities achieve compatible development around military facilities. The main purpose of the presentation was to provide the public with an overview of the draft JLUS report, which was recently released for public review. The presentation discussed the layout of the document and explained the contents and purpose of the four chapters. The presentation also provided an overview of the recommended strategies for addressing the issues that are contained in the report. The strategies discussed at this meeting were specific to Missile Complex Study Area, which encompasses Cascade County, Chouteau County, Fergus County, Judith Basin County, Lewis and Clark County, Teton County and Wheatland County. After the presentation concluded the Matrix Team opened up the meeting for discussion. The following issues were discussed:

- Q: What type of restrictions will be part of the "Red, Yellow and Green" Map? A: No restrictions, it is just guidance intended to provide better information to decision makers.
- Q: Why is a 3,900 foot buffer around each Launch Facility and Missile Alert Facility mentioned in the report? A: The 1,200 foot safety arc was designed for explosives. The extra area is needed to train in landing troops and taking over missile silos from hostile fire or take over. The Air Force hopes to have a bigger area in which to train, if possible.



Use of land would not happen without compensation. The need for land should be evaluated on a case by case basis by the Air Force.

- Q: Landowners are not concerned about compensation; the concern is if there is existing development within the 3,900 foot area and there is a desire to develop more. A: These types of land use would not be restricted because the JLUS is not regulatory.
- The Air Force has committed to maintaining a balance between training needs and property rights.
- Malmstrom needs a point of contact and website for community inquiries.
- Air Force personnel tend to forget to shut gates and cattle get out. Need to develop a strategy to address this.
- Make sure to collaborate on potential issues early on so that there is no concern about a land taking.
- Q: Will people have access to a hard copy of the final document? A: It might be possible to have hard copies available at local libraries.
- Six of the seven counties have no desire to establish zoning regulation.
- Cascade County has been able to use its zoning regulations to require wind developers
 to coordinate with Malmstrom. For example, one wind developer consulted with MAFB
 on a wind energy project and MAFB advised a minor change to the site plan atno extra
 cost.

Matrix Design Group concluded the meeting by mentioning that the public was being granted an additional 30 days to review the draft JLUS report. Final comments are due no later than December 5, 2011.

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Malmstrom AFB Joint Land Use Study

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Malmstrom Air Force Base Joint Land Use Study

JLUS STRATEGY TOOLBOX

What are JLUS Strategies?

JLUS strategies constitute a variety of actions local governments, military installations, agencies, and other stakeholders can take to promote compatible land use planning. When these strategies are implemented, existing and potential compatibility issues arising from the civilian / military interface can be removed or significantly reduced. As such, the recommended strategies function as the heart of the JLUS document and are the culmination of the planning process.

The strategy types presented within this brochure constitute a "toolbox" of the possible actions that can be taken to address the range of compatibility issues identified during the planning process. This document is intended to start the discussion to determine specific strategies that are useful for the study area. For each strategy type, a brief overview is provided to assist in communicating a general understanding of its intent. It will be up to each individual stakeholder to determine the best assortment of tools / strategies that are appropriate within their communities.

It is important to note that once the JLUS process is completed, the final document is not an adopted plan, but rather a recommended set of strategies which all, or in part, should be implemented by the plan participants for the JLUS to be successful.

The Strategy "Toolbox"

- **♦** Acquisition
- **♦** Air Installation Compatible Use Zone (AICUZ)
- **♦** Airport Master Plan / Airspace Study
- **♦** Avigation Easement
- ♦ Base Planning
- ♦ Bird / Wildlife Aircraft Strike Hazard (BASH)
- **♦** Building Codes / Construction Standards
- **♦** Capital Improvement Program (CIP)
- **♦** Cluster Development
- **♦** Code Enforcement
- **♦** Communication and Coordination
- ♦ Comprehensive / General / Master Plans

- **♦** Deed Restrictions / Covenants
- ♦ Habitat Conservation Tools
- **♦** Hazard Mitigation Plans
- **♦** Legislative Tools
- Memorandum of Understanding (MOU)
- ♦ Military Influence Areas (MIA)
- National Environmental Policy Act (NEPA)
- Partnership with Non-Governmental Organizations
- ♦ Real Estate Disclosures
- **♦** Zoning Ordinance / Subdivision Regulations

Acquisition

As a land use planning tool, property rights can be acquired through donation, easement, or the outright purchase of property for public purposes. The purpose of acquisition tools is to eliminate land use incompatibilities through market transactions and the local development process. Acquisition tools are particularly effective because they advance the complementary goals of shifting future growth away from military installations and preserving community assets such as agriculture, open space, rural character, or sensitive natural habitats.

Air Installation Compatible Use Zone (AICUZ)

The Air Installation Compatible Use Zone (AICUZ) program is an Air Force planning program developed in response to incompatible urban development and land use conflicts around military airfields. The AICUZ program seeks to provide information on compatibility, develop a cooperative relationship between communities and military bases, and provide land use compatibility guidelines that protect public health and safety while maintaining military readiness.

Airport Master Plan / Airspace Study



An Airport Master Plan provides the guidelines for future long-term airport development which will satisfy aviation demand in a financially feasible manner, while at the same time resolving the aviation,

environmental, and socioeconomic issues existing in a community. The Airport Master Plan process is guided by the FAA and ultimately results in projections of future growth and an Airport Layout Plan (ALP). All development at federally obligated airports must be in accordance with and FAA-approved ALP.

For compatibility planning, airspace planning provides a coordinated approach to the designation of special use airspace.

Avigation Easement

An easement is a non-possessory right to use land owned by another party. An avigation easement is an easement that grants the holder one or more of the following rights: the right of flight; the right to cause noise, dust, or other impacts related to aircraft flight; the right to restrict or prohibit certain lights, electromagnetic signals, and birdattracting land uses; the right to unobstructed airspace over the property above a specified height; and, the right of ingress or egress upon the land to exercise those rights.

Base Planning

Similar to a local jurisdiction, military installations maintain a long-range plan, such as general plans and master plans. The installation's general/master plan is the primary document that is used to guide the development and use of physical assets and the protection of resources. The general / master plan is used to ensure an installation maintains the land use areas and infrastructure needed to respond to its development program and future mission potential.

Bird / Wildlife Aircraft Strike Hazard (BASH)



The Bird / Wildlife Aircraft Strike Hazard (BASH) program is aimed at reducing the potential for collisions between military aircraft and birds and other wildlife. Knowledge of where birds travel,

nest, and feed helps the military avoid problem areas, and therefore saves lives and avoids the destruction of valuable aircraft. The program also looks to work with local stakeholders to avoid actions that would increase BASH incidents. The BASH program considers not only birds / wildlife within the confines of the airfield, but also in neighboring areas.

Building Codes / Construction Standards

Building codes and construction standards are ordinances and regulations controlling the design, construction processes, materials, alteration, and occupancy of any structure to safeguard human safety and welfare. They include both technical and functional standards and generally address structural safety, fire safety, health requirements, and accessibility. Noise attenuation requirements, for example, are typically covered under this category.

Capital Improvement Program (CIP)

A Capital Improvement Program (CIP) is a detailed planning document used to plan and direct a jurisdiction's or agency's investment in public facilities, including infrastructure. The CIP lays out the public facilities plans and programs of the jurisdiction or agency and provides details on expenditures

that can be incorporated into the jurisdiction's or agency's annual budgeting process. Most CIPs cover multiple years in order to plan for major expenditures and projects.

Code Enforcement

The purpose of a code enforcement program is to promote and maintain a safe and desirable living and working environment. Related to land use compatibility, code enforcement is a tool used by a community to ensure adherence to its rules and regulations.

Communication and Coordination

In any planning effort, plans can only move toward successful implementation if frequent ongoing communication is maintained among local jurisdictions, the military, state and federal agencies, Native American tribal groups, landowners, and the public. Enhanced communication and coordination is an integral component to successful compatibility planning in support of the military's existing and potential future mission(s).

Comprehensive / General / Master Plans

These are long-range plans that outline goals and policies to guide the physical development in a county or city. Comprehensive plans are designed to serve as the jurisdiction's blueprint for future decisions concerning physical development, including land use, infrastructure, public services, and resource conservation. Most comprehensive plans consist of written text discussing the community's goals, objectives, policies, and programs for the distribution of land use as well as one or more diagrams illustrating the general location of existing and future land uses, roadways, public facilities and parks and open space.

Deed Restrictions / Covenants

Deed restrictions, or covenants, are written agreements that restrict or limit some of the rights associated with property ownership. These restrictions are recorded with the deed for the property and are attached to the property when it is sold to a new owner (i.e., they remain in effect). Deed restrictions are private agreements or contracts executed between a motivated buyer and a willing seller.

Habitat Conservation Tools

The primary objective of habitat conservation tools is the conservation and protection of sensitive natural habitats and the species that occupy them. An example of this is the federal Endangered Species Act (ESA) which allows for the development of Habitat Conservation Plans (HCPs).

An HCP identifies and provides for the regional or areawide protection of plants, animals, and their habitats, while allowing compatible and appropriate economic activity. The primary objective of the HCP program is to conserve natural communities at the ecosystem level while accommodating compatible land use.

Hazard Mitigation Plans

Hazard mitigation is defined as any sustained, cost effective action taken to reduce or eliminate long-term risk to people, property, and the environment from natural and man-made hazards and their effects. Hazard Mitigation Plans include actions that have a positive impact over an extended period of time. This distinguishes them from emergency planning or emergency services, which are associated with preparedness for immediate response to, and short-term recovery from, a specific event. Hazard mitigation actions, which can be used to eliminate or minimize the risk to life and property, fall into three categories: (1) those that keep the hazard away from people, property, and structures; (2) those that keep people, property, and structures away from the hazard; and (3) those that reduce the impact of the hazard.

Legislative Tools



State and local legislation can have a significant impact on compatibility planning by allowing, restricting, or limiting the tools available to local jurisdictions to control land use planning

activities. Legislative Tools are designed to encourage changes in state and local laws and ordinances to support the objectives of the recommended JLUS strategies.

Memorandum of Understanding (MOU)

A Memorandum of Understanding (MOU) is a contract between two or more government entities. The governing bodies of the participating public agencies must take appropriate legal actions, often adoption of an ordinance or resolution, before such agreements become effective. The purpose of an MOU is to establish a formal framework for coordination and cooperation. These agreements may also assign roles and responsibilities for all of the agreement's signatories. These agreements are also known as Joint Powers Agreements or Interlocal Agreements.

Military Influence Areas (MIA)



A Military Influence Area (MIA) is a formally designated geographic planning area where military operations may impact local communities, and conversely, where local activities may affect the military's ability to carry out

its mission. An MIA is designated to promote an orderly transition between community and military land uses to ensure that they are compatible.

National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) is the federal law that established a national policy for the environment and requires federal agencies: (1) to become aware of the environmental ramifications of their proposed actions, (2) to fully disclose to the public proposed federal actions and provide a mechanism for public input to federal decision making, and (3) to prepare environmental impact statements for every major action that would significantly affect the quality of the human environment.

Partnership with Non-Governmental Organizations

Non-Governmental Organizations (NGOs) are recognized for their role in developing innovative initiatives and programs to address a variety of issues. Local governments and military installations can develop relationships with NGOs to provide additional resources to achieve joint goals. For example, under these partnerships, agreements can be reached to acquire real estate or property rights in the vicinity of military installations to protect military training, testing, operations, and readiness, while at the same time, achieving the objectives of the NGO, such as habitat protection.

Real Estate Disclosures

Prior to the transfer of real property to a new owner, real estate disclosure requires sellers and their agents to disclose certain specified facts related to the condition of the property. These facts could include



noise or other proximity impacts associated with property near a military installation or operations area. The purpose of real estate disclosure is to protect the seller, buyer, and sales agent from potential litigation resulting from specified existing and / or anticipated conditions (i.e., hazard areas, existing easements). Disclosures provide a practical and cost effective land use compatibility tool as buyers are informed of the possible affects (noise, light, etc.) of military operations prior to purchase.

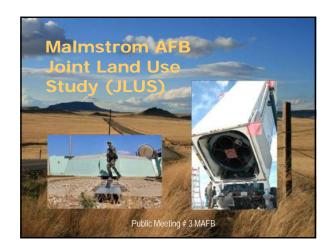
Zoning Ordinance / Subdivision Regulations

Zoning is the division of a jurisdiction into districts (zones) within which permissible uses are prescribed and restrictions on building height, bulk, layout, and other requirements are defined. The primary purpose of zoning is to protect the public health, safety, and welfare of the community by separating incompatible land uses and establishing design requirements. Effective zoning can also provide opportunities for the implementation of regulations supporting land use compatibility near military installations. For instance, zoning can address:

- Nuisances such as noise, vibration and air emissions,
- ♦ Land use type and intensity (including clustering),
- ♦ Light and glare,
- ♦ Frequency spectrum and impedance,
- ♦ Height / vertical obstructions,
- ♦ Development incentives, and
- ♦ Development processes and procedures.

Land cannot be divided without local government approval. Subdivisions set forth the minimum requirements deemed necessary to protect the health, safety, and welfare of the public. Subdivision review allows local governments the opportunity to ensure that a new subdivision is properly served by needed services and a public or private agency is responsible for maintaining the subdivision improvements. These regulations can be effectively used for compatibility planning. For example, subdivision regulations might limit the division of land in areas with compatibility issues or locations without necessary services. Subdivision regulations can also be used to require open-space set-asides.



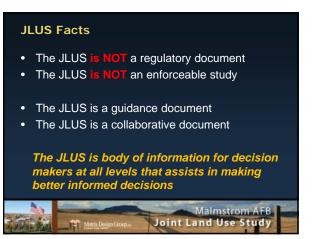








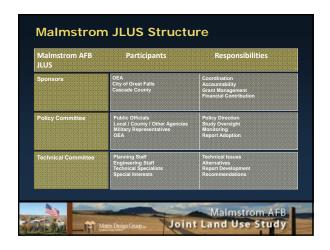






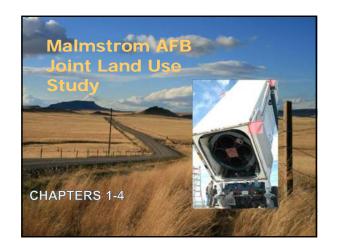


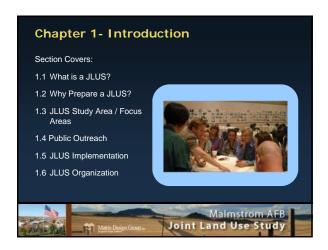


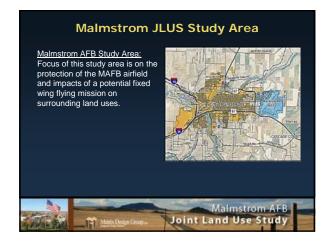


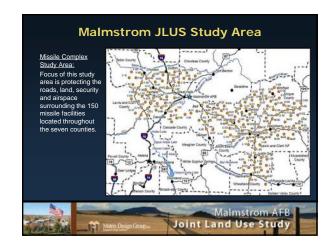


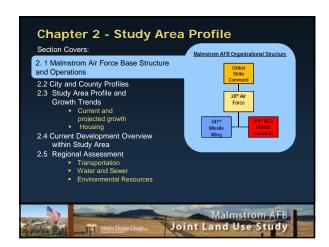


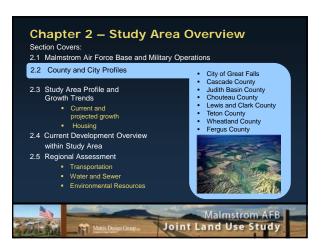


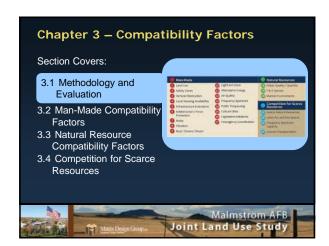


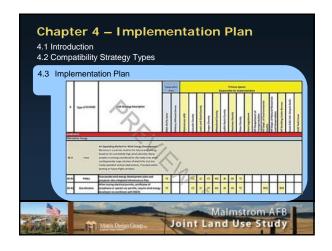






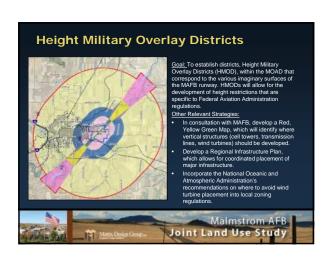


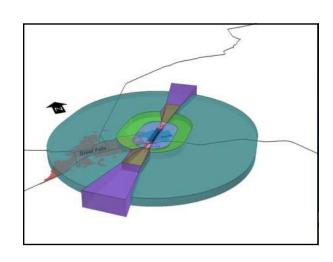














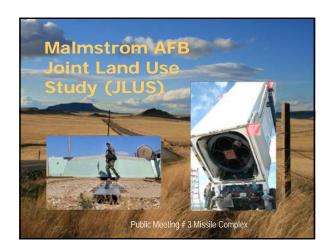












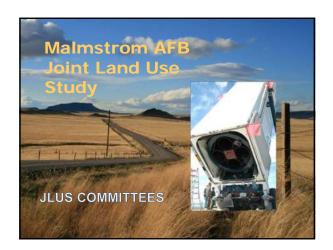


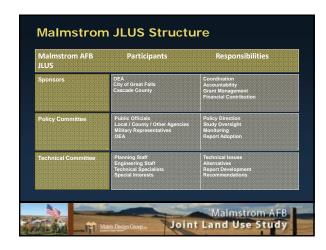








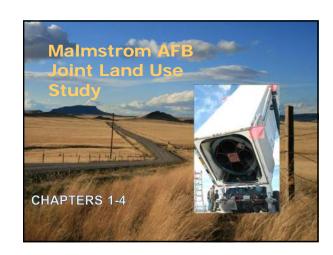


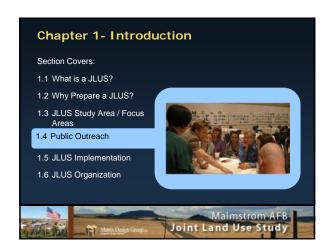


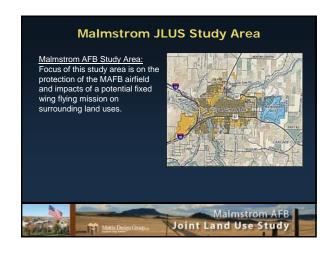


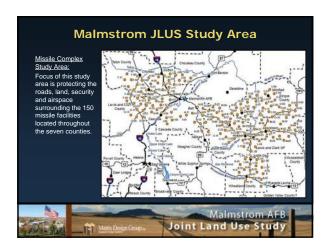


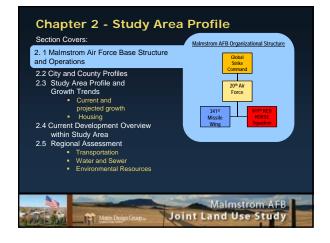


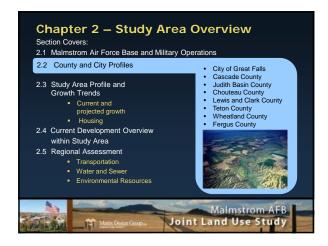


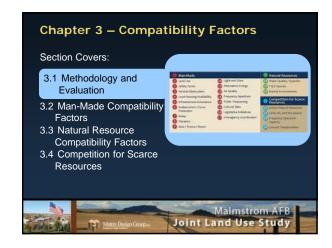


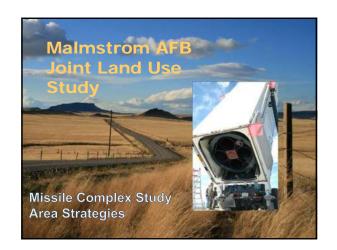


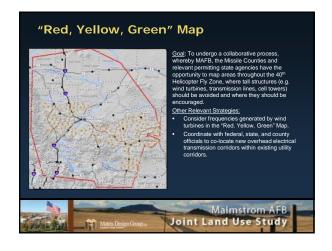






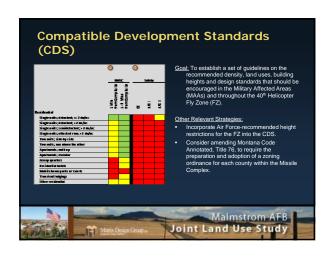
























MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Public Meeting #2A Tuesday, February 22, 2010 6 – 7:30 PM

Sherriff Complex Lewistown, Fergus County

MEETING MINUTES

Parties Present:

Sandy Youngbauer, Fergus County Commissioner Arn Hanson, Landowner Cory Merrill, Fergus County Landowner Joe Gramek, Landowner

Issues Covered:

The meeting began with a presentation given by Mike Hrapla, from Matrix Design Group, the consulting firm hired to facilitate the development of the Malmstrom Joint Land Use Study (JLUS). This meeting was one of three meetings that made up the second part of the outreach session for the Malmstrom JLUS. The presentation provided an overview of the JLUS Program, which is a Department of Defense, Office of Economic Adjustment funded effort to help communities achieve compatible development around military facilities. Hrapla went on to explain the nature of the military mission at Malmstrom AFB, which is primarily dedicated to maintaining and supporting the Intercontinental Ballistic Missiles that are stored throughout a seven-county area in Northern Montana. Hrapla explained that the JLUS will have two main study areas, the area immediately surrounding Malmstrom AFB (the City of Great Falls and Cascade County) and the entire Missile Complex, which encompasses Cascade County, Fergus County, Wheatland County, Judith Basin County, Teton County, Chouteau County and Lewis and Clark County. Hrapla outlined the Malmstrom JLUS process to date which included collecting data, interviewing local experts and representatives, receiving input from the project communities, developing a list of issues and organizing them according to the 24 compatibility factors (see Compatibility Factors Brochure). Hrapla went on to explain the different issues that the JLUS effort has identified to date. A list of these issues follows:

- Vertical Obstructions
 - Unmonitored development of structures such as wind turbines, transmission lines and cell towers within fly zone and within the 1200 ft. LF buffer.
 - Density of such development is an important factor e.g. 20 versus 100 wind turbines.



- Development of transmission lines could invite future wind energy development in inopportune locations.
- Minimal Local Land Use Regulation
 - Montana State Law does not require counties to instate zoning regulations which
 means the counties that do not elect to have zoning regulations have minimal
 capacity to oversee how and where development happens.
 - State of Montana oversees building code requirements and enforcement, not local jurisdictions, which limits their ability to impose height restrictions and design standards.
 - Under the Major Facilities Siting Act large scale energy development projects are permitted by the State not local governments.
- Military easements
 - Each of the LFs, MAFs and all of the HICS has easements associated with them.
 - Easements are agreements between landowners and military stating that certain types of development will not be allowed due to safety concerns.
 - Terms of easements are vague and do not prohibit uses that present a threat to military operations such as structures exceeding 50 feet.
 - It is difficult to enforce terms of all easements. There are many landowners and local jurisdictions have limited authority.
 - Whereabouts of easements is not widely known to utility companies etc...
- Frequency Interference
 - Wind turbines present potential for frequency interference with helicopter navigation instruments.
- Light and Glare
 - 40th HS flies 24/7 and uses night vision goggles, certain outdoor lights limit visibility.
 - LED and outdoor light sources that are not designed with helicopter visibility in mind can create safety risks.
 - In the absence of Dark Sky Ordinances there is no way for local governments to regulate outdoor lighting.
- Ground Transportation Capacity
 - Military convoys share roadways with civilian traffic, do not stop and drive at high speeds.
 - Montana Department of Transportation does not routinely factor in military use of roadways when issuing permits.
 - Military funds maintenance of Defense Access Roads (DAR) and is entitled to use of roadways.
 - Large commercial trucks can interfere with military convoys.

After the presentation concluded the meeting was opened up for discussion. The majority of the meeting attendees happened to be landowners with land adjacent to one of the Launch Facilities/ Missile Alert Facilities. The focus of the meeting was on issues relating to their shared use of the land. Some specific issues that surfaced were:

Air Force Personnel leaving gates open allowing cattle to wander into busy roadways



- Difficulty contacting the right person at Malmstrom AFB to issue a complaint.
- Air Force personnel shooting rabbits and antelope.
- Garbage and littering outside of the fence.
- Poor weed management on right of way roads.
- Lack of awareness about the terms of easement agreements because property had been inherited.



MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Public Meeting #2B Wednesday, February 23, 2010 6 – 7:30 PM

County Courthouse Fort Benton, Chouteau County

MEETING MINUTES

Parties Present:

Russ Albers, Chouteau County Rd. District #2
Stan Klimas, Chouteau County Commissioner
Alice Honrud, Chouteau County Planning Department
Susan Conell, Cascade County Planning Department
Anita McNamara, Cascade County Planning Department
Mark Donohue, Cascade County Planning Department
Rick Solander, Department of Defense, Office of Economic Adjustment

Issues Covered:

The meeting began with a presentation given by Mike Hrapla, from Matrix Design Group, the consulting firm hired to facilitate the development of the Malmstrom Joint Land Use Study (JLUS). This meeting was second of three meetings that made up the second part of the outreach session for the Malmstrom JLUS. The presentation provided an overview of the JLUS Program, which is a Department of Defense, Office of Economic Adjustment funded effort to help communities achieve compatible development around military facilities. Hrapla went on to explain the nature of the military mission at Malmstrom AFB, which is primarily dedicated to maintaining and supporting the Intercontinental Ballistic Missiles that are stored throughout a seven-county area in Northern Montana. Hrapla explained that the JLUS will have two main study areas, the area immediately surrounding Malmstrom AFB (the City of Great Falls and Cascade County) and the entire Missile Complex, which encompasses Cascade County, Fergus County, Wheatland County, Judith Basin County, Teton County, Chouteau County and Lewis and Clark County. Hrapla outlined the Malmstrom JLUS process to date which included collecting data, interviewing local experts and representatives, receiving input from the project communities, developing a list of issues and organizing them according to the 24 compatibility factors (see Compatibility Factors Brochure). Hrapla went on to explain the different issues that the JLUS effort has identified to date. A list of these issues follows:

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 - Unmonitored development of structures such as wind turbines, transmission lines and cell towers within fly zone and within the 1200 ft. LF buffer.



- Density of such development is an important factor e.g. 20 versus 100 wind turbines.
- Development of transmission lines could invite future wind energy development in inopportune locations.
- Minimal Local Land Use Regulation
 - Montana State Law does not require counties to instate zoning regulations which
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 - Montana Department of Transportation does not routinely factor in military use of roadways when issuing permits.
 - Military funds maintenance of Defense Access Roads (DAR) and is entitled to use of roadways.
 - Large commercial trucks can interfere with military convoys.

Upon conclusion of the presentation the meeting was opened up for discussion. Some of the issues that surfaced during the discussion included:

Within the next 2-6 year there may be wind energy development in Fort Benton.



- Fort Benton requires development permits for any development. The Chouteau County Growth Policy was just adopted.



MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Public Meeting #2C Thursday, February 25, 2010 6 – 7:30 PM

Simms High School Simms, Montana

MEETING MINUTES

Parties Present:

No members of the public were in attendance

Susan Conell, Cascade County Planning Department Anita McNamara, Cascade County Planning Department Mark Donohue, Cascade County Planning Department Rick Solander, Department of Defense, Office of Economic Adjustment

Issues Covered:

The meeting began with a presentation given by Mike Hrapla, from Matrix Design Group, the consulting firm hired to facilitate the development of the Malmstrom Joint Land Use Study (JLUS). This meeting was third of three meetings that made up the second part of the outreach session for the Malmstrom JLUS. The presentation provided an overview of the JLUS Program, which is a Department of Defense, Office of Economic Adjustment funded effort to help communities achieve compatible development around military facilities. Hrapla went on to explain the nature of the military mission at Malmstrom AFB, which is primarily dedicated to maintaining and supporting the Intercontinental Ballistic Missiles that are stored throughout a seven-county area in Northern Montana. Hrapla explained that the JLUS will have two main study areas, the area immediately surrounding Malmstrom AFB (the City of Great Falls and Cascade County) and the entire Missile Complex, which encompasses Cascade County, Fergus County, Wheatland County, Judith Basin County, Teton County, Chouteau County and Lewis and Clark County. Hrapla outlined the Malmstrom JLUS process to date which included collecting data, interviewing local experts and representatives, receiving input from the project communities, developing a list of issues and organizing them according to the 24 compatibility factors (see Compatibility Factors Brochure). Hrapla went on to explain the different issues that the JLUS effort has identified to date. A list of these issues follows:

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 - Density of such development is an important factor e.g. 20 versus 100 wind turbines.



- Development of transmission lines could invite future wind energy development in inopportune locations.
- Minimal Local Land Use Regulation
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 - Montana Department of Transportation does not routinely factor in military use of roadways when issuing permits.
 - Military funds maintenance of Defense Access Roads (DAR) and is entitled to use of roadways.
 - Large commercial trucks can interfere with military convoys.

Upon conclusion of the presentation the meeting was ended.



GROUP: Public my #2 Lewistown

Date:

Sign-In Sheet



22 Fort Benton

GROUP: Date:

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Malmstrom AFB oint Land Use Study

ans Public Mas #

GROUP: Date:

Sign-In Sheet

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Peter SOLMNDER	L'Hian Sunuli! Joe Briji Jane Weber Anita MaNamara	NAME
County Planning	CARCADE CUS CASCADE CUS CASCADE CO.	AGENCY
5063-454 5069-124	54	PHONE
richard, solonder & uso, who, m. 1		EMAIL
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Malmstrom Air Force Base Joint Land Use Study

COMPATIBILITY FACTORS



What Are Compatibility Issues?

Compatibility, in relationship to military readiness, can be defined as the balance or compromise between community needs and interests and those of the military. The goal of compatibility planning is to promote an environment where both entities can coexist successfully.

A number of factors influence whether community and military plans, programs, and activities are compatible or in conflict. To assist in identifying potential compatibility issues, a comprehensive list of 24 Compatibility Factors (categories) is used to characterize local issues. These Compatibility Factors have been divided into three broad categories: man-made, natural resource, and competition for scarce resources (see text box at the bottom of this page). While it is uncommon to find issues under each of the 24 Compatibility Factors, using this list helps to ensure a comprehensive look at potential issues. A short description of each Compatibility Factor is provided on the following pages.

In addition to describing existing and potential compatibility issues, this list can also be used in the future to assist in reviewing plans, programs, or development proposals and related applications.

Standard Compatibility Factors

Man-Made **Natural Resources** 10 Light and Glare 1 Land Use 18 Water Quality / Quantity 2 Safety Zones **Alternative Energy** 19 T & E Species 3 Vertical Obstruction Air Quality 20 Marine Environments Frequency Spectrum Local Housing Availability Competition for **Public Trespassing** Infrastructure Extensions **Scarce Resources Cultural Sites** Antiterrorism / Force 21) Scarce Natural Resources Protection Legislative Initiatives 22) Land, Air, and Sea Spaces Noise **Interagency Coordination** 23) Frequency Spectrum Vibration Capacity Dust / Smoke / Steam 24) Ground Transportation

1 Land Use



The basis of land use planning relates to the government's role in protecting the public's health, safety, and welfare. County and local jurisdictions' growth

policy/comprehensive plans and zoning ordinances can be the most effective tools for avoiding, or resolving, land use compatibility issues. These tools ensure the separation of land uses that differ significantly in character. Land use separation also applies to properties where the use of one property may impact the use of another. For instance, industrial uses are often separated from residential uses to avoid impacts related to noise, odors, lighting, etc.

2 Safety Zones

Safety zones are areas in which development should be more restrictive, in terms of use and concentrations of people, due to the higher risks to public safety. Issues to consider include aircraft accident potential zones, weapons firing range safety zones, and explosive safety zones.

3 Vertical Obstructions



Vertical obstructions are created by buildings, trees, structures, or other features that may encroach into the navigable airspace used for military operations (aircraft approach, transitional, inner horizontal, outer horizontal, and conical areas, as well as

military training routes). These can present a safety hazard to both the public and military personnel and potentially impact military readiness.

4 Local Housing Availability

Local housing availability addresses the supply and demand for housing in the region, the competition for housing that may result from changes in the number of military personnel, and the supply of military family housing provided by the installation.

5 Infrastructure Extensions

This factor covers the extension or provision of infrastructure (roads, sewer, water, etc.). Infrastructure plays an interesting role in compatibility. On the positive side, infrastructure can enhance the operations of the installation by providing needed services, such as sanitary sewer treatment capacity and transportation systems. However, infrastructure can also be an encroachment issue. If enhanced or expanded, infrastructure could encourage growth into areas near the installation that might not be compatible with current or future missions.

6 Anti-Terrorism / Force Protection

Anti-Terrorism / Force Protection (AT / FP) relates to the safety of personnel, facilities, and information on an installation from outside threats. Methods to protect the installation and its supportive facilities can impact off-installation uses.

7 Noise

From a technical perspective, sound is mechanical energy transmitted by pressure waves in a compressible medium such as air. More simply stated, sound is what we hear. As sounds reach unwanted levels, this is referred to as noise.

The central issue of noise is the impact, or perceived impact, on people, animals (wild and domestic), and general land use compatibility. Exposure to high noise levels can have a significant impact on human activity, health, and safety.



8 Vibration

Vibration is an oscillation or motion that alternates in opposite directions and may occur as a result of an impact, explosion, noise, mechanical operation, or other change in the environment. Vibration may be caused by military and/or civilian activities.

9 Dust / Smoke / Steam

Dust is the common term used to describe the suspension of particulate matter in the air. Dust (and smoke) can be created by fire (controlled burns, agricultural burning), ground disturbance (agricultural operations, grading), industrial activities, or other similar processes. Dust, smoke and steam becomes a compatibility issue if sufficient in quantity to impact flight operations (such as reduced visibility or equipment damage).

10 Light and Glare



This factor refers to manmade lighting (street lights, airfield lighting, building lights) and glare (direct or reflected light that disrupts normal vision).

Light sources from commercial, industrial, and residential uses at night can cause excessive glare

and illumination, which can impact the use of military night vision devices and air operations. Conversely, high intensity light sources generated from a military area (such as ramp lighting) may have a negative impact on the adjacent community.

11 Alternative Energy Development



Alternative energy refers to sources, such as solar, wind, or biofuels, that can be used to replace or supplement traditional fossil-fuel sources, such as coal, oil, and natural gas. Alternative energy development could pose compatibility issues related to glare (solar

energy) or vertical obstruction (wind generation). Other alternative energy developments, such as biofuels, do not typically pose compatibility issues, and would be analyzed for compatibility on a case-by-case basis.

12 Air Quality

Air quality is defined by a number of components that are regulated at the federal and state level. For compatibility, the primary concerns are pollutants that limit visibility, such as particulates, ozone, and potential non-attainment of air quality standards that may limit future changes in operations at the installation.

Frequency Spectrum Impedance and Interference

Frequency spectrum impedance and interference refers to the interruption of electronic signals by a structure (impedance) or the inability to distribute / receive a particular frequency because of similar frequency competition (interference).

14 Public Trespassing

This factor addresses public trespassing, either purposeful or unintentional, onto a military installation. The potential for trespassing increases when public use areas are in close proximity to the installation.



15 Cultural Resources

Cultural resources may prevent development, apply development constraints, or require special access by Native American tribes, other groups, or governmental regulatory authorities.

16 Legislative Initiatives

Legislative initiatives are federal, state, or local laws and regulations that may have a direct or indirect effect on a military installation to conduct its current or future mission. They can also constrain development potential in areas surrounding the installation.

17 Interagency Coordination

Interagency coordination relates to the level of interaction on compatibility issues among military installations, jurisdictions, land and resource management agencies, and conservation authorities.

18) Water Quality / Quantity

Water quality / quantity concerns include the assurance that adequate water supplies of good quality are available for use by the installation and surrounding communities as the area develops.

19 Threatened and Endangered Species

A threatened species is one that may become extinct if measures are not taken to protect it. An endangered species is one that has a very small population and is at greater risk of becoming extinct. Many species that become extinct are never included on the endangered species list. The presence of threatened and endangered species may require special development considerations and should be included early in planning processes to ensure compatibility with military missions and economic development.

20) Marine Environments

Regulatory or permit requirements protecting marine and ocean resources can cumulatively affect the military's ability to conduct operations, training exercises, or testing in a water-based environment.

21) Scarce Natural Resources

Pressure to gain access to valuable natural resources (such as oil, natural gas, minerals, and water resources) located on military installations, within military training areas, or on public lands historically used for military operations can impact land utilization and military operations.

22 Land, Air, and Sea Spaces

The military manages or uses land, air, and sea space to accomplish testing, training, and operational missions. These resources must be available and of a sufficient size, cohesiveness, and quality to accommodate effective training and testing.



Military and civilian air operations can compete for limited air space, especially when the airfields are in close proximity to

each other. Use of this shared resource can impact future growth in operations for all users.

23) Frequency Spectrum Capacity

In a defined area, the frequency spectrum is limited. Frequency spectrum capacity is critical for maintaining existing and future missions and communications on installations. This is also addressed from the standpoint of consumer electronics.

24) Ground Transportation Capacity

Ground Transportation Capacity relates to the ability of existing freeways, highways, arterials, and other local roads to provide adequate mobility and access between military installations and their surrounding communities.









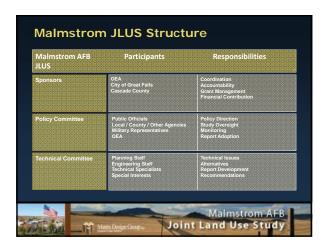




Address the full range of compatibility issues of concern to local jurisdictions, agencies, the public, and the military, such as: Compatible Land Use Safety Vertical Obstructions Noise Alternative Energy Development Competition for Land & Air Spaces, and Ground Transportation Capacity Develop an implementation strategy for preventing and mitigating encroachment: Recommendations will involve local jurisdictions, state and federal agencies, private organizations, and / or military Malmstrom AFB Malmstrom AFB









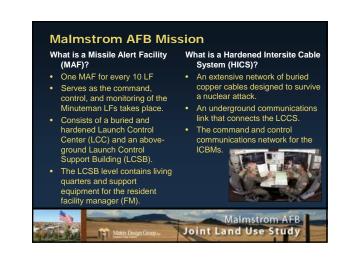


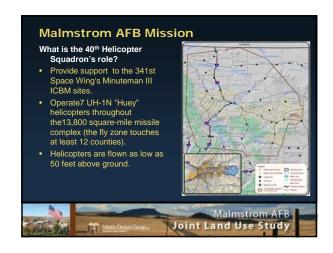


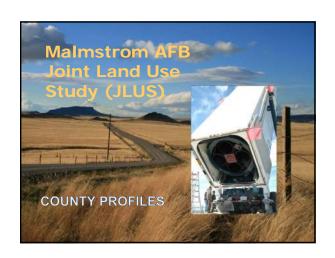








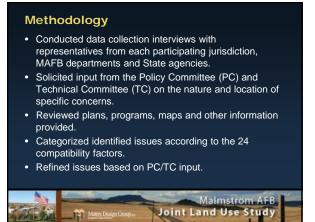






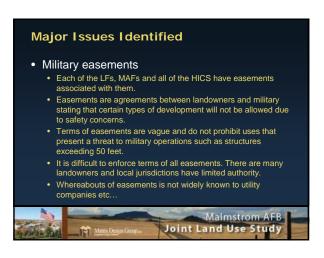




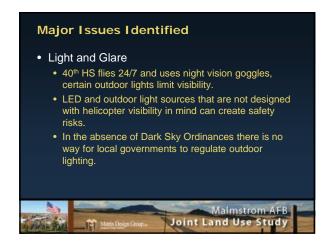


















MALMSTROM AFB JOINT LAND USE STUDY (JLUS) PUBLIC MEETING #1

AGENDA

September 15, 2010 Wednesday 11:00AM – 1:00 PM

1.	Welcome and Introductions	Cascade County Commissioner Joe Briggs
	Welcome and IntroductionsPurpose of the Meeting	
2.	JLUS Program Overview	Matrix Design Group
3.	Malmstrom AFB JLUS Process and Approach	Matrix Design Group
4.	Malmstrom AFB Mission	Matrix Design Group
5.	Project Study Area	Matrix Design Group
6.	Definitions of the 24 Encroachment Factors	Matrix Design Group
7.	Questions and Answers	Matrix Design Group

For more particular information, contact the Cascade County, Planning Department.

Funded by the Department of Defense Office of Economic Adjustment, the JLUS is a collaborative planning effort between Malmstrom AFB, Cascade County, surrounding cities and counties, and other affected agencies. The overall goal of the JLUS is to reduce potential conflicts while accommodating growth, sustaining the economic health of the region, and protecting public health and safety.



MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Public Meeting #1 September 15, 2010 11 AM to 1 PM

Courthouse Annex 325 2nd Avenue North Room 105 Great Falls, MT 59401

MEETING MINUTES

Parties Present:

lan Huestis
Joe Aline
Mitch Trapila
Mary Jolly
Erling Juel
Ron Gessaman
Karl Puckett
Jane Weber, Commissioner, Cascade County
Garry Gontz, Project Manager, Office of Economic Adjustment
Don Treanor, Military Liaison, Office of Economic Adjustment

Issues Covered:

The meeting began with a Welcome and Introductions from Commissioner Briggs and a presentation by the Matrix Design Group Team (see attached). The presentation covered the following issues:

- Explanation of the JLUS Program
- Malmstrom AFB JLUS Process and Approach
- Malmstrom AFB Mission
- Project Study Areas
- Definitions of the 24 Encroachment Factors

After the presentation participants were invited to comment on the JLUS. Comments from the public included the following:

- The meeting was not advertised widely enough.
- Calling the JLUS a "joint" effort is a misnomer.



- The JLUS will result in land controls on the land within the CZs and APZs that will amount to a taking unless compensation is made to the landowners.
- There is not any representation of landowner interests on either of the committees (later in the comment period the landowner sitting on the PC clarified that he was a sitting member).
- The runway is closed; why should we protect it?
- The people in the region just want to be able to have jobs, housing and economic development.
- Include Whitmore Ravine Study Area in the Project.
- The website did not announce the meeting.

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- The presentation powerpoint slides were too numerous and were hard to read.
- The proposed Agri-tech Industrial Park to the north of MAFB will create odor and noise that will affect the on-base residents.
- The sanitary sewer interceptor that running through town is over-capacity and upgrades would be expensive and result in rate increases for users. Instead of increasing rates new developers intending to use the interceptor should pay for upgrades.
- It would be great if the MAFB act as an anchor client for the emerging local bio-fuel industry. This partnership would allow local farmers to use agricultural waste and maximize facilities on MAFB, such as storage tanks.

2



Malmstrom AFB Joint Land Use Study

GROUP:

PC mtg #2

Date: 2010 09 15

Sign-In Sheet

NAME	AGENCY	PHONE	EMAIL
JEFF MANGAN	6FIAA	788-1954	JMangan Omountainpeaksinc.com
PHIL RADIFORTH	MALMSTROM AFB	731-7227	PHILIP. RAINFONTH @MALMSTROM. AF. MEL
CARL J DONOVAN	Council of Councils GF Chair GF Transit	750-2195	Gde my. Net
BRANT RARKELAND	ity of at	465-8428	pointelando greatfallont. nec
LOE ALINE	LAHOOWNER	727-3537	Joe @Shumaker, Psemail. Com
BRIDAN CLIFTON	CASCADE County	454-6905	bdiffon aco, cascade, mt. us
Toe Briggs	CHSI 405 Conty	454-6815	brys a do. c recast my 43
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Malmstrom AFB Joint Land Use Study

GROUP: PC mtg # 2
Date: 8010 090 15

Sign-In Sheet

NAME	AGENCY	PHONE	EMAIL
Don TREAWOR	OEA	7036045153	edward, treonore wso, wHS, MIL
GARRY E. GONTZ	OEA	703-604-5142	garry, gontzowsa. whs, mil
Susan Conell	Cascade Co Plannin		
Anita McNamara	Cascade Co. Plansing	406-454-18905	cmenaraa eo caseade mt. us
JaneWeber	Cas. Co.	406-454-6814	Juveber@ co. cascade. mt, vs
Bill Saling	CASCO.	406.454.686	bsahma@co. cAscado.m. us
Kim Thill Schaaf	GPOC-OEA	727-5339	Kim Whe square org
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FACT SHEET September 2010

What Is a Joint Land Use Study?

A Joint Land Use Study (JLUS) is a cooperative land use planning effort conducted as a joint venture between an active military installation, surrounding cities and counties, state and federal agencies, and other affected stakeholders. The JLUS collaboration is funded through the Department of Defense (DoD) Office of Economic Adjustment (OEA).

What Are the Objectives of the JLUS?

The primary objective of a JLUS is to reduce potential conflicts between a military installation and its host community while still accommodating new growth and economic development, sustaining economic vitality, and protecting the general public's health, safety, and welfare, without compromising the operational missions of the installation. JLUS programs have three core objectives:

UNDERSTANDING. Increase communication between the military, local jurisdictions, and stakeholders to promote an understanding of the strong economic and physical relationship between the installation and its neighbors.

COLLABORATION. Promote collaborative planning between the military, local jurisdictions, and stakeholders in order to safeguard the mission of the installation from future incompatible development.

ACTIONS. Develop and implement strategies for reducing the impacts of incompatible activities on the community and military operations. Devise tools to support compatibility in the future.

How Long Will the Project Take?

The Malmstrom JLUS is expected to be completed by May 2011.

How Will the Project Be Undertaken?

The project will be completed in five phases that are built upon each other:

PHASE 1: Project Initiation

PHASE 2: Data Collection

PHASE 3: Public Outreach and Communication

PHASE 4: Analysis and Mapping

PHASE 5: Analysis of Land Uses and Potential Conflicts with Military Missions

What Are the Opportunities For Public Input?

The public can be involved in the development of the JLUS by providing input and guidance to the process by informing the representatives of the Policy Committee of their issues and recommendations, submitting comments and feedback online at www.malmstromjlus.com, using the interactive JLUS website, and attending the three public meetings.

PUBLIC FORUM #1. Provides an overview of the JLUS process and defines the study area.

PUBLIC FORUM #2. Presents the potential compatibility issues relating to the JLUS study area.

PUBLIC FORUM #3. Presents the Draft JLUS document.

Who Will Guide the Development of the JLUS?

Two committees, comprised of city, county, military, and other stakeholders will guide the development of the JLUS. These committees include:

POLICY COMMITTEE (PC). This committee is responsible for leading the direction of the JLUS and monitoring the implementation and adoption of policies and strategies.

TECHNICAL COMMITTEE (TC). This committee is made up of representatives from different agencies and the development community. The TC identifies and addresses technical issues, provides feedback on report development, and assists in the development and evaluation of implementation strategies and tools.

What Will the Malmstrom JLUS Address?

The Malmstrom JLUS will provide all stakeholders:

- A detailed land use assessment for surrounding high growth
 areas.
- A baseline of existing incompatible land uses around the installation.
- Assessments of regional growth trends along designated transportation corridors.
- A plan to assist surrounding communities with decision-making.
- Recommendations and strategies to promote compatible land use planning around Malmstrom Air Force Base (AFB), the Malmstrom Missile Complex, and surrounding communities.

The Malmstrom JLUS is comprised of two study areas. One study area covers the entirety of the Malmstrom Missile Complex, which is a 13,800 square mile area crossing 7 counties and containing 150 Minuteman III Intercontinental Ballistic Missile (ICBM) sites called Launch Facilities (LFs) and 15 Missile Alert Facilities (MAFs). The other study area covers the area surrounding Malmstrom Air Force Base proper. This study area will examine the impacts that an operational runway might have on surrounding land uses and vice versa. This JLUS will use the noise and safety footprint of the most recent Malmstrom flying mission. The two study areas will address private and public lands near these military facilities.

The JLUS will examine existing land use; growth trends and development potential; and existing regulations, plans and procedures. Using this background information and the ideas developed with the stakeholders during public forums and committee workshops, the JLUS will develop recommendations and identify strategies to promote compatible land use planning around each installation and military use area.

Malmstrom Missile Complex

The Missile Complex is the area that contains the 150 Minuteman III ICBM LFs and MAFs. This areas falls within the boundaries of the following counties:

- Cascade
- Chouteau
- Fergus
- Lewis and Clark
- Teton
- Wheatland
- Judith Basin

The LFs and MAFs within the Missile Complex are managed by the 341st Missile Wing (341 MW). The 341 MW, headquartered at Malmstrom Air Force Base, is one of three U.S. Air Force Bases that maintains and operates the Minuteman III ICBM. The 341 MW is made up of a wing staff and five groups - the 341st Operations Group, 341st Maintenance Group, 341st Mission Support Group, 341st Security Forces Group and 341st Medical Group. Together, these groups manage 150 Minuteman III missiles which provide the critical component of America's on-alert strategic forces. The 341 MW also operates 8 UH-1N "Huey" helicopters throughout the 13,800 squaremile missile complex. The helicopters are used as a force-multiplier in day-to-day security of the missile complex.

Malmstrom Air Force Base (AFB)

Malmstrom AFB is situated just east of the City of Great Falls in Cascade County in northeastern Montana. Malmstrom AFB, which serves as the headquarters for the 341 MW, was the former home of the 43rd Air Refueling Group. While the 43rd Air Refueling Group was operational, the runway at Malmstrom served KC-135R, UH-1N, and C-12 aircraft.

In 1997, Malmstrom's runway was declared inactive and the air traffic control tower, navigational aids and runway were closed. One hangar and a portion of the Malmstrom flight line remained operational for aviation purposes as a heliport for Malmstrom's 40th Helicopter Squadron (40 HS), which provides support for the 341 MW's Minuteman III ICBM sites.

MINUTEMAN III INTERCONTINENTAL BALLISTIC MISSILE (ICBM)

The Minuteman is a strategic weapon system using a ballistic missile of intercontinental range. Missiles are dispersed in hardened silos to protect against attack and connected to an underground launch control center through a system of hardened cables. Launch crews, consisting of two officers, perform around-the-clock alert in the launch control center.

A variety of communication systems provide the president and secretary of defense with highly reliable, virtually instantaneous direct contact with each launch crew. Should command capability be lost between the launch control center and remote missile launch facilities, specially configured E-6B airborne launch control center aircraft automatically assume command and control of the isolated missile or missiles. Fully qualified airborne missile combat crews aboard airborne launch control center aircraft would execute the president's orders.

LAUNCH FACILITIES (LFS)

An ICBM LF is an underground vertical cylindrical container for the storage and launching of ICBMs. They typically have the missile some distance under the surface, protected by a large "blast door" on top. They are usually connected, either physically or electrically to a launch control center. ICBM Launch facilities are synonymous with the term missile silo, used in common nomenclature.

MISSILE ALERT FACILITIES (MAFS)

MAFs are located at each operational missile wing for command, control, and monitoring of the Minuteman LFs. The MAF consists of a buried and hardened Launch Control Center (LCC), an above-ground Launch Control Support Building (LCSB), and a buried and hardened Launch Control Equipment Building (LCEB) to house the cooling and generator systems. The MAF topside contains living quarters and support equipment for the facility manager (FM), chef, and security personnel.

LAUNCH CONTROL CENTER (LCC)

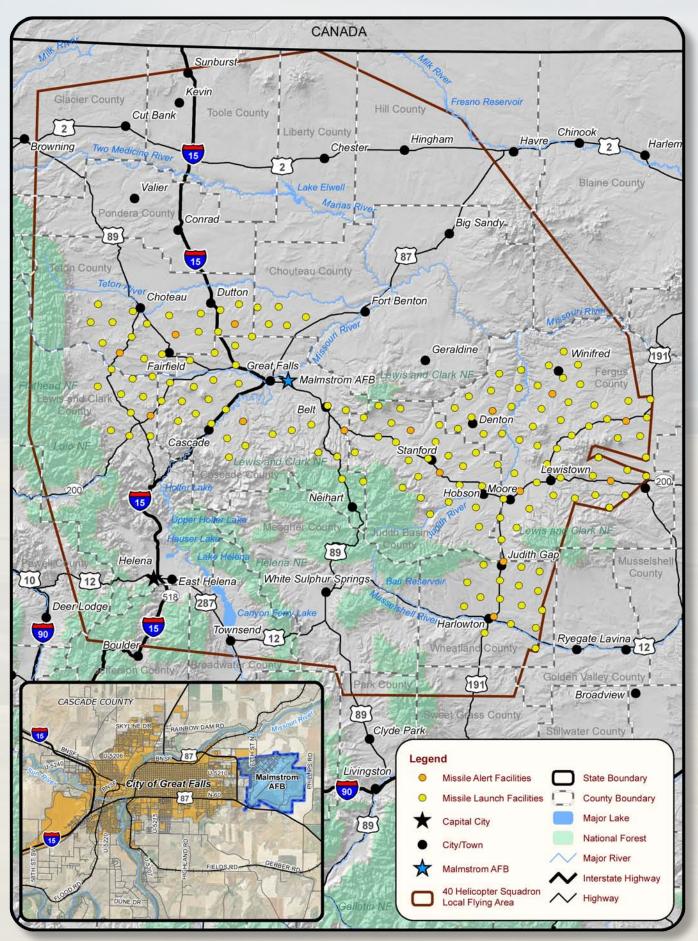
The LCC is an underground structure of reinforced concrete and steel of sufficient strength to withstand weapon effects. It contains equipment and personnel capable of controlling, monitoring, and launching 50 missiles in the unmanned launch facilities within the squadron.

The LCC outer structure is cylindrical with hemispherical ends. Walls are approximately 4.5 feet thick. A blast door permits entry into the LCC from the tunnel junction. An escape hatch 3-feet in diameter is located at the far end of the LCC. The escape hatch and associate tunnel are constructed to withstand weapon effects and allow personnel egress in the event of damage to the vertical access shaft. Essential LCC launch equipment along with the missile combat crew are located in a shock isolated room suspended within the blast-proof outer structure. The room is steel and suspended as a pendulum by four shock isolators.

HARDENED INTERSITE CABLE SYSTEMS (HICS)

The HICS is an extensive network of buried copper cables designed to survive a nuclear attack. The HICS is an underground communications link that connects the LCCs. HICS serves as the command and control communications network for the ICBMs.

Malmstrom JLUS Study Area Map



What Are JLUS Recommendations?

JLUS recommendations may involve revisions to the communities' growth policies and traditional land use and development controls, such as zoning, subdivision regulations, structural height restrictions, and promotion of planned unit development concepts. Additional actions may include amending local building codes to require increased sound attenuation in existing and new buildings, land exchanges, transfer of development rights, and real estate disclosure.

How Have Past JLUS's Been Successful?

Previous JLUS's have shown a high success rate. The JLUS effort can directly benefit both the jurisdiction and the installation by:

- Protecting the health and safety of residents living or working near military installations.
- Preserving long-term land use compatibility between the installation and the surrounding community.
- Promoting comprehensive community planning.
- Encouraging a cooperative spirit between the local base command and local community officials.
- Integrating the local jurisdictions' growth policy plans with the installation's plans.



What Is Compatibility?

Compatibility, in relationship to military readiness, can be defined as the balance and/or compromise between community and military needs and interests. The goal of compatibility planning is to promote an environment where both entities can coexist successfully. Study area data on existing conditions obtained from the TC and PC meetings will be analyzed to identify future compatibility issues. This analysis will also identify the influence of regulatory measures on land use decisions and consider existing and projected development trends within the study area. The JLUS will study a set of 24 compatibility factors that are used to help ensure all compatibility issues are identified and addressed. While some of these issues may not occur in this study, they are presented below to provide a sense of the comprehensive nature of the JLUS evaluation.

What Are the 24 Compatibility Factors?

Man-Made

- 1 Land Use
- 2 Safety Zones
- 3 Vertical Obstruction
- 4 Local Housing Availability
- 5 Infrastructure Extensions
- 6 Antiterrorism / Force Protection
- 7 Noise
- 8 Vibration
- 9 Dust / Smoke / Steam

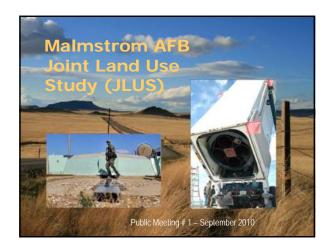
- 10 Light and Glare
- Alternative Energy
- 12 Air Quality
- 13 Frequency Spectrum
- 14 Public Trespassing
- 15 Cultural Sites
- 16 Legislative Initiatives
- 17 Interagency Coordination

Natural Resources

- 18) Water Quality / Quantity
- 19 T & E Species
- 20) Marine Environments

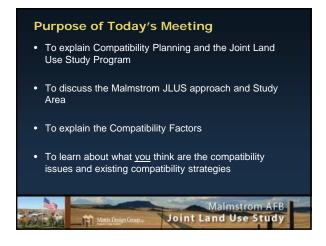
Competition for Scarce Resources

- **21)** Scarce Natural Resources
- 22) Land, Air, and Sea Spaces
- 23) Frequency Spectrum Capacity
- **24** Ground Transportation

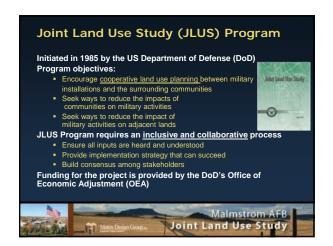


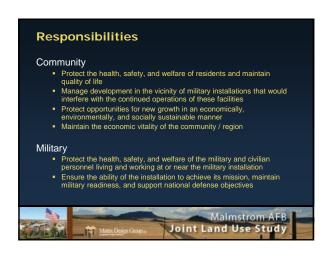








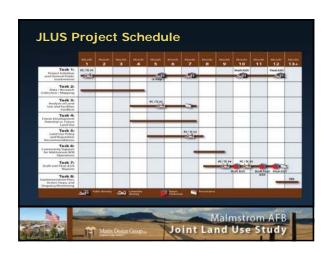




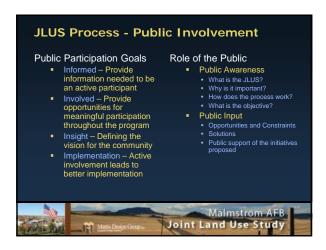


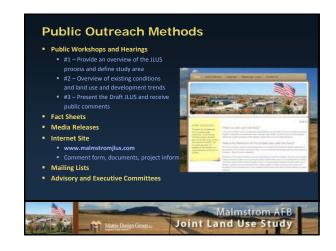
Address the full range of compatibility issues of concern to local jurisdictions, agencies, the public, and the military, such as: Compatible Land Use Safety Vertical Obstructions Noise Alternative Energy Development Competition for Land & Air Spaces, and Ground Transportation Capacity Develop an implementation strategy for preventing and mitigating encroachment: Recommendations will involve local jurisdictions, state and federal agencies, private organizations, and / or military Malmstrom AFB Mum Desertions. Joint Land Use Study



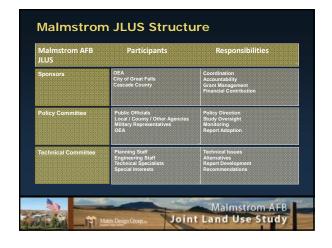
















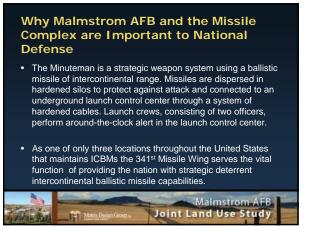


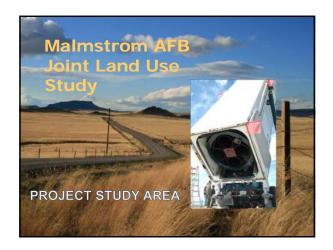




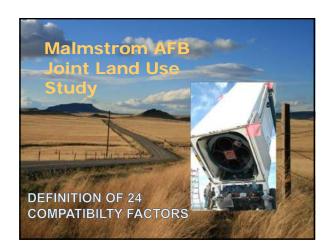




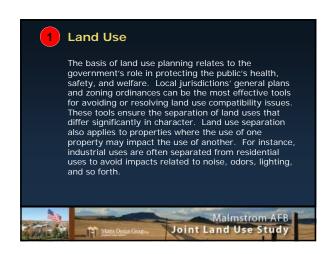




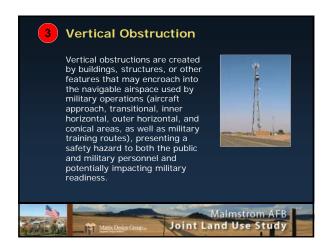












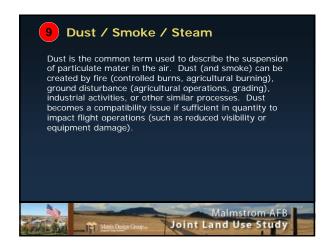


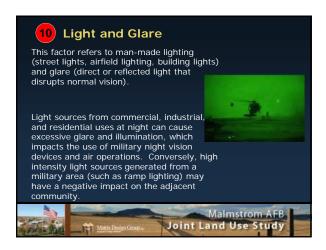






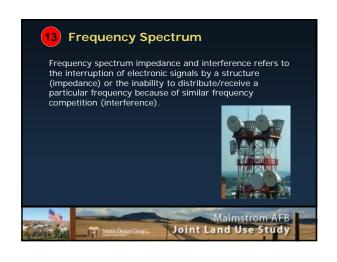




















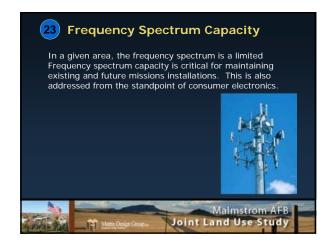
















Appendix B

Technical Committee (TC) Meetings







MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Technical Committee Meeting #2

AGENDA

September 15, 2010 8:30 to 10:30 AM Wednesday

1. Welcome and Introductions	Cascade County, Commissioner Joe Briggs
Welcome and Self IntroductionsPurpose of the Meeting	
2. JLUS Project Update	Matrix Design Group
3. Compatibility Survey and Interview Results	Matrix Design Group
4. Malmstrom AFB JLUS Encroachment Issues Overview	Matrix Design Group
5. Preliminary Military Influence Area (MIA)	Matrix Design Group
6. Administration and Next Steps	Matrix Design Group

For more particular information, contact the Cascade County, Planning Department.

Funded by the Department of Defense Office of Economic Adjustment, the JLUS is a collaborative planning effort between Malmstrom AFB, Cascade County, the surrounding cities and counties, and other affected agencies. The overall goal of the JLUS is to reduce potential conflicts while accommodating growth, sustaining the economic health of the region, and protecting public health and safety.



MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Technical Committee Meeting #2 September 15, 2010 8:30 to 10:30 AM

Courthouse Annex 325 2nd Avenue North Room 105 Great Falls, MT 59401

MEETING MINUTES

Parties Present:

Commissioner Joe Briggs, Cascade County
Commissioner Jane Weber, Cascade County
Susan Connell, Cascade County, Planning Director,
Anita McNamara, Cascade County, Planner
Brant Birkeland, City of Great Falls, Planner
Kim Thiel-Schaaf, Great Falls Development Authority, OEA Grant Liaison
Andy Hayes, Malmstrom AFB, Comprehensive Planner
Jim Yeagley, Judith Basin County, Planner
Joe Murphy, Big Sky Civil & Engineering
Earl Wheeler, Neighborhood Council #4

Issues Covered:

The meeting began with a Welcome and Introductions from Commissioner Briggs and a presentation by the consultant, Matrix Design Group Team (see attached). The presentation covered the following issues:

- JLUS Update
- Compatibility Survey and Interview Results
- Malmstrom AFB JLUS Encroachment Issues Overview
- Preliminary Military Influence Areas (MIA)
- Administration and Next Steps

After the presentation Matrix Design Group facilitated a discussion about a series of DRAFT maps (see attached) that were developed to illustrate the compatibility issues identified in the stakeholder interviews conducted by Matrix Design Group. The stakeholder interviews included participating jurisdictions, Malmstrom AFB, state and local agencies and



organizations as well as private land owners. The information and documents provided during these interviews were used to present potential Draft Military Influence Areas (MIA), which were also reflected in the map package. These maps provided an opportunity to discuss the following issues and concerns:

- Discuss the reason for including the currently decommissioned runway in the study. The stated reason is the change in Air Force policy to now consider all installation assets (commissioned or decommissioned) for future new mission beddown locations.
- Clarify the status of the parcel of land that falls within MAFB's southern Clear Zone (CZ) and Accident Potential Zone I (APZ) and was once considered for development and annexation by the City of Great Falls. Currently no development of this parcel is being considered nor is it likely to be annexed any time in the near future.
- Clarify the densities associated with the zoning of the land within the CZ and APZ, which is 1 dwelling unit/20 acre.
- Clarify the status of the parcels of land that are adjacent to MAFB along the northern boundary. These parcels are all zoned Heavy Industrial and none are currently developed.
- Discuss whether to use the noise contours in the 1994 Air Installation Compatible Use
 Zone (AICUZ) study or whether to consider the noise contours associated with a more
 likely future air mission to determine a noise buffer / MIA. Cascade County advocated
 for considering a larger footprint but also acknowledged that this would have minimal
 impact on their land uses and would likely have a greater impact on the City of Great
 Falls. A discussion followed about strategies that could be used to address increases in
 noise in developed areas over the City.
- Discuss the potential for frequency issues within the study areas.
- Discuss the areas where the Department of Energy has identified high wind speeds and therefore wind energy development potential within the 40th Helicopter Squadron Fly Zone.
- Present the area in which the 40th Helicopter Squadron flies, which extends beyond the
 current seven county area. Discussion ensued about whether to use this entire fly zone
 area as part of the study area or whether to limit the area of analysis to the portion of
 the counties which contain the ICBM Launch Facilities (LFs) and Missile Alert Facilities
 (MAFs).
- Discuss whether it was necessary to include the entire Whitmore Ravine Study Area as a compatibility issue in the JLUS or whether to only include the areas of concern in the study area (West and Central Fork areas of the Whitmore Ravine Study Area.
- Discuss the potential conflict presented by the traffic patterns proposed by the Kearle Module Transportation Plan. Part of the roadway network proposed for use falls within the Missile Complex and could present interference with convoys' use of roadways. It was mentioned that one meeting between the Kearle project lead and MAFB has been conducted. Further discussions may be necessary.
- Discuss the four proposed transmission line projects within Cascade County, which could increase interest in wind energy development.



- Discuss whether to include a Light and Glare MIA in the study. Most participants agreed that it should be included.
- Commissioner Briggs brought up the need to develop draft legislative resolution language for consideration by the Montana Association of County Officials (MACO) Missile County Committee (MCC). This proposed language would attempt to set out reasonable parameters for the types of development allowable within the Missile Complex.

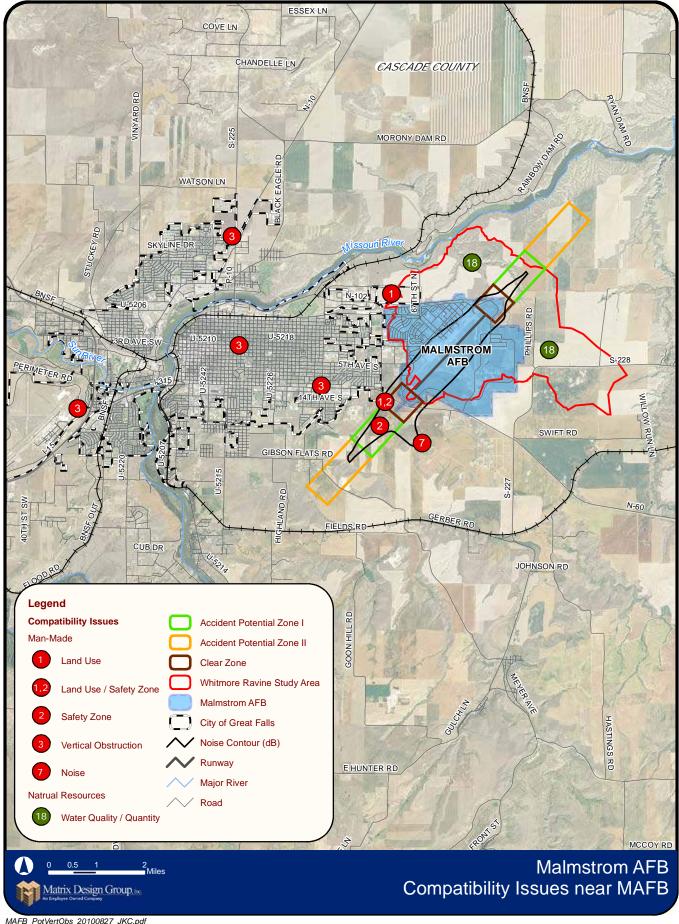


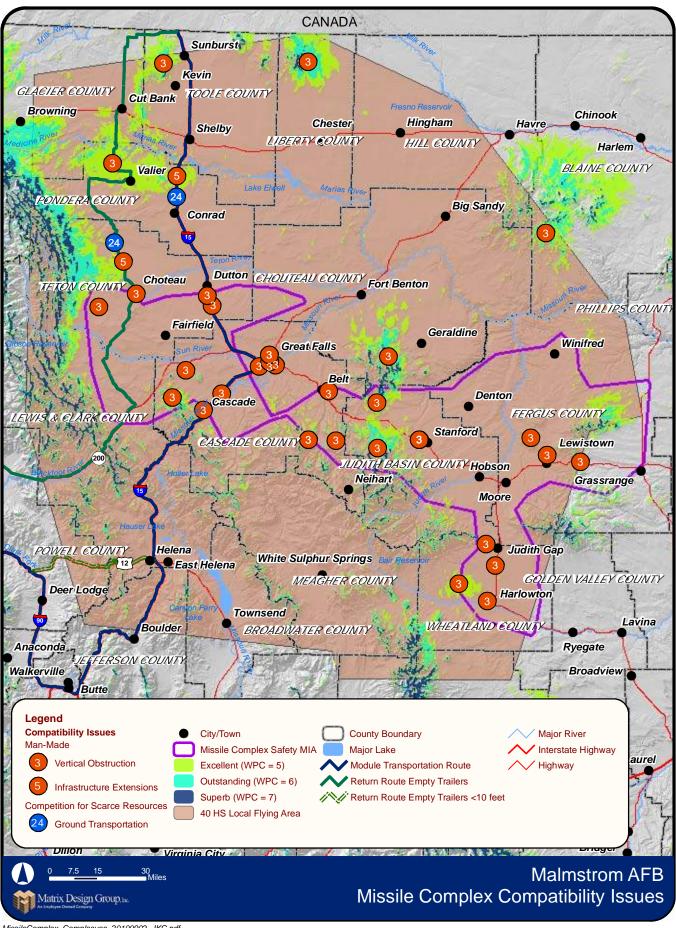
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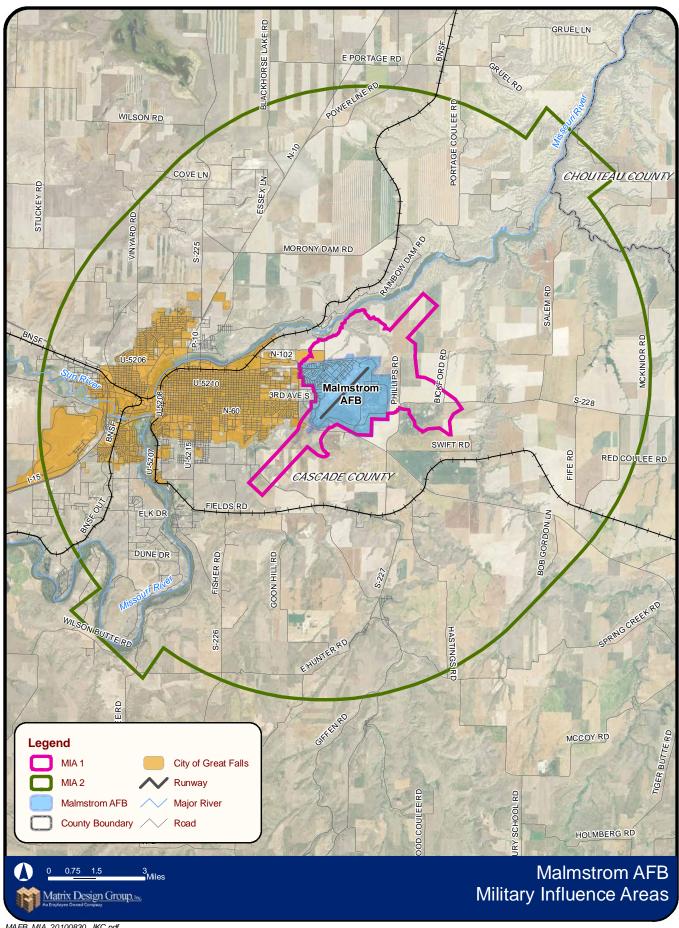
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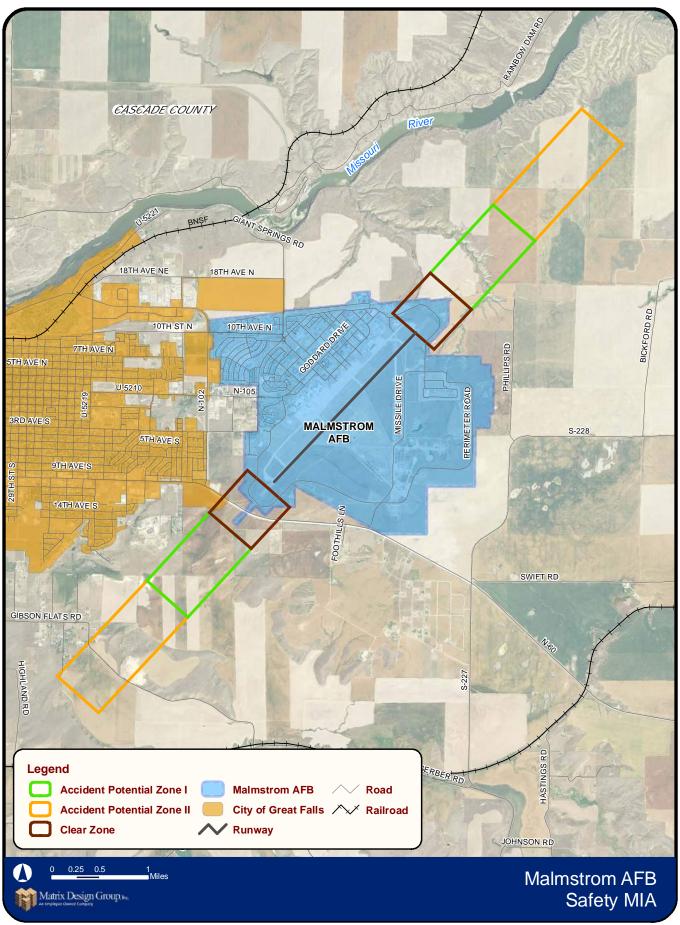
Sign-In Sheet

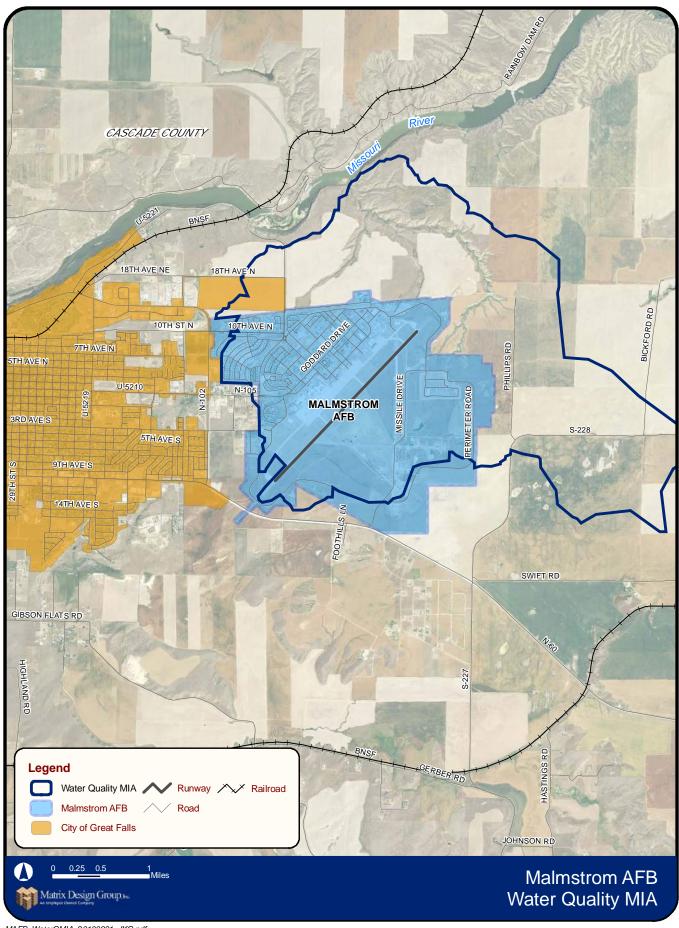
NAME	AGENCY	PHONE	EMAIL
JEFF WANGARY	6FIMA	188-1974	Inangan Omorntainpeaksine.com
PHIL CALIFORNIA	Macmstram ATS	731-7227	PHILIP. PAINFONG @ MALMSTRON, AF. MOL
CARL J DONOVAN	Council of Councils Gt Charren GF Transit	750-3195	Gidomy, wer
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LOE ALINE	LANDOWNER	727-3537	JOE OShumkER, PSEMAIL. Com
BRIGA CLUSTON	CARCADE COUNTY	5929-647	bditten aco cascade, mt.us
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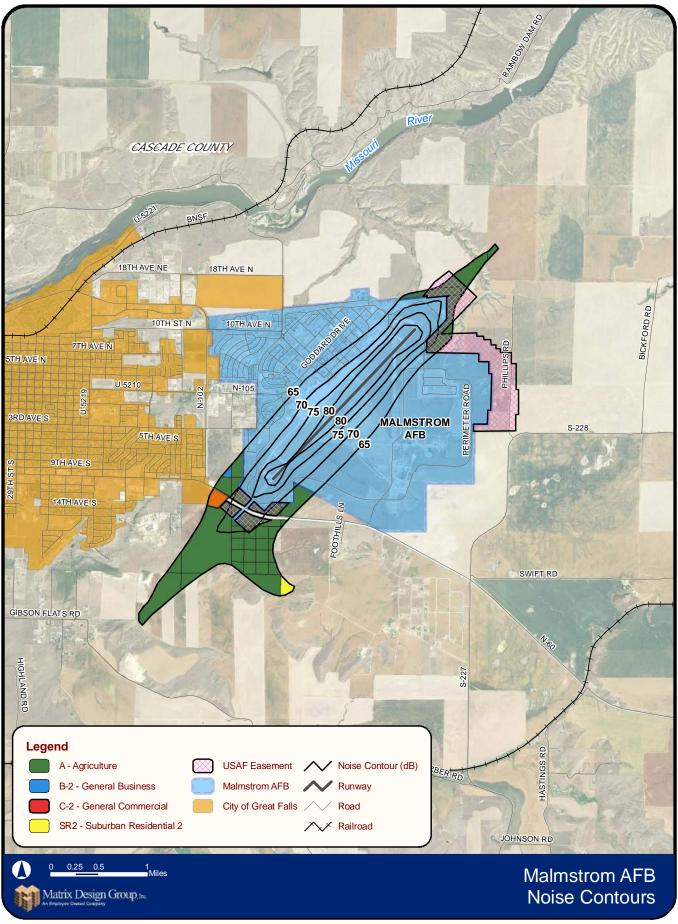


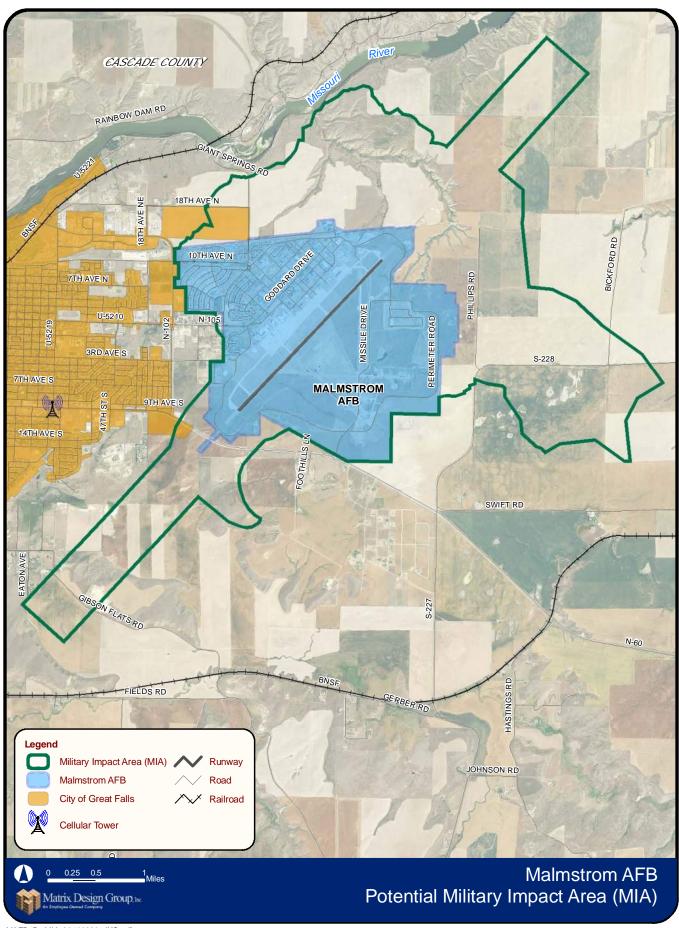


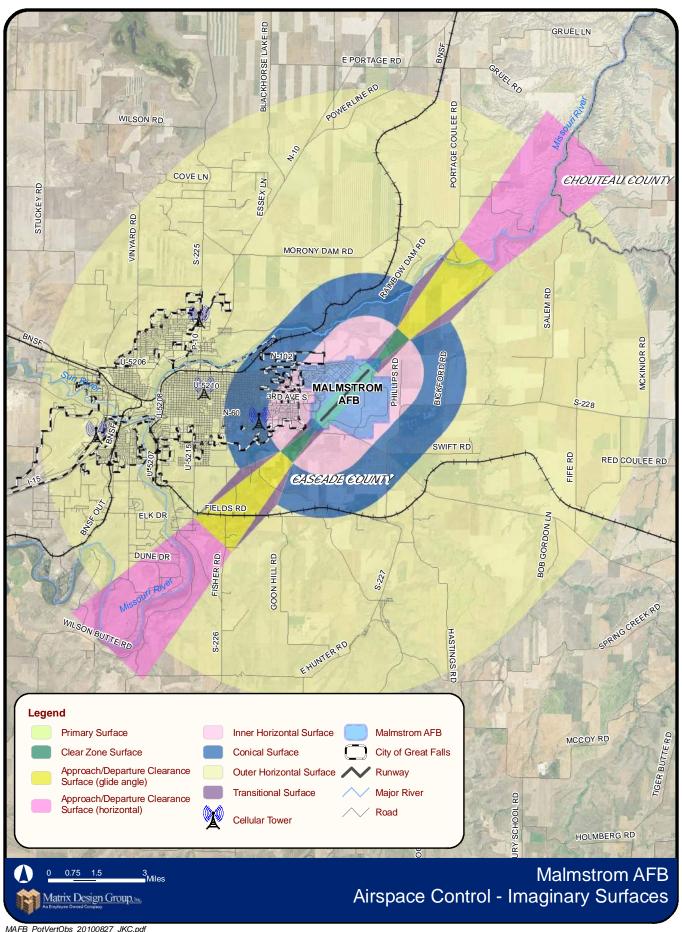


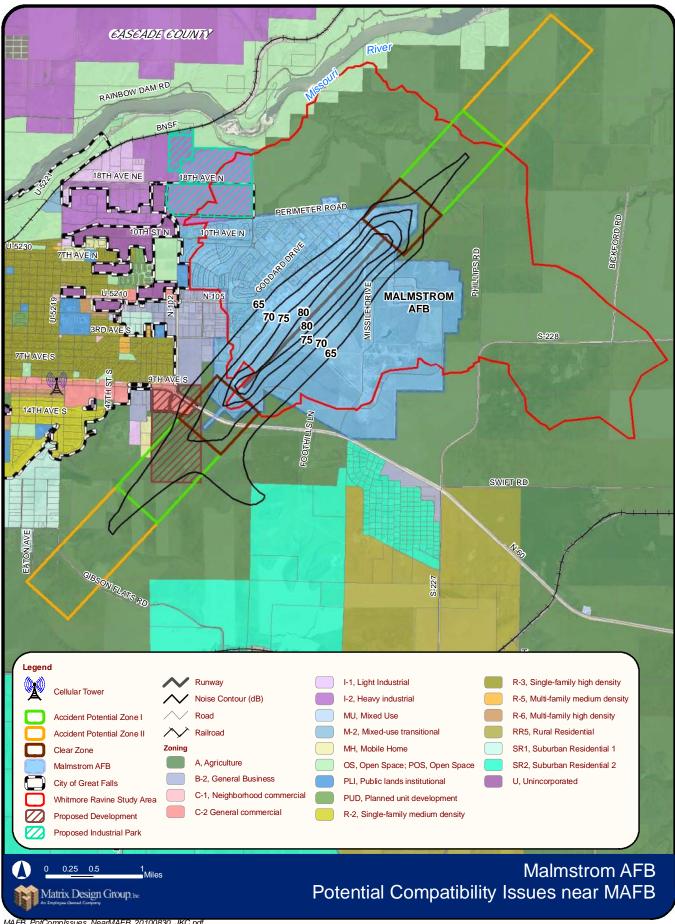


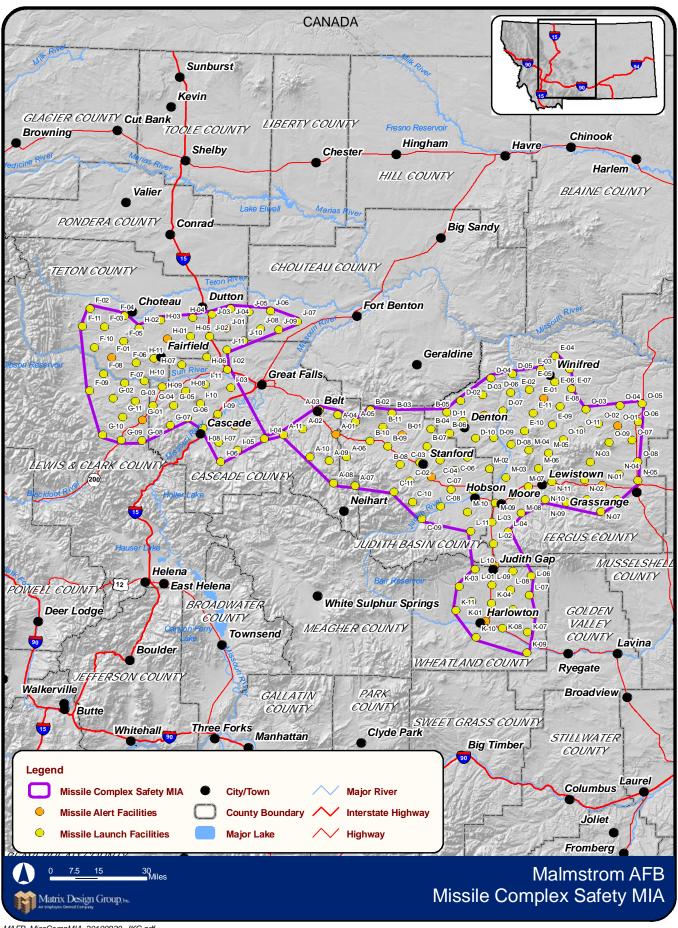


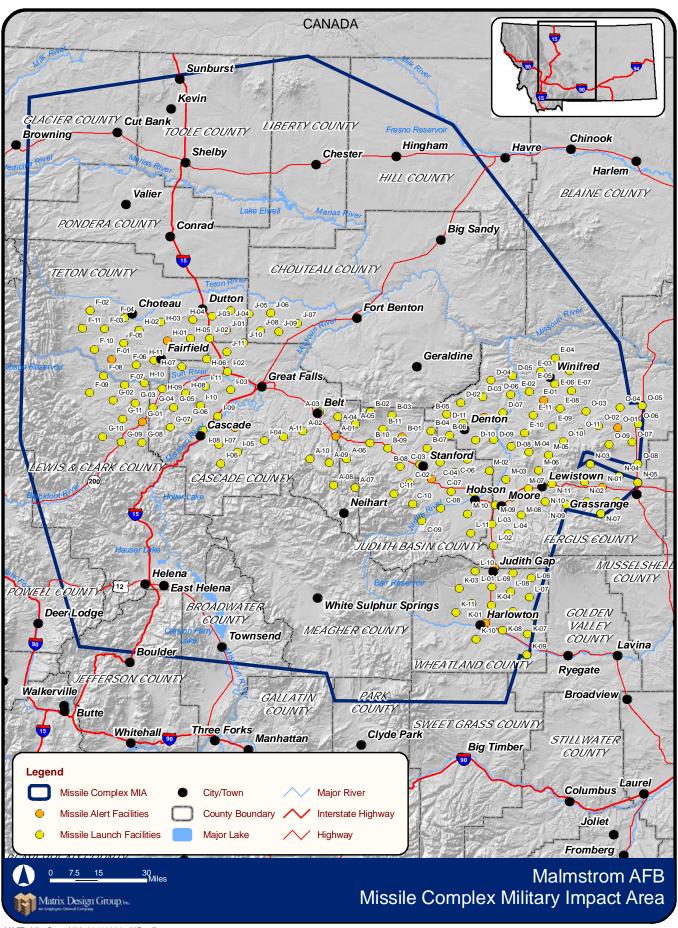


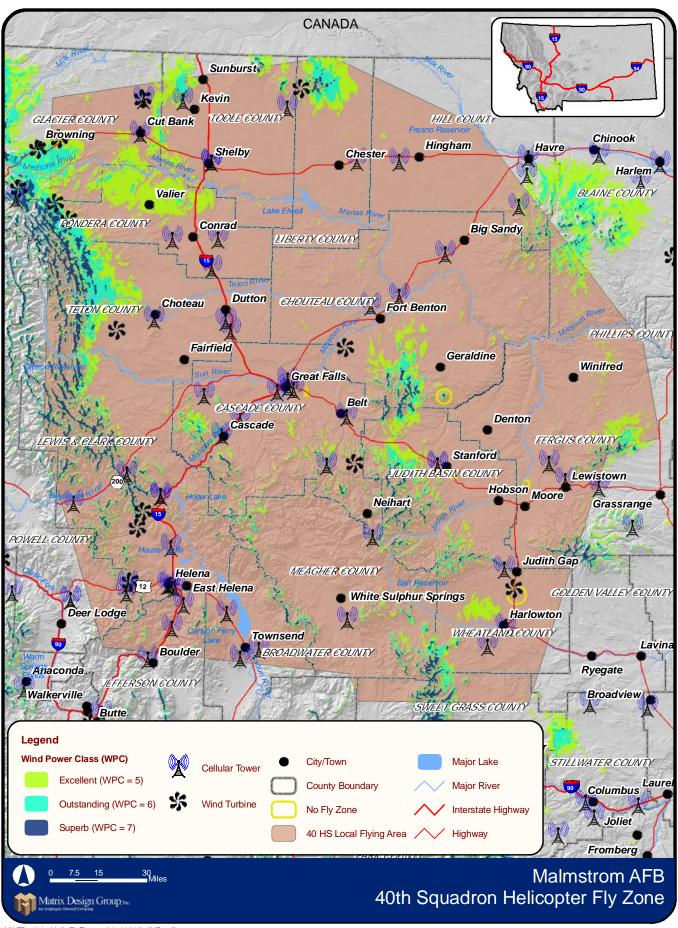


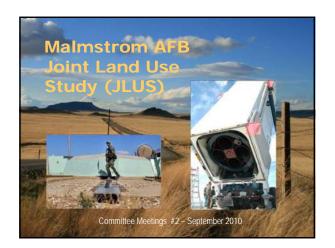






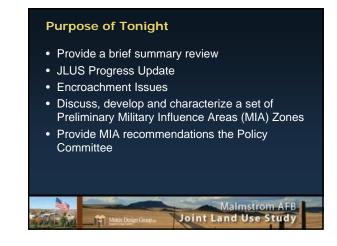














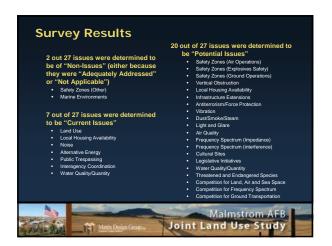


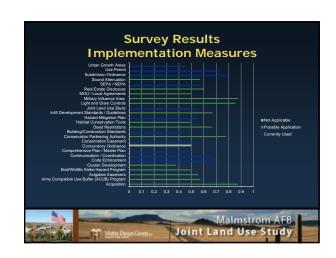










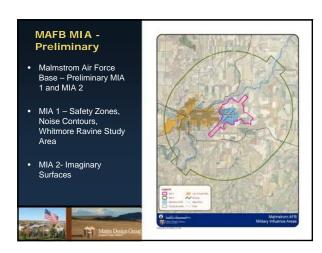




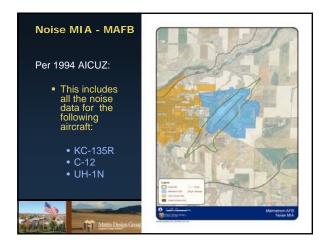




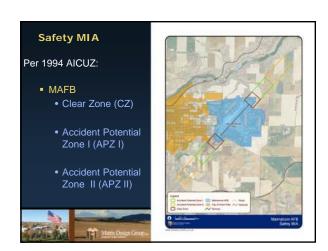


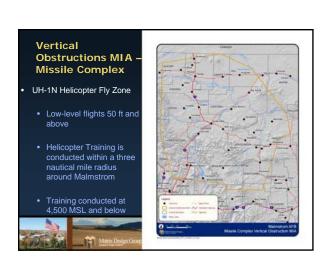


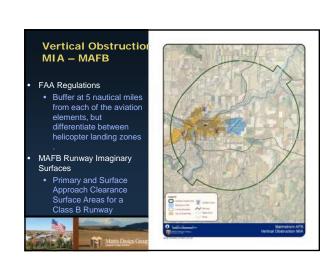


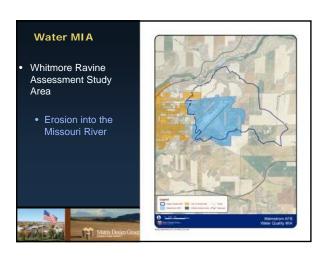


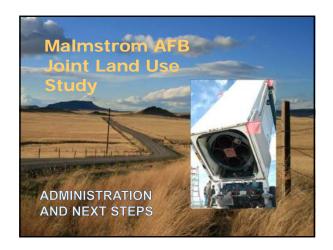












Next Steps

- First Public Meeting Today
- Technical Committee to work on refining compatibility issues and initial tools discussion in preparation for next TAC Meeting
- Technical Committee to be provided initial review of the draft chapters (1-4) of report
- Develop plan for next set of public meetings in surrounding counties





MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Technical Committee Meeting #3

AGENDA

February 23, 2010 9 to 11 AM Wednesday

1.	Welcome and Introductions	Cascade County, Commissioner Joe Briggs
	Welcome	
	Purpose of the Meeting	
2.	JLUS Project Update	Matrix Design Group
3.	Malmstrom AFB JLUS Encroachment Issues Overview	Matrix Design Group
4	Review of Preliminary Strategies	Matrix Design Group
5.	Administration and Next Steps	Matrix Design Group

For more particular information, contact the Cascade County, Planning Department.

Funded by the Department of Defense Office of Economic Adjustment, the JLUS is a collaborative planning effort between Malmstrom AFB, Cascade County, the surrounding cities and counties, and other affected agencies. The overall goal of the JLUS is to reduce potential conflicts while accommodating growth, sustaining the economic health of the region, and protecting public health and safety.



MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Technical Committee Meeting #4 Wednesday, February 23, 2010 9 AM

Courthouse Annex 325 2nd Avenue North Room 105 Great Falls, MT 59401

MEETING MINUTES

Parties Present:

Joe Briggs, Cascade County Commissioner
Brian Clifton, Cascade County, Director of Public Works
Brant Birkeland, City of Great Falls, Planner
Lillian Sunwall, Great Falls Economic Development Authority
Rick Solander, Office of Economic Adjustment, Project Manager
Gina Gremaux, Great Falls, Association of Realtors
Sarah Ziaja, Malmstorm Air Force Base
Chris Murphy, Malmstrom Air Force Base
Jane Weber, Cascade County, Commissioner
Bill Salina, Cascade County, Commissioner
Anita McNamara, Cascade County, Planner
Mark Donahue, Cascade County, Planner

Issues Covered:

The meeting began with a presentation given by Mike Hrapla from Matrix Design Group. The presentation provided an overview of the progress on the JLUS to date to include the collection of data, the identification of issues and review of the preliminary versions of Chapters 1 through 4 by committee members. The presentation also highlighted the major issues that that have been identified in the JLUS process to date. The issues discussed included: Vertical Obstructions

- Unmonitored development of structures such as wind turbines, transmission lines and cell towers within fly zone and within the 1200 ft. LF buffer.
- Density of such development is an important factor e.g. 20 versus 100 wind turbines.
- Development of transmission lines could invite future wind energy development in inopportune locations.

Minimal Local Land Use Regulation



- Montana State Law does not require counties to instate zoning regulations which means the counties that do not elect to have zoning regulations have minimal capacity to oversee how and where development happens.
- State of Montana oversees building code requirements and enforcement, not local jurisdictions, which limits their ability to impose height restrictions and design standards.
- Under the Siting Facilities Act large scale energy development projects are permitted by the State not local governments.

Military easements

- Each of the LFs, MAFs and the entire HICS network has associated easements.
- Easements are agreements between landowners and military stating that certain types of development will not be allowed due to safety concerns.
- Terms of easements are vague and do not prohibit uses that present a threat to military operations such as structures exceeding 50 feet.
- It is difficult to enforce terms of all easements. There are many landowners and local jurisdictions have limited authority.
- Whereabouts of easements is not widely known to utility companies etc...

Frequency Interference

• Wind turbines present potential for frequency interference with helicopter navigation instruments.

Light and Glare

- 40th HS flies 24/7 and uses night vision goggles, certain outdoor lights limit visibility.
- LED and outdoor light sources that are not designed with helicopter visibility in mind can create safety risks.
- In the absence of Dark Sky Ordinances there is no way for local governments to regulate outdoor lighting.

Ground Transportation Capacity

- Military convoys share roadways with civilian traffic, do not stop and drive at high speeds.
- Montana Department of Transportation does not routinely factor in military use of roadways when issuing permits.
- Military funds maintenance of Defense Access Roads (DAR) and is entitled to use of roadways.
- Large commercial trucks can interfere with military convoys.

Safety

- Development in Clear Zone and APZs
- Controls in areas around MAFB

Vertical Obstructions

- Erection of vertical Obstructions within Imaginary Surfaces
- New Transmission Line Development
- Development of Wind Turbines in departure and approach zones.

Noise

- Existing noise contours shown in the Air Installation Compatible Use Zone Report.
- Future development in potential high noise areas



Threats to a potential future aircraft / mission
 Water Quality

Erosion and sedimentation caused by MAFB in Whitmore Ravine

After the presentation, the meeting was opened up for a round table discussion of the proposed strategies that have been developed to address the issues identified above. A handout identifying the specific issues, the proposed strategies and actions for addressing those issues, the impacted study area and which agencies should be the primary responsible agency for implementing the strategy were provided. Many of the proposed strategies entailed the creation and implementation of Military Influence Areas (MIAs) and a Military Overlay Airport District (MOAD). To provide context on the proposed geographic location of these MIAs, Celeste Werner from Matrix Design Group, exhibited maps showing the proposed areas. The proposed MIAs included:

MAFB Study Area:

- A Military Overlay Airport District (MOAD) which encompasses the same area as the MAFB Runway Imaginary Surfaces area and includes various Height MIAs within its boundaries. The Height MIAs would match up with the various Imaginary Surfaces (e.g. Conical, Primary, Transitional) each of which would have its own height specifications per Federal Aviation Administration requirements.
- Noise and Safety MIA which would encompass the noise contours and safety zones identified in Malmstrom's 1994 Air Installation Compatible Use Zone (AICUZ) Report, as well as the Whitmore Ravine Study Area.

Missile Complex:

- A Safety MIA around each of the Launch Facilities (LFs) and Missile Alert Facilities (MAFs) that extends the existing safety arc area from 1200 feet to 4000 feet.
- A Missile Complex MIA, which encompasses the entire 40th HS Fly Zone.

The TC reviewed the strategy handout and provided the following comments:

- Use language such as "consider" rather commanding certain actions.
- Cascade County is spearheading an effort to get legislation passed that designates
 potential buffer zones around specified military assets. This legislation would also
 authorize the creation of Joint Airport Zoning Boards.
- A Transfer of Development Rights Programs is a "no go".
- Even if development applications require consultation with MAFB, Conditional Use Permits, Special Uses and Variances often do not.
- Developers of the Industrial Park parcels to the north of MAFB will likely be required to enter into a development agreement with the City and MAFB.
- Some of the language in the strategies recommending the incorporation of height restrictions into the State Building Code confuses the authorities provided by zoning regulations with the standards required by building construction permits.
- The 40th HS is not likely to share a comprehensive map of its flight paths or a map of the entire network map of the Hardened Intersite Cable System (HICS), so strategies recommending this action should be modified.



- Ideas such as increasing or formalizing MAFB's input on development applications are good.
- The Call and Locate system might be a good way to identify where the HICS transects proposed construction sites.

In addition, the Matrix Team shared some of the comments that had surfaced during the public meetings conducted in the days prior. Some of the specific comments discussed were:

Q: Are Air Force personnel allowed to shoot rabbits and other fowl on landowners' property? A: No, however sometimes if a wild animal sets off an alarm it may be shot. Otherwise, recreational hunting has been known to happen even though it is not condoned.

Q: How can landowners with issues get in direct contact with the appropriate MAFB staff member? A: There are three appointed contacts at MAFB designated to deal with different issues such as easements, HICS, public relations.

The meeting concluded with the Matrix Team providing an outline of the next steps. These included:

- Refine and update strategies and send out to TC and PC members for review.
- Finish Data Collection
- Update Chapters 1 through 5 with information gathered from meetings.
- Submit draft for public review in June or July.



Malmstrom AFB oint Land Use Study

Feb as, 2011 Committee

Date: GROUP:

	Sign-In Sheet

NAME	AGENCY	PHONE	EMAIL
Manual Sunwall	GF 9A	1609-111-90H	466-771-9024 Sunwall @ ofderelopment org
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Chas Murphy	MAFB	406-731-6369	christopher murphy malustrom of mil
Joine Weber	Cascade Co.	h187-454	Juxbar Coscade monty mt. 901
Bill Salina	CAS. CXY	9189-45h	bsalina @ co, cascade, vit. us
Amita manara	Constrade Co. Many	454-1905	amonamare a co. caseado mont. as
Mark N. Donahue	Cascade Co. Planning	454-6905	Monohue Co. cuscade, mt. us
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FACT SHEET

What Is a Joint Land Use Study?

A Joint Land Use Study (JLUS) is a cooperative land use planning effort conducted as a joint venture between an active military installation, surrounding cities and counties, state and federal agencies, and other affected stakeholders. The JLUS collaboration is funded through the Department of Defense (DoD) Office of Economic Adjustment (OEA).

What Are the Objectives of the JLUS?

The primary objective of a JLUS is to reduce potential conflicts between a military installation and its host community while still accommodating new growth and economic development, sustaining economic vitality, and protecting the general public's health, safety, and welfare, without compromising the operational missions of the installation. JLUS programs have three core objectives:

UNDERSTANDING. Increase communication between the military, local jurisdictions, and stakeholders to promote an understanding of the strong economic and physical relationship between the installation and its neighbors.

COLLABORATION. Promote collaborative planning between the military, local jurisdictions, and stakeholders in order to safeguard the mission of the installation from future incompatible development.

ACTIONS. Develop and implement strategies for reducing the impacts of incompatible activities on the community and military operations. Devise tools to support compatibility in the future.

How Long Will the Project Take?

The Malmstrom JLUS is expected to be completed by May 2011.

How Will the Project Be Undertaken?

The project will be completed in five phases that are built upon each other:

PHASE 1: Project Initiation

PHASE 2: Data Collection

PHASE 3: Public Outreach and Communication

PHASE 4: Analysis and Mapping

PHASE 5: Analysis of Land Uses and Potential Conflicts with Military Missions

What Are the Opportunities For Public Input?

The public can be involved in the development of the JLUS by providing input and guidance to the process by informing the representatives of the Policy Committee of their issues and recommendations, submitting comments and feedback online at www.malmstromjlus.com, using the interactive JLUS website, and attending the three public meetings.

PUBLIC FORUM #1. Provides an overview of the JLUS process and defines the study area.

PUBLIC FORUM #2. Presents the potential compatibility issues relating to the JLUS study area.

PUBLIC FORUM #3. Presents the Draft JLUS document.

Who Will Guide the Development of the JLUS?

Two committees, comprised of city, county, military, and other stakeholders will guide the development of the JLUS. These committees include:

POLICY COMMITTEE (PC). This committee is responsible for leading the direction of the JLUS and monitoring the implementation and adoption of policies and strategies.

TECHNICAL COMMITTEE (TC). This committee is made up of representatives from different agencies and the development community. The TC identifies and addresses technical issues, provides feedback on report development, and assists in the development and evaluation of implementation strategies and tools.

What Will the Malmstrom JLUS Address?

The Malmstrom JLUS will provide all stakeholders:

- A detailed land use assessment for surrounding high growth
 areas.
- A baseline of existing incompatible land uses around the installation.
- Assessments of regional growth trends along designated transportation corridors.
- A plan to assist surrounding communities with decision-making.
- Recommendations and strategies to promote compatible land use planning around Malmstrom Air Force Base (AFB), the Malmstrom Missile Complex, and surrounding communities.

The Malmstrom JLUS is comprised of two study areas. One study area covers the entirety of the Malmstrom Missile Complex, which is a 13,800 square mile area crossing 7 counties and containing 150 Minuteman III Intercontinental Ballistic Missile (ICBM) sites called Launch Facilities (LFs) and 15 Missile Alert Facilities (MAFs). The other study area covers the area surrounding Malmstrom Air Force Base proper. This study area will examine the impacts that an operational runway might have on surrounding land uses and vice versa. This JLUS will use the noise and safety footprint of the most recent Malmstrom flying mission. The two study areas will address private and public lands near these military facilities.

The JLUS will examine existing land use; growth trends and development potential; and existing regulations, plans and procedures. Using this background information and the ideas developed with the stakeholders during public forums and committee workshops, the JLUS will develop recommendations and identify strategies to promote compatible land use planning around each installation and military use area.

Malmstrom Missile Complex

The Missile Complex is the area that contains the 150 Minuteman III ICBM LFs and MAFs. This areas falls within the boundaries of the following counties:

- Cascade
- Chouteau
- Fergus
- Lewis and Clark
- Teton
- Wheatland
- Judith Basin

The LFs and MAFs within the Missile Complex are managed by the 341st Missile Wing (341 MW). The 341 MW, headquartered at Malmstrom Air Force Base, is one of three U.S. Air Force Bases that maintains and operates the Minuteman III ICBM. The 341 MW is made up of a wing staff and five groups - the 341st Operations Group, 341st Maintenance Group, 341st Mission Support Group, 341st Security Forces Group and 341st Medical Group. Together, these groups manage 150 Minuteman III missiles which provide the critical component of America's on-alert strategic forces. The 341 MW also operates 8 UH-1N "Huey" helicopters throughout the 13,800 squaremile missile complex. The helicopters are used as a force-multiplier in day-to-day security of the missile complex.

Malmstrom Air Force Base (AFB)

Malmstrom AFB is situated just east of the City of Great Falls in Cascade County in northeastern Montana. Malmstrom AFB, which serves as the headquarters for the 341 MW, was the former home of the 43rd Air Refueling Group. While the 43rd Air Refueling Group was operational, the runway at Malmstrom served KC-135R, UH-1N, and C-12 aircraft.

In 1997, Malmstrom's runway was declared inactive and the air traffic control tower, navigational aids and runway were closed. One hangar and a portion of the Malmstrom flight line remained operational for aviation purposes as a heliport for Malmstrom's 40th Helicopter Squadron (40 HS), which provides support for the 341 MW's Minuteman III ICBM sites.

MINUTEMAN III INTERCONTINENTAL BALLISTIC MISSILE (ICBM)

The Minuteman is a strategic weapon system using a ballistic missile of intercontinental range. Missiles are dispersed in hardened silos to protect against attack and connected to an underground launch control center through a system of hardened cables. Launch crews, consisting of two officers, perform around-the-clock alert in the launch control center.

A variety of communication systems provide the president and secretary of defense with highly reliable, virtually instantaneous direct contact with each launch crew. Should command capability be lost between the launch control center and remote missile launch facilities, specially configured E-6B airborne launch control center aircraft automatically assume command and control of the isolated missile or missiles. Fully qualified airborne missile combat crews aboard airborne launch control center aircraft would execute the president's orders.

LAUNCH FACILITIES (LFS)

An ICBM LF is an underground vertical cylindrical container for the storage and launching of ICBMs. They typically have the missile some distance under the surface, protected by a large "blast door" on top. They are usually connected, either physically or electrically to a launch control center. ICBM Launch facilities are synonymous with the term missile silo, used in common nomenclature.

MISSILE ALERT FACILITIES (MAFS)

MAFs are located at each operational missile wing for command, control, and monitoring of the Minuteman LFs. The MAF consists of a buried and hardened Launch Control Center (LCC), an above-ground Launch Control Support Building (LCSB), and a buried and hardened Launch Control Equipment Building (LCEB) to house the cooling and generator systems. The MAF topside contains living quarters and support equipment for the facility manager (FM), chef, and security personnel.

LAUNCH CONTROL CENTER (LCC)

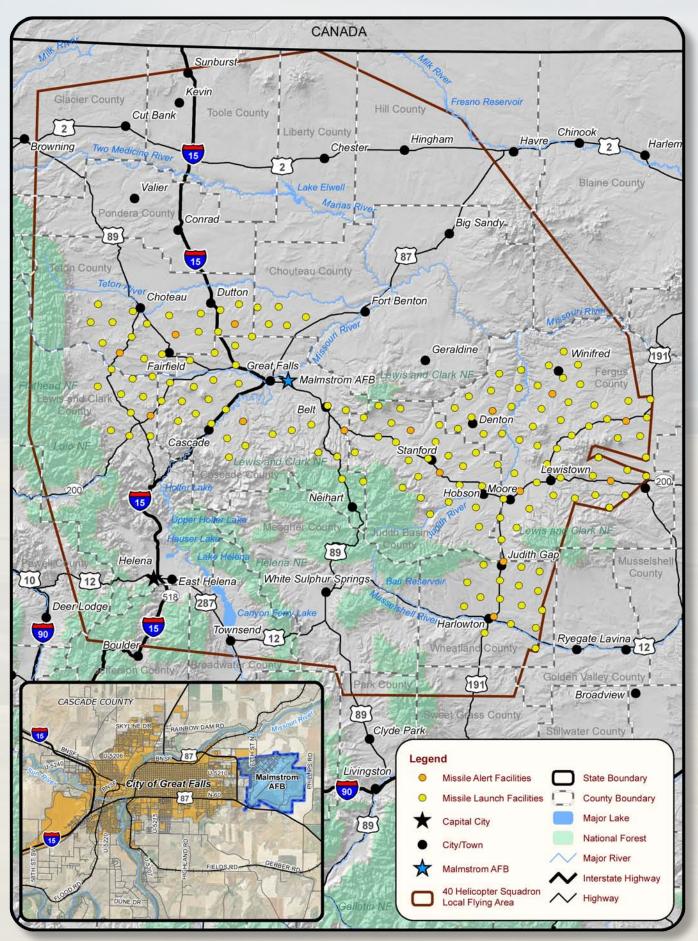
The LCC is an underground structure of reinforced concrete and steel of sufficient strength to withstand weapon effects. It contains equipment and personnel capable of controlling, monitoring, and launching 50 missiles in the unmanned launch facilities within the squadron.

The LCC outer structure is cylindrical with hemispherical ends. Walls are approximately 4.5 feet thick. A blast door permits entry into the LCC from the tunnel junction. An escape hatch 3-feet in diameter is located at the far end of the LCC. The escape hatch and associate tunnel are constructed to withstand weapon effects and allow personnel egress in the event of damage to the vertical access shaft. Essential LCC launch equipment along with the missile combat crew are located in a shock isolated room suspended within the blast-proof outer structure. The room is steel and suspended as a pendulum by four shock isolators.

HARDENED INTERSITE CABLE SYSTEMS (HICS)

The HICS is an extensive network of buried copper cables designed to survive a nuclear attack. The HICS is an underground communications link that connects the LCCs. HICS serves as the command and control communications network for the ICBMs.

Malmstrom JLUS Study Area Map



What Are JLUS Recommendations?

JLUS recommendations may involve revisions to the communities' growth policies and traditional land use and development controls, such as zoning, subdivision regulations, structural height restrictions, and promotion of planned unit development concepts. Additional actions may include amending local building codes to require increased sound attenuation in existing and new buildings, land exchanges, transfer of development rights, and real estate disclosure.

How Have Past JLUS's Been Successful?

Previous JLUS's have shown a high success rate. The JLUS effort can directly benefit both the jurisdiction and the installation by:

- Protecting the health and safety of residents living or working near military installations.
- Preserving long-term land use compatibility between the installation and the surrounding community.
- Promoting comprehensive community planning.
- Encouraging a cooperative spirit between the local base command and local community officials.
- Integrating the local jurisdictions' growth policy plans with the installation's plans.



What Is Compatibility?

Compatibility, in relationship to military readiness, can be defined as the balance and/or compromise between community and military needs and interests. The goal of compatibility planning is to promote an environment where both entities can coexist successfully. Study area data on existing conditions obtained from the TC and PC meetings will be analyzed to identify future compatibility issues. This analysis will also identify the influence of regulatory measures on land use decisions and consider existing and projected development trends within the study area. The JLUS will study a set of 24 compatibility factors that are used to help ensure all compatibility issues are identified and addressed. While some of these issues may not occur in this study, they are presented below to provide a sense of the comprehensive nature of the JLUS evaluation.

What Are the 24 Compatibility Factors?

Man-Made

- 1 Land Use
- 2 Safety Zones
- 3 Vertical Obstruction
- 4 Local Housing Availability
- 5 Infrastructure Extensions
- 6 Antiterrorism / Force Protection
- 7 Noise
- 8 Vibration
- 9 Dust / Smoke / Steam

- 10 Light and Glare
- Alternative Energy
- 12 Air Quality
- 13 Frequency Spectrum
- 14 Public Trespassing
- 15 Cultural Sites
- 16 Legislative Initiatives
- 17 Interagency Coordination

Natural Resources

- 18) Water Quality / Quantity
- 19 T & E Species
- 20) Marine Environments

Competition for Scarce Resources

- **21)** Scarce Natural Resources
- 22) Land, Air, and Sea Spaces
- 23) Frequency Spectrum Capacity
- **24** Ground Transportation









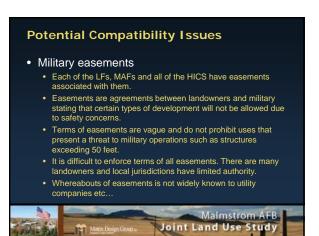










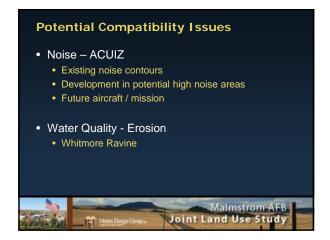














Cather additional data where needed Continue to revise Chapters 1-4 per comments, inputs and data. Receive comments on strategies Refine strategies to reflect viability and inputs. Develop Military Impact Areas Prepare for Draft Document Review Prepare for Public Comment Period Malmstrom AFB Joint Land Use Study



MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Technical Committee Meeting Tuesday, October 4, 2011

Cascade County Commission Chambers 325 2nd Ave N., Great Falls

MEETING MINUTES

Parties Present:

Joe Briggs, Cascade County
Brian Clifton, Cascade County
Susan Conell, Cascade County
Anita McNamara, Cascade County
Frank Rives, Lewis and Clark County
Lillian Sunwall, Great Falls Development Authority
Maddie Krezowski, Exergy
Steve Juhlin, Gaelectric
Van Jamison, Gaelectric
Sarah Converse, Sweetgrass Development
James Combs, Montana Department of Transportation
Harold Wheeler, Neighborhood #4
Peter Johnson, Great Falls Tribune

Issues Covered:

This meeting was the fifth Technical Committee meeting of the Malmstrom Joint Land Use Study (JLUS) process.

The meeting began with a presentation given by the Matrix Design Group Team (Matrix Team), the consulting firm hired to facilitate the development of the Malmstrom JLUS. The presentation provided an overview of the JLUS progress to date. Milestone JLUS accomplishments to date include: conducting four Policy Committee (PC) and Technical Committee (TC) meetings and two public meetings; a Cascade County tour of the six other missile counties to introduce and explain the proposed the JLUS strategies; and submitting a draft copy of the JLUS for PC/TC and public review. The main purpose of the presentation was to provide the TC with an overview of the draft JLUS report and the recommended strategies for addressing the issues contained therein. Examples of recommended strategies include establishing Military Overlay Districts and Military Affected Areas, establishing Compatibility Standard Guidelines, and developing a "Red, Yellow and Green" Map, among others (see draft JLUS report for a list of all strategies).



After the presentation was concluded the Matrix Team opened up the meeting for discussion. During the discussion the following points were made:

- Include the Bird Air Strike Hazard (BASH) as part of a Military Overlay District (MOD) in a strategy.
- The strategies need to be organized by timing and priority.
- The strategies may not need to include the adoption of building codes.
- Add Strategy: Include a disclosure strategy or MIA overlay disclosure statement
- Add Strategy: Develop mapping tool for counties.
- Add Strategy: Identify and work with an organization that buys development rights to keep land in agricultural production.
- Add Strategy: Legislation for direct appropriations to purchase additional easements around LF from 1,200 to 3,936 ft.
- Add Strategy: Notification of Military Affected Area (MAA) Buffer in growth policy and mapping for awareness.
- Add Strategy: Coordinate with local jurisdiction and MAFB to determine compatibility.
- Add Strategy: Develop Compatibility Guidelines for both the MAA and MAA buffer area.
 Add Strategy: Identify revenue source for acquisition.
- Add Strategy: Counties should require wind energy developers to pay impact fees and tax abatement process. Coordinate with MAFB prior to entering into this process.
- Add Strategy: Require wind energy developers to work with the State to trade wind energy rights for proposed development that is incompatible within the MAA buffer zone

 or require that they purchase a new type of radar that doesn't cause interference.
- Add Strategy: Cascade County subdivisions and deeds should include a disclosure statement that says: "Your land is in the proximity of MAFB and noise may be generated by the military mission."
- Add Strategy: Great Falls should include sound attenuation in building code.
- Add Strategy: Air Force should draft the Red, Yellow, Green map from DoD perspective
- Add Strategy: Develop a mother of all maps.

The Matrix Team concluded the meeting by outlining the next steps in the process. These include:

- Receiving and incorporating committee and public comments.
- Revising the draft.
- Setting up a PC/TC phone call to discuss the new strategies.
- Issuing the final draft for review by the PC and TC.

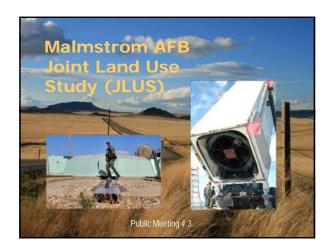
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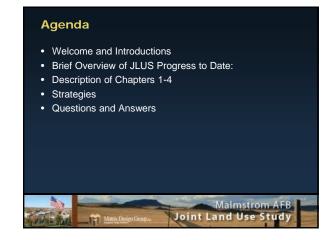
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Sign-In Sheet

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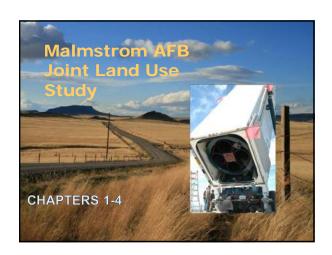


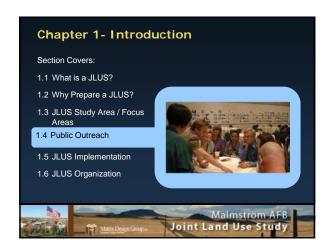


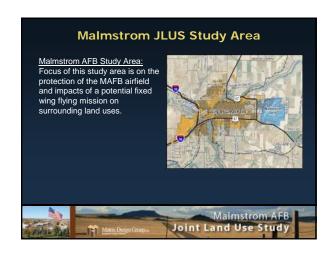


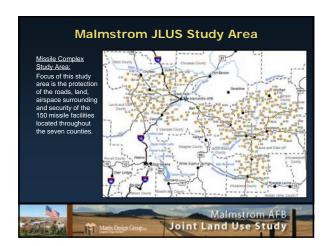


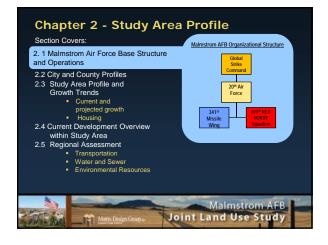


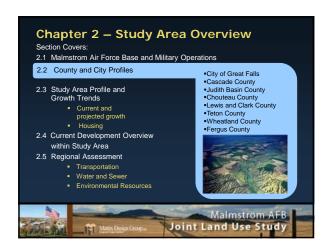


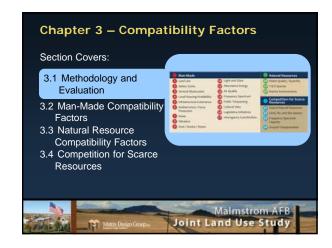


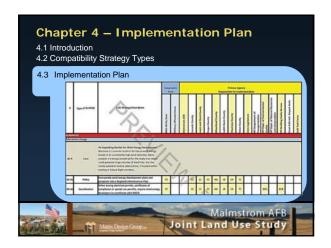


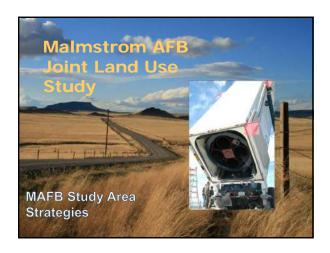










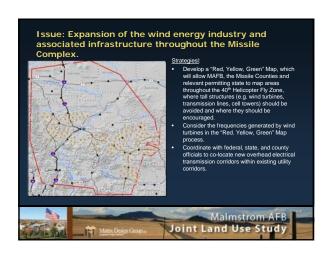


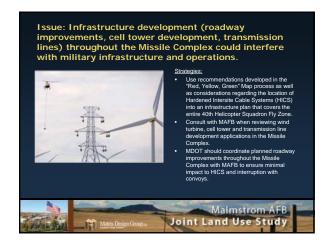




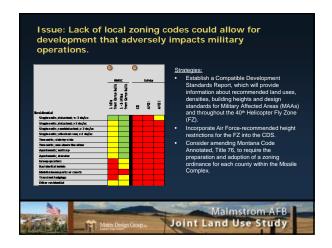




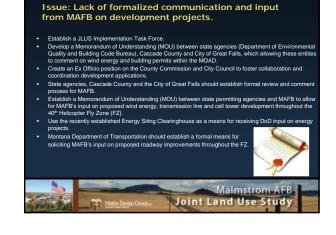
















Appendix C

Policy Committee (PC) Meetings







MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Kick-Off Policy and Technical Committee Meeting #1 March 16, 2010

Courthouse Annex 325 2nd Avenue North Room 105 Great Falls, MT 59401

MEETING MINUTES

Issues Covered:

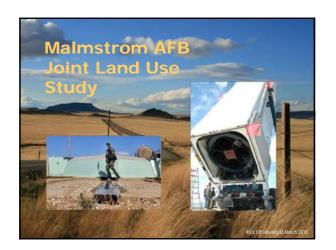
The meeting began with a Welcome and Introductions from Commissioner Briggs and a presentation by the Matrix Design Group Team. The presentation covered the following issues:

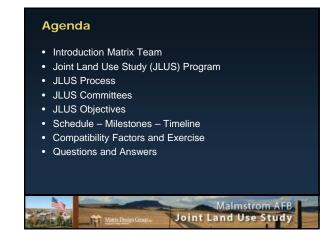
- Introduction of Matrix Team
- Explanation of the (JLUS) Program and Process
- Introduction of the JLUS Committees
- JLUS Objectives
- Schedule Milestones Timeline
- Brief Overview of the Compatibility Factors
- Questions and Answers

After the presentation, participants were invited to ask questions about the purpose and nature of the JLUS. Data requests were submitted to participants in preparation for the follow-up data collection site visit (April 2010). Participants were requested to help facilitate interviews with key staff and to assemble requested materials for the upcoming site visit.

The Matrix Design Group Team concluded the meeting by providing an overview of the next steps in the process. These included:

- Organize a data collection site visit with each of the seven counties.
- Organize the second Policy Committee and Technical Committee meeting to discuss land use conflicts.





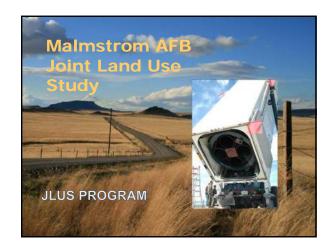


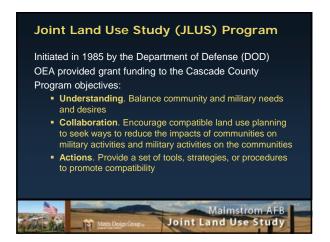


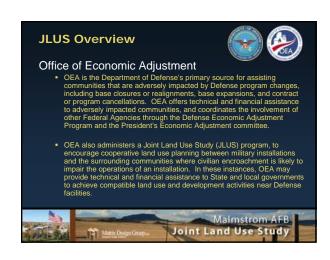




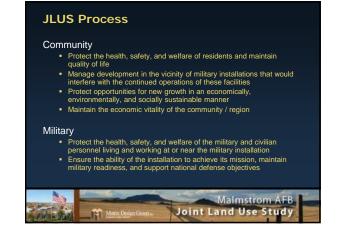


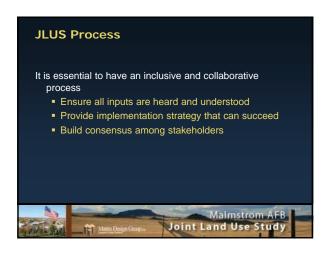




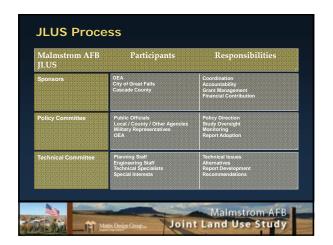


















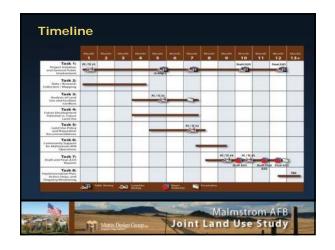


























MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Joint Policy and Technical Committee Meeting #2 April 20, 2010

Courthouse Annex 325 2nd Avenue North Room 105 Great Falls, MT 59401

MEETING MINUTES

Issues Covered:

The meeting began with a Welcome and Introductions from Commissioner Briggs and a presentation by the Matrix Design Group Team. The presentation covered the following issues:

- Explanation of the JLUS Program and Process
- Overview of the Compatibility Factors that will be reviewed in the JLUS process. These factors are:
 - Land Use
 - Safety
 - Vertical Obstructions
 - Housing Availability
 - Infrastructure Extensions
 - Anti-Terrorism/Force Protection
 - Noise
 - Vibration
 - Light and Glare
 - Alternative Energy Development
 - Air Quality
 - Frequency Spectrum Impedance and Interference
 - Public Trespassing
 - Cultural Sites
 - Legislative Initiatives
 - Interagency Coordination
 - Water Quality/Quantity
 - Threatened and Endangered Species
 - Marine Environments
 - Scarce Natural Resources
 - Land, Air and Sea Spaces
 - Frequency Spectrum Capacity
 - Ground Transportation Capacity



- Explanation of the Encroachment Issues Survey
- Administration and Next Steps

After the presentation Matrix Design Group invited committee members to fill out the encroachment issues survey and participate in a discussion about the possible encroachment issues. During this discussion the following comments were made:

- Neighborhood Council #4 is always hoping for a new flying mission.
- Wal Mart was looking to develop on the southern end of the MAFB runway within the Clear Zone (CZ) and Accident Potential Zone (APZ). This proposal was withdrawn.
- There are signs for sale of commercial property in this area.
- There was a proposal to develop of 500 residential units has also been discussed for areas within the CZ and APZ – there has been no further action on this proposal.
- The City of Great Falls cannot limit land use approval based on Growth Plan consistency
- Development in this CZ and APZ could impact long-range viability of the base's potential flying mission.
- Wind energy is an expanding industry in the region.
- There is a large area in Cascade County, where the DoD prohibits wind energy development because of the presence of a radar. Understanding of the reason for this prohibition is limited.
- Verify lack of height limitations within the 1,200' radius around launch sites
- Andy will get list of all property owners around each site and the base
- Wind energy stakeholders include:
 - ✓ Montana Renewable Energy Association
 - ✓ www.montanawind.com
 - √ www.cascadecountywind.com

The Matrix Design Group Team concluded the meeting by providing an overview of the next steps in the process. These included:

- Reviewing the data collected during this site visit.
- Continuing to gather additional information.
- Identifying issues based on the information gathered and interviews conducted.
- Organizing a future site visit and set of public outreach meetings.



FACT SHEET September 2010

What Is a Joint Land Use Study?

A Joint Land Use Study (JLUS) is a cooperative land use planning effort conducted as a joint venture between an active military installation, surrounding cities and counties, state and federal agencies, and other affected stakeholders. The JLUS collaboration is funded through the Department of Defense (DoD) Office of Economic Adjustment (OEA).

What Are the Objectives of the JLUS?

The primary objective of a JLUS is to reduce potential conflicts between a military installation and its host community while still accommodating new growth and economic development, sustaining economic vitality, and protecting the general public's health, safety, and welfare, without compromising the operational missions of the installation. JLUS programs have three core objectives:

UNDERSTANDING. Increase communication between the military, local jurisdictions, and stakeholders to promote an understanding of the strong economic and physical relationship between the installation and its neighbors.

COLLABORATION. Promote collaborative planning between the military, local jurisdictions, and stakeholders in order to safeguard the mission of the installation from future incompatible development.

ACTIONS. Develop and implement strategies for reducing the impacts of incompatible activities on the community and military operations. Devise tools to support compatibility in the future.

How Long Will the Project Take?

The Malmstrom JLUS is expected to be completed by May 2011.

How Will the Project Be Undertaken?

The project will be completed in five phases that are built upon each other:

PHASE 1: Project Initiation

PHASE 2: Data Collection

PHASE 3: Public Outreach and Communication

PHASE 4: Analysis and Mapping

PHASE 5: Analysis of Land Uses and Potential Conflicts with Military Missions

What Are the Opportunities For Public Input?

The public can be involved in the development of the JLUS by providing input and guidance to the process by informing the representatives of the Policy Committee of their issues and recommendations, submitting comments and feedback online at www.malmstromjlus.com, using the interactive JLUS website, and attending the three public meetings.

PUBLIC FORUM #1. Provides an overview of the JLUS process and defines the study area.

PUBLIC FORUM #2. Presents the potential compatibility issues relating to the JLUS study area.

PUBLIC FORUM #3. Presents the Draft JLUS document.

Who Will Guide the Development of the JLUS?

Two committees, comprised of city, county, military, and other stakeholders will guide the development of the JLUS. These committees include:

POLICY COMMITTEE (PC). This committee is responsible for leading the direction of the JLUS and monitoring the implementation and adoption of policies and strategies.

TECHNICAL COMMITTEE (TC). This committee is made up of representatives from different agencies and the development community. The TC identifies and addresses technical issues, provides feedback on report development, and assists in the development and evaluation of implementation strategies and tools.

What Will the Malmstrom JLUS Address?

The Malmstrom JLUS will provide all stakeholders:

- A detailed land use assessment for surrounding high growth
 areas.
- A baseline of existing incompatible land uses around the installation.
- Assessments of regional growth trends along designated transportation corridors.
- A plan to assist surrounding communities with decision-making.
- Recommendations and strategies to promote compatible land use planning around Malmstrom Air Force Base (AFB), the Malmstrom Missile Complex, and surrounding communities.

The Malmstrom JLUS is comprised of two study areas. One study area covers the entirety of the Malmstrom Missile Complex, which is a 13,800 square mile area crossing 7 counties and containing 150 Minuteman III Intercontinental Ballistic Missile (ICBM) sites called Launch Facilities (LFs) and 15 Missile Alert Facilities (MAFs). The other study area covers the area surrounding Malmstrom Air Force Base proper. This study area will examine the impacts that an operational runway might have on surrounding land uses and vice versa. This JLUS will use the noise and safety footprint of the most recent Malmstrom flying mission. The two study areas will address private and public lands near these military facilities.

The JLUS will examine existing land use; growth trends and development potential; and existing regulations, plans and procedures. Using this background information and the ideas developed with the stakeholders during public forums and committee workshops, the JLUS will develop recommendations and identify strategies to promote compatible land use planning around each installation and military use area.

Malmstrom Missile Complex

The Missile Complex is the area that contains the 150 Minuteman III ICBM LFs and MAFs. This areas falls within the boundaries of the following counties:

- Cascade
- Chouteau
- Fergus
- Lewis and Clark
- Teton
- Wheatland
- Judith Basin

The LFs and MAFs within the Missile Complex are managed by the 341st Missile Wing (341 MW). The 341 MW, headquartered at Malmstrom Air Force Base, is one of three U.S. Air Force Bases that maintains and operates the Minuteman III ICBM. The 341 MW is made up of a wing staff and five groups - the 341st Operations Group, 341st Maintenance Group, 341st Mission Support Group, 341st Security Forces Group and 341st Medical Group. Together, these groups manage 150 Minuteman III missiles which provide the critical component of America's on-alert strategic forces. The 341 MW also operates 8 UH-1N "Huey" helicopters throughout the 13,800 squaremile missile complex. The helicopters are used as a force-multiplier in day-to-day security of the missile complex.

Malmstrom Air Force Base (AFB)

Malmstrom AFB is situated just east of the City of Great Falls in Cascade County in northeastern Montana. Malmstrom AFB, which serves as the headquarters for the 341 MW, was the former home of the 43rd Air Refueling Group. While the 43rd Air Refueling Group was operational, the runway at Malmstrom served KC-135R, UH-1N, and C-12 aircraft.

In 1997, Malmstrom's runway was declared inactive and the air traffic control tower, navigational aids and runway were closed. One hangar and a portion of the Malmstrom flight line remained operational for aviation purposes as a heliport for Malmstrom's 40th Helicopter Squadron (40 HS), which provides support for the 341 MW's Minuteman III ICBM sites.

MINUTEMAN III INTERCONTINENTAL BALLISTIC MISSILE (ICBM)

The Minuteman is a strategic weapon system using a ballistic missile of intercontinental range. Missiles are dispersed in hardened silos to protect against attack and connected to an underground launch control center through a system of hardened cables. Launch crews, consisting of two officers, perform around-the-clock alert in the launch control center.

A variety of communication systems provide the president and secretary of defense with highly reliable, virtually instantaneous direct contact with each launch crew. Should command capability be lost between the launch control center and remote missile launch facilities, specially configured E-6B airborne launch control center aircraft automatically assume command and control of the isolated missile or missiles. Fully qualified airborne missile combat crews aboard airborne launch control center aircraft would execute the president's orders.

LAUNCH FACILITIES (LFS)

An ICBM LF is an underground vertical cylindrical container for the storage and launching of ICBMs. They typically have the missile some distance under the surface, protected by a large "blast door" on top. They are usually connected, either physically or electrically to a launch control center. ICBM Launch facilities are synonymous with the term missile silo, used in common nomenclature.

MISSILE ALERT FACILITIES (MAFS)

MAFs are located at each operational missile wing for command, control, and monitoring of the Minuteman LFs. The MAF consists of a buried and hardened Launch Control Center (LCC), an above-ground Launch Control Support Building (LCSB), and a buried and hardened Launch Control Equipment Building (LCEB) to house the cooling and generator systems. The MAF topside contains living quarters and support equipment for the facility manager (FM), chef, and security personnel.

LAUNCH CONTROL CENTER (LCC)

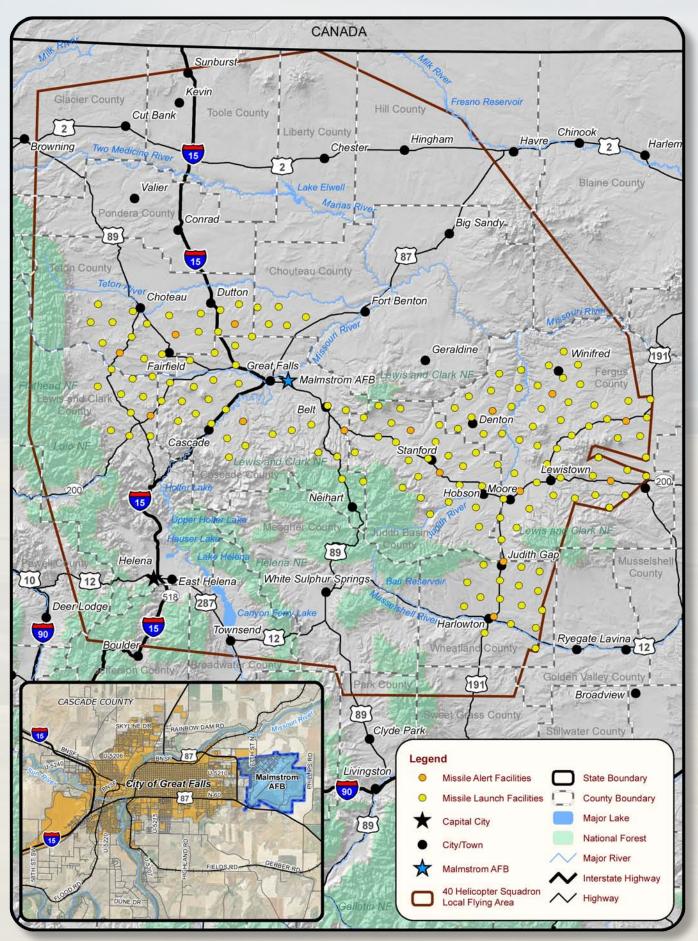
The LCC is an underground structure of reinforced concrete and steel of sufficient strength to withstand weapon effects. It contains equipment and personnel capable of controlling, monitoring, and launching 50 missiles in the unmanned launch facilities within the squadron.

The LCC outer structure is cylindrical with hemispherical ends. Walls are approximately 4.5 feet thick. A blast door permits entry into the LCC from the tunnel junction. An escape hatch 3-feet in diameter is located at the far end of the LCC. The escape hatch and associate tunnel are constructed to withstand weapon effects and allow personnel egress in the event of damage to the vertical access shaft. Essential LCC launch equipment along with the missile combat crew are located in a shock isolated room suspended within the blast-proof outer structure. The room is steel and suspended as a pendulum by four shock isolators.

HARDENED INTERSITE CABLE SYSTEMS (HICS)

The HICS is an extensive network of buried copper cables designed to survive a nuclear attack. The HICS is an underground communications link that connects the LCCs. HICS serves as the command and control communications network for the ICBMs.

Malmstrom JLUS Study Area Map



What Are JLUS Recommendations?

JLUS recommendations may involve revisions to the communities' growth policies and traditional land use and development controls, such as zoning, subdivision regulations, structural height restrictions, and promotion of planned unit development concepts. Additional actions may include amending local building codes to require increased sound attenuation in existing and new buildings, land exchanges, transfer of development rights, and real estate disclosure.

How Have Past JLUS's Been Successful?

Previous JLUS's have shown a high success rate. The JLUS effort can directly benefit both the jurisdiction and the installation by:

- Protecting the health and safety of residents living or working near military installations.
- Preserving long-term land use compatibility between the installation and the surrounding community.
- Promoting comprehensive community planning.
- Encouraging a cooperative spirit between the local base command and local community officials.
- Integrating the local jurisdictions' growth policy plans with the installation's plans.



What Is Compatibility?

Compatibility, in relationship to military readiness, can be defined as the balance and/or compromise between community and military needs and interests. The goal of compatibility planning is to promote an environment where both entities can coexist successfully. Study area data on existing conditions obtained from the TC and PC meetings will be analyzed to identify future compatibility issues. This analysis will also identify the influence of regulatory measures on land use decisions and consider existing and projected development trends within the study area. The JLUS will study a set of 24 compatibility factors that are used to help ensure all compatibility issues are identified and addressed. While some of these issues may not occur in this study, they are presented below to provide a sense of the comprehensive nature of the JLUS evaluation.

What Are the 24 Compatibility Factors?

Man-Made

- 1 Land Use
- 2 Safety Zones
- 3 Vertical Obstruction
- 4 Local Housing Availability
- 5 Infrastructure Extensions
- 6 Antiterrorism / Force Protection
- 7 Noise
- 8 Vibration
- 9 Dust / Smoke / Steam

- 10 Light and Glare
- Alternative Energy
- 12 Air Quality
- 13 Frequency Spectrum
- 14 Public Trespassing
- 15 Cultural Sites
- 16 Legislative Initiatives
- 17 Interagency Coordination

Natural Resources

- 18) Water Quality / Quantity
- 19 T & E Species
- 20) Marine Environments

Competition for Scarce Resources

- **21)** Scarce Natural Resources
- 22) Land, Air, and Sea Spaces
- 23) Frequency Spectrum Capacity
- **24** Ground Transportation



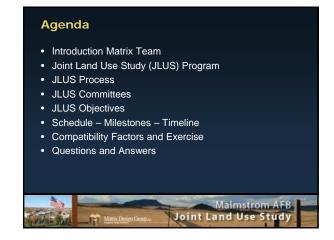
What are the encroachment factors today, tomorrow, and beyond?

Nam Orga	anization:	Current Issue	Potential Future Issue	Adequately Addressed Now	Not Applicable
1	Land Use				
	Safety Zones (Air Operations)				
2	Safety Zones (Explosives Safety)				
2	Safety Zones (Ground Operations)				
	Safety Zones (Other)				
3	Vertical Obstruction				
4	Local Housing Availability				
5	Infrastructure Extensions				
6	Antiterrorism / Force Protection				
7	Noise				
8	Vibration				
9	Dust / Smoke / Steam				
10	Light and Glare				
11	Alternative Energy Development (wind, etc.)				
12	Air Quality				
10	Frequency Spectrum (Impedance)				
13	Frequency Spectrum (Interference)				
14	Public Trespassing				
15	Cultural Sites				
16	Legislative Initiatives				
17	Interagency Coordination				
18	Water Quality / Quantity				
19	Threatened and Endangered Species				
20	Marine Environments				
21	Competition for Natural Resources				
22	Competition of Land, Air, and Sea Spaces				
23	Competition for Frequency Spectrum				
24	Competition for Ground Transportation Capacity				
25	Other				
26	Other				
27	Other				
28	Other				
29	Other				
30	Other				

What are the implementation measures today, tomorrow, and beyond?

		Local	Military	Currently Used	Possible Application	Not Desirable	Not Applicable
1	Acquisition						
2	Army Compatible Use Buffer (ACUB) Program						
3	Avigation Easement						
4	Bird/Wildlife Strike Hazard Program						
5	Cluster Development						
6	Code Enforcement						
7	Communication / Coordination						
8	Comprehensive Plan / Master Plan						
9	Concurrency Ordinance						
10	Conservation Easement						
11	Conservation Partnering Authority						
12	Building/Construction Standards						
13	Deed Restrictions						
14	Habitat Conservation Tools						
15	Hazard Mitigation Plan						
16	Infill Development Standards / Guidelines						
17	Joint Land Use Study						
18	Light and Glare Controls						
19	Military Influence Area						
20	MOU / Local Agreements						
21	Real Estate Disclosure						
22	SEPA / NEPA						
23	Sound Attenuation						
24	Subdivision Ordinance						
25	Use Permit						
26	Urban Growth Areas						
27	Zoning						
28	Other						
29	Other						
30	Other						





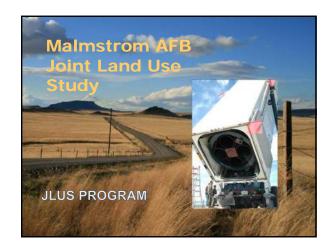


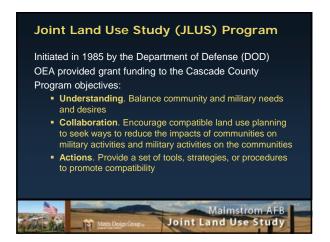


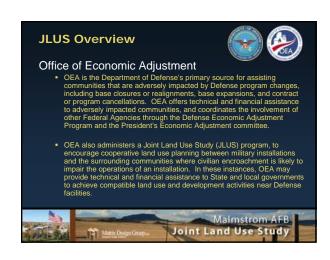




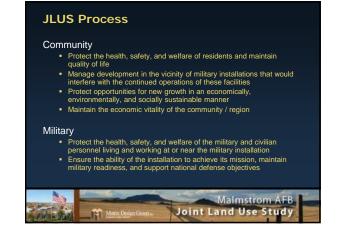


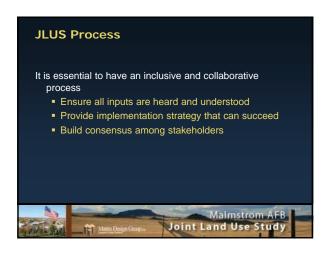




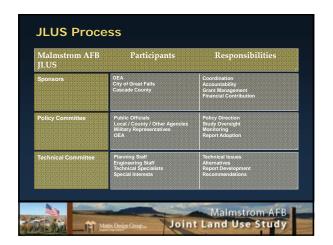


















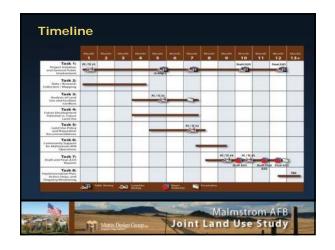


























MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Policy Committee Meeting #2

AGENDA

September 15, 2010 Wednesday 3:00 – 5:00 PM

1. Welcome and Introductions	Cascade County, Commissioner Joe Briggs
Welcome and Self IntroductionsPurpose of the Meeting	
2. JLUS Project Update	Matrix Design Group
3. Compatibility Survey and Interview Results	Matrix Design Group
4. Malmstrom AFB JLUS Encroachment Issues Overview	Matrix Design Group
5. Preliminary Military Influence Area (MIA)	Matrix Design Group
6. Administration and Next Steps	Matrix Design Group

For more particular information, contact the Cascade County, Planning Department.

Funded by the Department of Defense Office of Economic Adjustment, the JLUS is a collaborative planning effort between Malmstrom AFB, Cascade County, the surrounding cities and counties, and other affected agencies. The overall goal of the JLUS is to reduce potential conflicts while accommodating growth, sustaining the economic health of the region, and protecting public health and safety.



MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Policy Committee Meeting #2 September 15, 2010 3 to 5 PM

Courthouse Annex 325 2nd Avenue North Room 105 Great Falls, MT 59401

MEETING MINUTES

Parties Present:

Commissioner Joe Briggs, Cascade County
Brian Clifton, Cascade County, Public Works Director
Brant Birkeland, City of Great Falls, Planner
Phil Rainforth, Malmstrom AFB, Chief Asset Management
Joe Aline, Property Owner
Jeff Mangan, Great Falls International Airport Authority, Board Chair
Carl Donovan, Council of Councils 6
Commissioner Jane Weber, Cascade County
Commissioner Bill Salina, Cascade County
Garry Gontz, Project Manager, DoD, Office of Economic Adjustment
Don Treanor, Air Force Liaison, DoD, Office of Economic Adjustment
Susan Connell, Cascade County, Planning Director
Anita McNamara, Cascade County, Planner
Kim Thiel-Schaaf, Great Falls Development Authority, OEA Grant

Issues Covered:

The meeting began with a Welcome and Introductions by Commissioner Briggs and a presentation by the consultant, Matrix Design Group Team (see attached document). The presentation covered the following issues:

- JLUS Update
- Compatibility Survey and Interview Results
- Malmstrom AFB JLUS Encroachment Issues Overview
- Preliminary Military Influence Areas (MIA)
- Administration and Next Steps



After the presentation Matrix Design Group facilitated a discussion about the contents of the presentation and the participants concerns and thoughts. The following questions, issues and considerations were discussed:

- An explanation of how the information provided in the presentation was gathered and was provided. Information was gathered through surveys of and interviews with participating stakeholders as well as comprehensive followup data collection actions through emails and telecommunication methods.
- A suggestion was made to include wind energy development/transmission and frequency issues experts from these fields in the discussion and perhaps have a workshop for PC/TC members so as to ensure shared comprehension and awareness of the issues. Conclusion was to invite experts to the PC/TC meetings to present their issues and potential solutions.
- The proposal to limit the Whitmore Ravine Study Area was discussed and determined that the areas of the Whitmore Ravine Study Area that may have a compatibility issue associated with the JLUS objectives should be included in the JLUS study area.
- A proposal to introduce an MOU between DoD and the State of Montana regarding wind energy permitting was discussed as a potential JLUS strategy.
- It was stated that MAFB is still considered an operational airport under Montana State Law since it still serves rotary aircraft.
- Cascade County mentioned that they met with a developer interested in developing 150 or more wind turbines within the 40th Helicopter Squadron Fly Zone.
- Discussed that frequency issues may be a potential compatibility issue such as interference by wind turbines with the line of sight communications.
- The possibility of considering a noise contour buffer area (Noise MIA) was discussed. It was determined that the new and future weapon systems generate larger noise contours that older weapon systems. A potential JLUS strategy may be to consider designating an overlay district or a noise buffer zone which might be a more conservative approach.
- The approach for protecting the areas of concern around the Great Falls International Airport was discussed as an example of a means for protecting all types of airports, including military.
- Incidents of vertical obstructions being erected within the 1,200 ft LF buffer zones, such as the cell tower in Eddie's Corner, were discussed.
- The possibility of pursuing a red, yellow, green map that reflects agreements between the MAFB, jurisdictions, the state, and the wind industry about appropriate locations for wind energy development was discussed. If this approach were to be taken MAFB would need to be more specific about the flight paths associated within the Fly Zone.
- There was a question about whether the Helicopter Fly Zone area (Preliminary Vertical Obstruction MIA) encompasses any Tribal Lands.
- It was proposed that the BLM, USFS and State Lands (Montana DNRC) be engaged in the process in some way.



GROUP:

Date:

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Sign-In Sheet

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PHONE	188-1957	731-7227	750-3195	455-8478	727-3537	454-6905	5189-15H				
AGENCY	6FIMA	Macmstram ATB	Course of Courses Ge Cheer GF Trensit	ारेष जी पह	LANDO WNER	CASCADE COUNTY	CASIANE CO. 47				
NAME	LEAF MANGARI	PHE PAPIFORIA	CARL J DOWOUAN	BRANT RIPHELAND	LOE ALINE	BRIEGE CLUFTON	Toe Briggs	94			



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Sign-In Sheet

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Malmstrom Air Force Base Joint Land Use Study

COMPATIBILITY FACTORS



What Are Compatibility Issues?

Compatibility, in relationship to military readiness, can be defined as the balance or compromise between community needs and interests and those of the military. The goal of compatibility planning is to promote an environment where both entities can coexist successfully.

A number of factors influence whether community and military plans, programs, and activities are compatible or in conflict. To assist in identifying potential compatibility issues, a comprehensive list of 24 Compatibility Factors (categories) is used to characterize local issues. These Compatibility Factors have been divided into three broad categories: man-made, natural resource, and competition for scarce resources (see text box at the bottom of this page). While it is uncommon to find issues under each of the 24 Compatibility Factors, using this list helps to ensure a comprehensive look at potential issues. A short description of each Compatibility Factor is provided on the following pages.

In addition to describing existing and potential compatibility issues, this list can also be used in the future to assist in reviewing plans, programs, or development proposals and related applications.

Standard Compatibility Factors

Man-Made **Natural Resources** 10 Light and Glare 1 Land Use 18 Water Quality / Quantity 2 Safety Zones **Alternative Energy** 19 T & E Species 3 Vertical Obstruction Air Quality 20 Marine Environments Frequency Spectrum Local Housing Availability Competition for **Public Trespassing** Infrastructure Extensions **Scarce Resources Cultural Sites** Antiterrorism / Force 21) Scarce Natural Resources Protection Legislative Initiatives 22) Land, Air, and Sea Spaces Noise **Interagency Coordination** 23) Frequency Spectrum Vibration Capacity Dust / Smoke / Steam 24) Ground Transportation

1 Land Use



The basis of land use planning relates to the government's role in protecting the public's health, safety, and welfare. County and local jurisdictions' growth

policy/comprehensive plans and zoning ordinances can be the most effective tools for avoiding, or resolving, land use compatibility issues. These tools ensure the separation of land uses that differ significantly in character. Land use separation also applies to properties where the use of one property may impact the use of another. For instance, industrial uses are often separated from residential uses to avoid impacts related to noise, odors, lighting, etc.

2 Safety Zones

Safety zones are areas in which development should be more restrictive, in terms of use and concentrations of people, due to the higher risks to public safety. Issues to consider include aircraft accident potential zones, weapons firing range safety zones, and explosive safety zones.

3 Vertical Obstructions



Vertical obstructions are created by buildings, trees, structures, or other features that may encroach into the navigable airspace used for military operations (aircraft approach, transitional, inner horizontal, outer horizontal, and conical areas, as well as

military training routes). These can present a safety hazard to both the public and military personnel and potentially impact military readiness.

4 Local Housing Availability

Local housing availability addresses the supply and demand for housing in the region, the competition for housing that may result from changes in the number of military personnel, and the supply of military family housing provided by the installation.

5 Infrastructure Extensions

This factor covers the extension or provision of infrastructure (roads, sewer, water, etc.). Infrastructure plays an interesting role in compatibility. On the positive side, infrastructure can enhance the operations of the installation by providing needed services, such as sanitary sewer treatment capacity and transportation systems. However, infrastructure can also be an encroachment issue. If enhanced or expanded, infrastructure could encourage growth into areas near the installation that might not be compatible with current or future missions.

6 Anti-Terrorism / Force Protection

Anti-Terrorism / Force Protection (AT / FP) relates to the safety of personnel, facilities, and information on an installation from outside threats. Methods to protect the installation and its supportive facilities can impact off-installation uses.

7 Noise

From a technical perspective, sound is mechanical energy transmitted by pressure waves in a compressible medium such as air. More simply stated, sound is what we hear. As sounds reach unwanted levels, this is referred to as noise.

The central issue of noise is the impact, or perceived impact, on people, animals (wild and domestic), and general land use compatibility. Exposure to high noise levels can have a significant impact on human activity, health, and safety.



8 Vibration

Vibration is an oscillation or motion that alternates in opposite directions and may occur as a result of an impact, explosion, noise, mechanical operation, or other change in the environment. Vibration may be caused by military and/or civilian activities.

9 Dust / Smoke / Steam

Dust is the common term used to describe the suspension of particulate matter in the air. Dust (and smoke) can be created by fire (controlled burns, agricultural burning), ground disturbance (agricultural operations, grading), industrial activities, or other similar processes. Dust, smoke and steam becomes a compatibility issue if sufficient in quantity to impact flight operations (such as reduced visibility or equipment damage).

10 Light and Glare



This factor refers to manmade lighting (street lights, airfield lighting, building lights) and glare (direct or reflected light that disrupts normal vision).

Light sources from commercial, industrial, and residential uses at night can cause excessive glare

and illumination, which can impact the use of military night vision devices and air operations. Conversely, high intensity light sources generated from a military area (such as ramp lighting) may have a negative impact on the adjacent community.

11 Alternative Energy Development



Alternative energy refers to sources, such as solar, wind, or biofuels, that can be used to replace or supplement traditional fossil-fuel sources, such as coal, oil, and natural gas. Alternative energy development could pose compatibility issues related to glare (solar

energy) or vertical obstruction (wind generation). Other alternative energy developments, such as biofuels, do not typically pose compatibility issues, and would be analyzed for compatibility on a case-by-case basis.

12 Air Quality

Air quality is defined by a number of components that are regulated at the federal and state level. For compatibility, the primary concerns are pollutants that limit visibility, such as particulates, ozone, and potential non-attainment of air quality standards that may limit future changes in operations at the installation.

Frequency Spectrum Impedance and Interference

Frequency spectrum impedance and interference refers to the interruption of electronic signals by a structure (impedance) or the inability to distribute / receive a particular frequency because of similar frequency competition (interference).

14 Public Trespassing

This factor addresses public trespassing, either purposeful or unintentional, onto a military installation. The potential for trespassing increases when public use areas are in close proximity to the installation.



15 Cultural Resources

Cultural resources may prevent development, apply development constraints, or require special access by Native American tribes, other groups, or governmental regulatory authorities.

16 Legislative Initiatives

Legislative initiatives are federal, state, or local laws and regulations that may have a direct or indirect effect on a military installation to conduct its current or future mission. They can also constrain development potential in areas surrounding the installation.

17 Interagency Coordination

Interagency coordination relates to the level of interaction on compatibility issues among military installations, jurisdictions, land and resource management agencies, and conservation authorities.

18) Water Quality / Quantity

Water quality / quantity concerns include the assurance that adequate water supplies of good quality are available for use by the installation and surrounding communities as the area develops.

19 Threatened and Endangered Species

A threatened species is one that may become extinct if measures are not taken to protect it. An endangered species is one that has a very small population and is at greater risk of becoming extinct. Many species that become extinct are never included on the endangered species list. The presence of threatened and endangered species may require special development considerations and should be included early in planning processes to ensure compatibility with military missions and economic development.

20) Marine Environments

Regulatory or permit requirements protecting marine and ocean resources can cumulatively affect the military's ability to conduct operations, training exercises, or testing in a water-based environment.

21) Scarce Natural Resources

Pressure to gain access to valuable natural resources (such as oil, natural gas, minerals, and water resources) located on military installations, within military training areas, or on public lands historically used for military operations can impact land utilization and military operations.

22 Land, Air, and Sea Spaces

The military manages or uses land, air, and sea space to accomplish testing, training, and operational missions. These resources must be available and of a sufficient size, cohesiveness, and quality to accommodate effective training and testing.



Military and civilian air operations can compete for limited air space, especially when the airfields are in close proximity to

each other. Use of this shared resource can impact future growth in operations for all users.

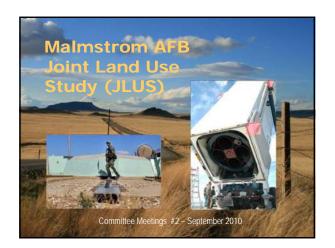
23) Frequency Spectrum Capacity

In a defined area, the frequency spectrum is limited. Frequency spectrum capacity is critical for maintaining existing and future missions and communications on installations. This is also addressed from the standpoint of consumer electronics.

24) Ground Transportation Capacity

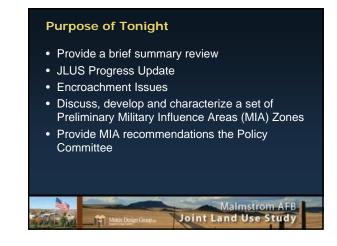
Ground Transportation Capacity relates to the ability of existing freeways, highways, arterials, and other local roads to provide adequate mobility and access between military installations and their surrounding communities.













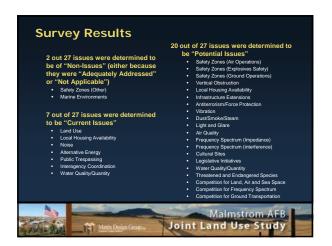


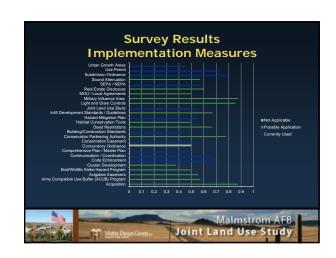








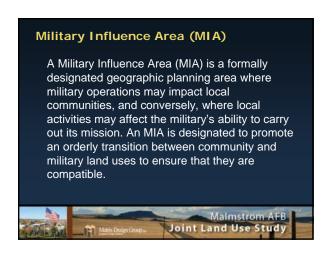


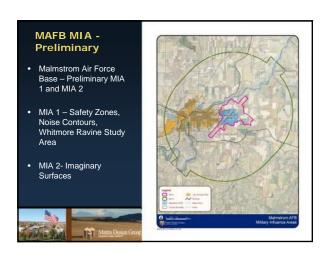


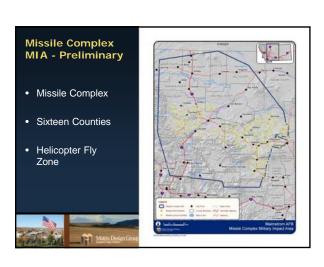


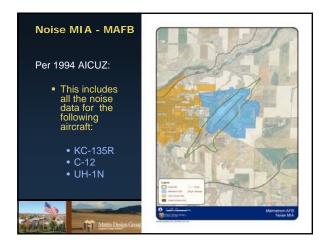




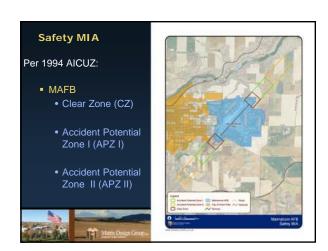


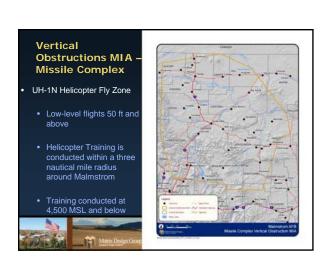


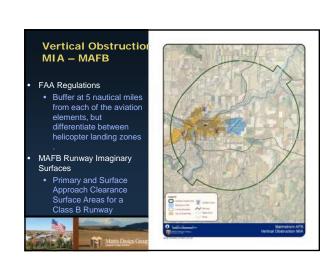


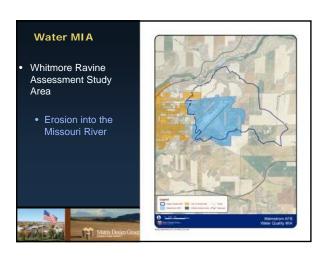


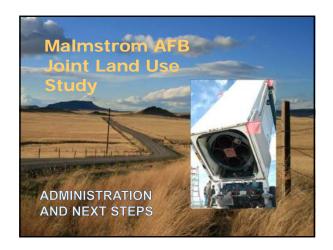












Next Steps

- First Public Meeting Today
- Technical Committee to work on refining compatibility issues and initial tools discussion in preparation for next TAC Meeting
- Technical Committee to be provided initial review of the draft chapters (1-4) of report
- Develop plan for next set of public meetings in surrounding counties





MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Policy Committee Meeting #3

AGENDA

February 24, 2011 Thursday 9:00 – 11:00 AM

1.	Welcome and Introductions	Cascade County, Commissioner Joe Briggs
	Welcome	
	 Purpose of the Meeting 	
2.	JLUS Project Update	Matrix Design Group
3.	Malmstrom AFB JLUS Encroachment Issues Overview	Matrix Design Group
4	Review of Preliminary Strategies	Matrix Design Group
5.	Administration and Next Steps	Matrix Design Group

For more particular information, contact the Cascade County, Planning Department.

Funded by the Department of Defense Office of Economic Adjustment, the JLUS is a collaborative planning effort between Malmstrom AFB, Cascade County, the surrounding cities and counties, and other affected agencies. The overall goal of the JLUS is to reduce potential conflicts while accommodating growth, sustaining the economic health of the region, and protecting public health and safety.



MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Policy Committee Meeting #4 Thursday, February 24, 2010 9 AM

Courthouse Annex 325 2nd Avenue North Room 105 Great Falls, MT 59401

MEETING MINUTES

Parties Present:

Joe Briggs, Cascade County Commissioner
Brian Clifton, Cascade County, Director of Public Works
Susan Connell, Cascade County, Director Planning Department
Greg Doyon, City of Great Falls, City Manager
Carl Seilstad, Fergus County, Commissioner
Lillian Sunwall, Great Falls Economic Development Authority
Rick Solander, Office of Economic Adjustment, Project Manager
Jeff Mangan, Great Falls International Airport Authority
Phil Rainforth, Malmstrom AFB, Property Asset Manager
Neal Cleveland, Property Owner
Mike Hayne, City of Great Falls, Planner
Ronda Wiggers, Great Falls Association of Realtors, Lobbyist

Issues Covered:

The meeting began with a presentation given by Mike Hrapla from Matrix Design Group. The presentation provided an overview of the progress on the JLUS to date to include the collection of data, the identification of issues and review of the preliminary versions of Chapters 1 through 4 by committee members. The presentation also highlighted the major issues that that have been identified in the JLUS process to date. The issues discussed included: Vertical Obstructions

- Unmonitored development of structures such as wind turbines, transmission lines and cell towers within fly zone and within the 1200 ft. LF buffer.
- Density of such development is an important factor e.g. 20 versus 100 wind turbines.
- Development of transmission lines could invite future wind energy development in inopportune locations.

Minimal Local Land Use Regulation



- Montana State Law does not require counties to instate zoning regulations which means
 the counties that do not elect to have zoning regulations have minimal capacity to
 oversee how and where development happens.
- State of Montana oversees building code requirements and enforcement, not local jurisdictions, which limits their ability to impose height restrictions and design standards.
- Under the Siting Facilities Act large scale energy development projects are permitted by the State not local governments.

Military easements

- Each of the LFs, MAFs and all of the HICS have easements associated with them.
- Easements are agreements between landowners and military stating that certain types of development will not be allowed due to safety concerns.
- Terms of easements are vague and do not prohibit uses that present a threat to military operations such as structures exceeding 50 feet.
- It is difficult to enforce terms of all easements. There are many landowners and local jurisdictions have limited authority.
- Whereabouts of easements is not widely known to utility companies etc...

Frequency Interference

• Wind turbines present potential for frequency interference with helicopter navigation instruments.

Light and Glare

- 40th HS flies 24/7 and uses night vision goggles, certain outdoor lights limit visibility.
- LED and outdoor light sources that are not designed with helicopter visibility in mind can create safety risks.
- In the absence of Dark Sky Ordinances there is no way for local governments to regulate outdoor lighting.

Ground Transportation Capacity

- Military convoys share roadways with civilian traffic, do not stop and drive at high speeds.
- Montana Department of Transportation does not routinely factor in military use of roadways when issuing permits.
- Military funds maintenance of Defense Access Roads (DAR) and is entitled to use of roadways.
- Large commercial trucks can interfere with military convoys.

Safety

- Development in Clear Zone and APZs
- Controls in areas around MAFB

Vertical Obstructions

- Erection of vertical Obstructions within Imaginary Surfaces
- New Transmission Line Development
- Development of Wind Turbines in departure and approach zones.

Noise

- Existing noise contours shown in the Air Installation Compatible Use Zone Report.
- Future development in potential high noise areas



Threats to a potential future aircraft / mission

Actor Quality

Water Quality

Erosion and sedimentation caused by MAFB in Whitmore Ravine

After the presentation, the meeting was opened up for a round table discussion of the proposed strategies that have been developed to address the issues identified above. A handout identifying the specific issues, the proposed strategies and actions for addressing those issues, the impacted study area and which agencies should be the primary responsible agency for implementing the strategy were provided. The version handed out to the PC reflected comments and suggestions made by the TC meeting.

Celeste Werner provided an overview of the geographic area and purpose of the proposed Military Influence Areas (MIAs) and a Military Overlay Airport District (MOAD). The proposed MIAs included:

MAFB Study Area:

- A Military Overlay Airport District (MOAD) which encompasses the same area as the MAFB Runway Imaginary Surfaces area and includes various Height MIAs within its boundaries. The Height MIAs would match up with the various Imaginary Surfaces (e.g. Conical, Primary, Transitional) each of which would have its own height specifications per Federal Aviation Administration requirements.
- Noise and Safety MIA which would encompass the noise contours and safety zones identified in Malmstrom's 1994 Air Installation Compatible Use Zone (AICUZ) Report, as well as the Whitmore Ravine Study Area.

Missile Complex:

- A Safety MIA around each of the Launch Facilities (LFs) and Missile Alert Facilities (MAFs) that extends the existing safety arc area from 1200 feet to 4000 feet.
- A Missile Complex MIA, which encompasses the entire 40th HS Fly Zone.

The Policy Committee (PC) reviewed the handout and provided the following comments:

- There are approximately 500 landowners with Launch Facility safety arc easements on their property. However in many cases the landowner does not live at the property address.
- Development within the 1200 ft. safety arc interrupts the line of sight, reduces maneuverability and allows for increased opportunities for terrorism.
- The cumulative effects of wind energy development need to be considered.
- Cascade County through the Montana Association of Counties (MACo), Missile Counties Committee (MCC) has been working on developing State legislation that establishes Military Affected Areas (MAAs) around designated military assets. The exact language of the bill was still being drafted. Ronda Wiggers, who is a sitting member of the PC and is the lobbyist in charge of drafting language and lobbying for the bill requested clarifications of the requirements of the bill. During the meeting the language of the bill evolved to include a requirement that development within 1200 meters (3960 feet) of a Launch Facility or Missile Alert Facility should trigger consultation with MAFB. Similarly any proposed development within the 40th HS Fly Zone exceeding 50 ft. should trigger consultation with MAFB.



- Phil Rainforth mentioned that a prioritization of specific LF/MAF sites of importance will not happen.
- The PC discussed and approved the proposed MOAD, encompassing the MAFB runway's imaginary surface zones and the Height MIAs within. The PC also approved the Noise and Safety MIA surrounding the MAFB runway and base sans the Whitemore Ravine study area. The concept of establishing a 4000 ft. MAA around each LF and MAF was approved. The 40th HS Fly Zone was not approved as an MIA but it was agreed that that area would serve as the parameter for a "Red, Yellow, Green" Map study.
- The easement surrounding the Launch Facilities (LFs) are perpetual easements.
- A 90 turbine wind farm is being proposed in Fergus County.
- State permitting agencies need to consult with counties and MAFB when reviewing wind energy development permits and transmission line energy permits.
- One of the Great Falls parcels that fall within the MAFB safety zones is used as a stormwater retention pond. This use could attract birds to this area.

The meeting concluded with the Matrix Team providing an outline of the next steps. These included:

- Refine and update strategies and send out to TC and PC members for review.
- Finish Data Collection
- Update Chapters 1 through 5 with information gathered from meetings.
- Submit draft for public review in June or July.



Malmstrom AFB Joint Land Use Study

Palicy Cont mata #4

GROUP: Date:

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NAME	AGENCY	PHONE	EMAIL
CARI Silstad	Ferques County Comme	535-5119	Commissioners da fergusiant. 45
NEAL CLE VELAND	SHUMAKER TEE	727 -3537	JOK @ SHUMANER T-E, COM
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DATE JOSEPH JAHO	MARINSTAM AFTS	731-7227	PITELS! PREVENTIL & MAKINSTON, AF. MILL
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ART HARSAN	OTIFF	788-1554	JUNON GANO MUCH TAINPORKSINC, COM
SRIAN CLERTON	CCPW		
DOE BETHES	CCC		

Malmstrom Air Force Base Joint Land Use Study

JLUS STRATEGY TOOLBOX

What are JLUS Strategies?

JLUS strategies constitute a variety of actions local governments, military installations, agencies, and other stakeholders can take to promote compatible land use planning. When these strategies are implemented, existing and potential compatibility issues arising from the civilian / military interface can be removed or significantly reduced. As such, the recommended strategies function as the heart of the JLUS document and are the culmination of the planning process.

The strategy types presented within this brochure constitute a "toolbox" of the possible actions that can be taken to address the range of compatibility issues identified during the planning process. This document is intended to start the discussion to determine specific strategies that are useful for the study area. For each strategy type, a brief overview is provided to assist in communicating a general understanding of its intent. It will be up to each individual stakeholder to determine the best assortment of tools / strategies that are appropriate within their communities.

It is important to note that once the JLUS process is completed, the final document is not an adopted plan, but rather a recommended set of strategies which all, or in part, should be implemented by the plan participants for the JLUS to be successful.

The Strategy "Toolbox"

- **♦** Acquisition
- **♦** Air Installation Compatible Use Zone (AICUZ)
- **♦** Airport Master Plan / Airspace Study
- **♦** Avigation Easement
- ♦ Base Planning
- ♦ Bird / Wildlife Aircraft Strike Hazard (BASH)
- **♦** Building Codes / Construction Standards
- **♦** Capital Improvement Program (CIP)
- **♦** Cluster Development
- **♦** Code Enforcement
- **♦** Communication and Coordination
- ♦ Comprehensive / General / Master Plans

- **♦** Deed Restrictions / Covenants
- ♦ Habitat Conservation Tools
- **♦** Hazard Mitigation Plans
- **♦** Legislative Tools
- Memorandum of Understanding (MOU)
- ♦ Military Influence Areas (MIA)
- National Environmental Policy Act (NEPA)
- Partnership with Non-Governmental Organizations
- ♦ Real Estate Disclosures
- **♦** Zoning Ordinance / Subdivision Regulations

Acquisition

As a land use planning tool, property rights can be acquired through donation, easement, or the outright purchase of property for public purposes. The purpose of acquisition tools is to eliminate land use incompatibilities through market transactions and the local development process. Acquisition tools are particularly effective because they advance the complementary goals of shifting future growth away from military installations and preserving community assets such as agriculture, open space, rural character, or sensitive natural habitats.

Air Installation Compatible Use Zone (AICUZ)

The Air Installation Compatible Use Zone (AICUZ) program is an Air Force planning program developed in response to incompatible urban development and land use conflicts around military airfields. The AICUZ program seeks to provide information on compatibility, develop a cooperative relationship between communities and military bases, and provide land use compatibility guidelines that protect public health and safety while maintaining military readiness.

Airport Master Plan / Airspace Study



An Airport Master Plan provides the guidelines for future long-term airport development which will satisfy aviation demand in a financially feasible manner, while at the same time resolving the aviation,

environmental, and socioeconomic issues existing in a community. The Airport Master Plan process is guided by the FAA and ultimately results in projections of future growth and an Airport Layout Plan (ALP). All development at federally obligated airports must be in accordance with and FAA-approved ALP.

For compatibility planning, airspace planning provides a coordinated approach to the designation of special use airspace.

Avigation Easement

An easement is a non-possessory right to use land owned by another party. An avigation easement is an easement that grants the holder one or more of the following rights: the right of flight; the right to cause noise, dust, or other impacts related to aircraft flight; the right to restrict or prohibit certain lights, electromagnetic signals, and birdattracting land uses; the right to unobstructed airspace over the property above a specified height; and, the right of ingress or egress upon the land to exercise those rights.

Base Planning

Similar to a local jurisdiction, military installations maintain a long-range plan, such as general plans and master plans. The installation's general/master plan is the primary document that is used to guide the development and use of physical assets and the protection of resources. The general / master plan is used to ensure an installation maintains the land use areas and infrastructure needed to respond to its development program and future mission potential.

Bird / Wildlife Aircraft Strike Hazard (BASH)



The Bird / Wildlife Aircraft Strike Hazard (BASH) program is aimed at reducing the potential for collisions between military aircraft and birds and other wildlife. Knowledge of where birds travel,

nest, and feed helps the military avoid problem areas, and therefore saves lives and avoids the destruction of valuable aircraft. The program also looks to work with local stakeholders to avoid actions that would increase BASH incidents. The BASH program considers not only birds / wildlife within the confines of the airfield, but also in neighboring areas.

Building Codes / Construction Standards

Building codes and construction standards are ordinances and regulations controlling the design, construction processes, materials, alteration, and occupancy of any structure to safeguard human safety and welfare. They include both technical and functional standards and generally address structural safety, fire safety, health requirements, and accessibility. Noise attenuation requirements, for example, are typically covered under this category.

Capital Improvement Program (CIP)

A Capital Improvement Program (CIP) is a detailed planning document used to plan and direct a jurisdiction's or agency's investment in public facilities, including infrastructure. The CIP lays out the public facilities plans and programs of the jurisdiction or agency and provides details on expenditures

that can be incorporated into the jurisdiction's or agency's annual budgeting process. Most CIPs cover multiple years in order to plan for major expenditures and projects.

Code Enforcement

The purpose of a code enforcement program is to promote and maintain a safe and desirable living and working environment. Related to land use compatibility, code enforcement is a tool used by a community to ensure adherence to its rules and regulations.

Communication and Coordination

In any planning effort, plans can only move toward successful implementation if frequent ongoing communication is maintained among local jurisdictions, the military, state and federal agencies, Native American tribal groups, landowners, and the public. Enhanced communication and coordination is an integral component to successful compatibility planning in support of the military's existing and potential future mission(s).

Comprehensive / General / Master Plans

These are long-range plans that outline goals and policies to guide the physical development in a county or city. Comprehensive plans are designed to serve as the jurisdiction's blueprint for future decisions concerning physical development, including land use, infrastructure, public services, and resource conservation. Most comprehensive plans consist of written text discussing the community's goals, objectives, policies, and programs for the distribution of land use as well as one or more diagrams illustrating the general location of existing and future land uses, roadways, public facilities and parks and open space.

Deed Restrictions / Covenants

Deed restrictions, or covenants, are written agreements that restrict or limit some of the rights associated with property ownership. These restrictions are recorded with the deed for the property and are attached to the property when it is sold to a new owner (i.e., they remain in effect). Deed restrictions are private agreements or contracts executed between a motivated buyer and a willing seller.

Habitat Conservation Tools

The primary objective of habitat conservation tools is the conservation and protection of sensitive natural habitats and the species that occupy them. An example of this is the federal Endangered Species Act (ESA) which allows for the development of Habitat Conservation Plans (HCPs).

An HCP identifies and provides for the regional or areawide protection of plants, animals, and their habitats, while allowing compatible and appropriate economic activity. The primary objective of the HCP program is to conserve natural communities at the ecosystem level while accommodating compatible land use.

Hazard Mitigation Plans

Hazard mitigation is defined as any sustained, cost effective action taken to reduce or eliminate long-term risk to people, property, and the environment from natural and man-made hazards and their effects. Hazard Mitigation Plans include actions that have a positive impact over an extended period of time. This distinguishes them from emergency planning or emergency services, which are associated with preparedness for immediate response to, and short-term recovery from, a specific event. Hazard mitigation actions, which can be used to eliminate or minimize the risk to life and property, fall into three categories: (1) those that keep the hazard away from people, property, and structures; (2) those that keep people, property, and structures away from the hazard; and (3) those that reduce the impact of the hazard.

Legislative Tools



State and local legislation can have a significant impact on compatibility planning by allowing, restricting, or limiting the tools available to local jurisdictions to control land use planning

activities. Legislative Tools are designed to encourage changes in state and local laws and ordinances to support the objectives of the recommended JLUS strategies.

Memorandum of Understanding (MOU)

A Memorandum of Understanding (MOU) is a contract between two or more government entities. The governing bodies of the participating public agencies must take appropriate legal actions, often adoption of an ordinance or resolution, before such agreements become effective. The purpose of an MOU is to establish a formal framework for coordination and cooperation. These agreements may also assign roles and responsibilities for all of the agreement's signatories. These agreements are also known as Joint Powers Agreements or Interlocal Agreements.

Military Influence Areas (MIA)



A Military Influence Area (MIA) is a formally designated geographic planning area where military operations may impact local communities, and conversely, where local activities may affect the military's ability to carry out

its mission. An MIA is designated to promote an orderly transition between community and military land uses to ensure that they are compatible.

National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) is the federal law that established a national policy for the environment and requires federal agencies: (1) to become aware of the environmental ramifications of their proposed actions, (2) to fully disclose to the public proposed federal actions and provide a mechanism for public input to federal decision making, and (3) to prepare environmental impact statements for every major action that would significantly affect the quality of the human environment.

Partnership with Non-Governmental Organizations

Non-Governmental Organizations (NGOs) are recognized for their role in developing innovative initiatives and programs to address a variety of issues. Local governments and military installations can develop relationships with NGOs to provide additional resources to achieve joint goals. For example, under these partnerships, agreements can be reached to acquire real estate or property rights in the vicinity of military installations to protect military training, testing, operations, and readiness, while at the same time, achieving the objectives of the NGO, such as habitat protection.

Real Estate Disclosures

Prior to the transfer of real property to a new owner, real estate disclosure requires sellers and their agents to disclose certain specified facts related to the condition of the property. These facts could include



noise or other proximity impacts associated with property near a military installation or operations area. The purpose of real estate disclosure is to protect the seller, buyer, and sales agent from potential litigation resulting from specified existing and / or anticipated conditions (i.e., hazard areas, existing easements). Disclosures provide a practical and cost effective land use compatibility tool as buyers are informed of the possible affects (noise, light, etc.) of military operations prior to purchase.

Zoning Ordinance / Subdivision Regulations

Zoning is the division of a jurisdiction into districts (zones) within which permissible uses are prescribed and restrictions on building height, bulk, layout, and other requirements are defined. The primary purpose of zoning is to protect the public health, safety, and welfare of the community by separating incompatible land uses and establishing design requirements. Effective zoning can also provide opportunities for the implementation of regulations supporting land use compatibility near military installations. For instance, zoning can address:

- Nuisances such as noise, vibration and air emissions,
- ♦ Land use type and intensity (including clustering),
- ♦ Light and glare,
- ♦ Frequency spectrum and impedance,
- ♦ Height / vertical obstructions,
- ♦ Development incentives, and
- ♦ Development processes and procedures.

Land cannot be divided without local government approval. Subdivisions set forth the minimum requirements deemed necessary to protect the health, safety, and welfare of the public. Subdivision review allows local governments the opportunity to ensure that a new subdivision is properly served by needed services and a public or private agency is responsible for maintaining the subdivision improvements. These regulations can be effectively used for compatibility planning. For example, subdivision regulations might limit the division of land in areas with compatibility issues or locations without necessary services. Subdivision regulations can also be used to require open-space set-asides.











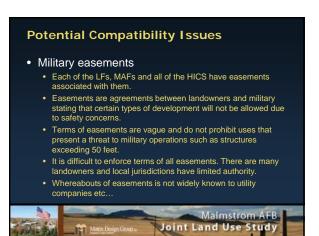










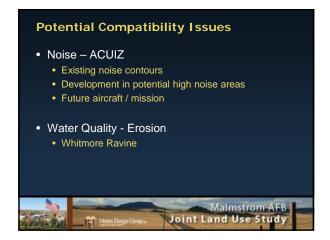














Cather additional data where needed Continue to revise Chapters 1-4 per comments, inputs and data. Receive comments on strategies Refine strategies to reflect viability and inputs. Develop Military Impact Areas Prepare for Draft Document Review Prepare for Public Comment Period Malmstrom AFB Joint Land Use Study



MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Policy Committee Meeting #5

AGENDA

October 6, 2011 Thursday 9:00 AM

1. Welcome and Introductions	Cascade County, Commissioner Joe Briggs
Welcome and Self IntroductionsPurpose of the Meeting	
2. JLUS Project Update	Matrix Design Group
3. Discuss Strategies and Concerns	Matrix Design Group
4. Overview of Public Review Period Components	Matrix Design Group
5. Administration and Next Steps	Matrix Design Group

For more particular information, contact the Cascade County, Planning Department.

Funded by the Department of Defense Office of Economic Adjustment, the JLUS is a collaborative planning effort between Malmstrom AFB, Cascade County, the surrounding cities and counties, and other affected agencies. The overall goal of the JLUS is to reduce potential conflicts while accommodating growth, sustaining the economic health of the region, and protecting public health and safety.



MALMSTROM AFB JOINT LAND USE STUDY (JLUS) Policy Committee Meeting Thursday, October 6, 2011

Cascade County Commission Chambers 325 2nd Ave N., Great Falls

MEETING MINUTES

Parties Present:

Susan Conell, Cascade County
Carl Seilstad, Fergus County
Phil Rainforth, Malmstrom AFB
Ronda Wiggers, Great Falls Chamber of Commerce
Steve Malicott, Great Falls Chamber of Commerce
Carl Donovan, Neighborhood #6
Mike Haynes, City Great Falls
Lillian Sunwall, Great Falls Development Authority
Joe Aline, Property Owner

Issues Covered:

This meeting was the fifth Policy Committee meeting of the Malmstrom Joint Land Use Study (JLUS) process.

The meeting began with a presentation given by the Matrix Design Group Team (Matrix Team), the consulting firm hired to facilitate the development of the Malmstrom JLUS. The presentation provided an overview of the JLUS progress to date. Milestone JLUS accomplishments to date include: conducting four Policy Committee (PC) and Technical Committee (TC) meetings and two public meetings; a Cascade County tour of the six other missile counties to introduce and explain the proposed the JLUS strategies; and submitting a draft copy of the JLUS for PC/TC and public review. The main purpose of the presentation was to provide the PC with an overview of the draft JLUS report and the recommended strategies for addressing the issues contained therein. Examples of recommended strategies include establishing Military Overlay Districts and Military Affected Areas, establishing Compatibility Standard Guidelines, and developing a "Red, Yellow and Green" Map, among others (see draft JLUS report for a list of all strategies).

After the presentation was concluded the Matrix Team opened up the meeting for discussion. During the discussion the following points were made:



- Need to include language about mitigation measures when discussing wind turbines.
- The red dot (area in Cascade County in which wind turbines are not recommended because of the presence of weather radar) is driven by the Federal Aviation Administration (FAA) and the National Oceanic and Atmospheric Administration (NOAA).
- The FAA has authorization to review any structure that is higher than 199 feet.
- Malmstrom AFB (MAFB) has to plot all structures over 199 feet in height on a flight map.
- Cascade County has a Performance Location Permit requirement for wind energy development; terms of the permit entail consulting with and obtaining approval from MAFB.
- Fergus County has no height restrictions; so how can MAFB put a 199 foot communication tower on LFs and MAFs?
- MAFB operates within the 1,200 foot safety buffer for security purposes and to address threat components.
- During the TC meeting it was discussed that there is a need for a strategy, which
 identifies how to prioritize LFs that have the threat of incompatibility. The strategy also
 needs to identify mechanisms for local government purchase of land if need be. This
 strategy will entail working with the military to determine what is not compatible.
 Potential acquisition options are:
 - Military purchases easement;
 - Readiness and Environmental Protection Initiative (REPI);
 - Montana Conservation Alliance: and
 - Impact fees from the wind energy industry.
- The public would have a harder time selling land (fee simple or easements) to nature conservation agencies and would be more supportive of negotiating and entering into a sale with the Department of Defense (DoD).
- A section needs to be added on community involvement.
- Q: Should the public review period be extended to 60-days to get the public's rational input? Yes, the review period should be extended by 30 days to end on12/4.
- There may be a conference call with the PC if a future meeting is required.
- Great Falls would like all the GIS layers.
- Wharf proposed development. The report needs to separate commercial property development and housing property development.
- Mention the Great Falls Agri-Tech Development Agreement with MAFB.
- The strategy referencing the Montana Alberta Transmission Ltd. (MATL) line should state: "Coordinate and consult with MAFB to take MATL out and use general language for future power lines. Consult with MAFB on pole siting."
- Do not label Wal-Mart use general language.
- Recommend that future power lines be put in existing easements.
- Revise Strategy VO-C1.
- Revise Strategy VO-A1

 create two strategies from the one and make one regulatory.
- Delete Strategy LG-A1and SA-B2.



- Revise to say "evaluate the type of industry to determine if it is compatible."
- Add Strategy: DoD and local government affairs responsible for coordinating with the BLM, MDoT and DOE regarding proposed development.
- Recommend that a Military Community Liaison participate in Planning Boards and City/County Commissions. The military needs to comply with finalizing consultation.
- One-call legislation 811 call Missile Cable Affairs for information about easements.
- There are 3 cell phone companies in the State of Montana.
- In strategy VO-A3 delete reference to 50 ft.
- Put Malmstrom as a primary agency for coordination on MOA strategies.
- The Regional Infrastructure Plan should include mention of animal passage corridors for grizzlies. Development in SW and NW Montana may cause waves of grizzly bears throughout Missile Counties.
- Delete LI-A1.
- The College of Technology is an asset to the base.

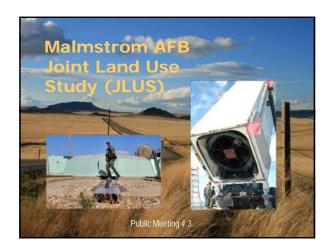
The Matrix Team concluded the meeting by outlining the next steps in the process. These include:

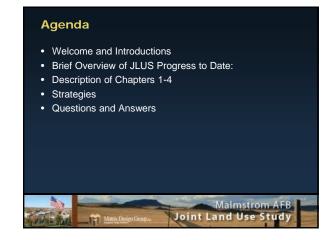
- Receiving and incorporating committee and public comments.
- Revising the draft.
- Setting up a PC/TC phone call to discuss the new strategies.
- Issuing the final draft for review by the PC and TC.

Joint Land Use Study Malmstrom AFB PC Mtg Sign In wall 10 06 MAFB

GROUP: De Meeting Date: Oct. Com Sign-In Sheet

NAME	AGENCY	PHONE	EMAIL
Konda Wiggers	GFAR/GF Chmbr	899. 5129	rondawiggerse bresnan. net
CARL J DONOUAW	NC#6 Cameil of Comeils 750-3198	750-3198	Cid Ont. Net
Susan Conell	Plan y assale C	2069-45th	langual assale C 454-6905 Samella cascale contint, as
	Chartell Chartell	456.8433	456. 8433 Whazeles Spreet Wint. Let
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Carl Seilstad	Fergus County	535-5119	Commissioners & Co. terqus, mT. us
PHYL LAWRANIA	MALMSTRON	731-7227	PHILIP. PAILTANTH @ MACH STACK, AF. MIL
Steve Malico H	Cof Chamber	761-4434	Sunlicetta Grant Sally homber, ory
JOE ALINE	property OwnER	727-3537	Joel Shumaker, PSEM Ail. COM
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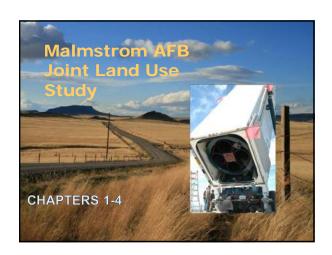


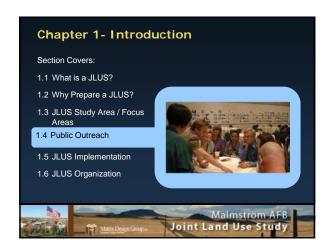


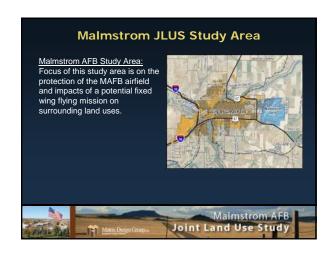


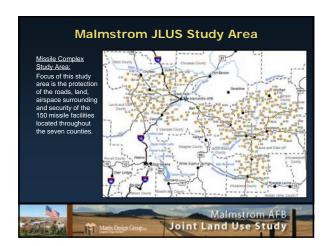


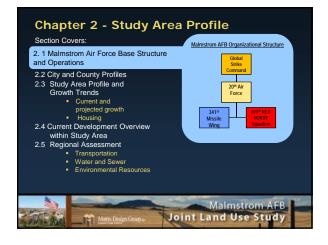


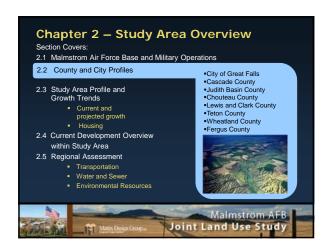


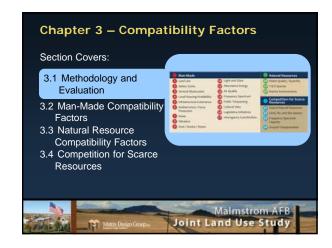


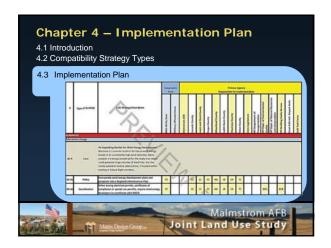


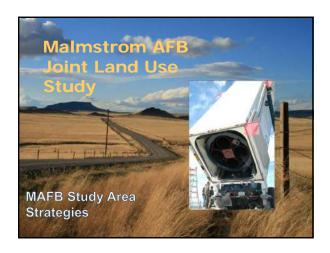










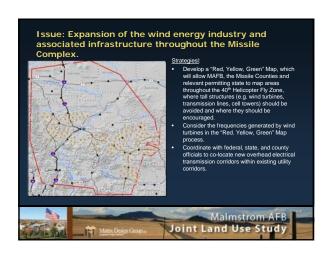


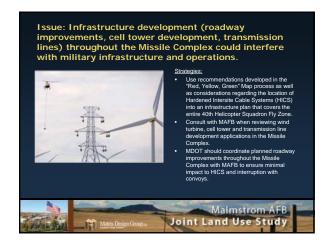




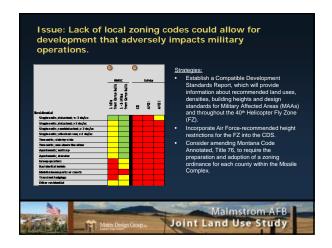




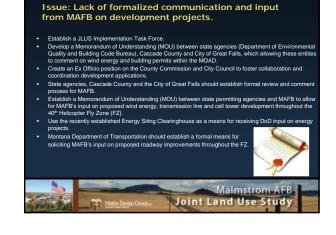










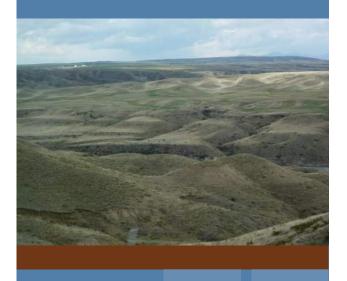






Appendix D

Other Outreach Materials







CASCADE COUNTY PLANNING DIVISION

SERVING CASCADE COUNTY, MONTANA

September 6, 2011

Subject: Malmstrom Air Force Base Joint Land Use Study (JLUS)

Dear Policy Committee member:

The fifth meeting of the Malmstrom Air Force (MAFB) Great Falls Joint Land Use Study (JLUS) Policy Committee will be held Thursday, October 6, 2011 at 9:00 am. The meeting will be held in the Cascade County Commission Chambers located at 325 2nd Ave N. (Courthouse Annex Building) in Great Falls.

Parking arrangements have been made for your convenience. Attendees may park in the north garage at no cost. The north garage is located on 1st Avenue North and 4th Street. A map has been included. Just pull into the garage and get the ticket there. Be sure to bring the ticket with you for me to sign (do not leave them in the car). The cashiers will know to look for signed tickets on the days of the various work groups.

We will be holding several community outreach meetings in the evenings of October 4th through October 6th. The meetings will consist of a brief introduction to the MAFB JLUS and will provide an opportunity for attendees to share specific concerns or general comments about the project. Please share this information with others who you believe may be interested in participating.

The following schedule is for the community meetings in October:

Tuesday, October 4, 2011

6:00 to 7:30 p.m. Location: 121 8th Avenue, South Lewistown, MT in the Sheriff's Complex

Wednesday, October 5, 2011

6:00 to 7:30 p.m. Location: 325 2nd Avenue North, Room 105, Great Falls, MT in the County Commissioner's

Chambers

Thursday, October 6, 2011

6:00 to 7:30 p.m. Location: 17 Main St., Choteau, MT in the Choteau Library

Please direct any questions regarding the JLUS to Anita McNamara, Planner, at either amcnamara@co.cascade.mt.us or 406-454-6905. Written comments will be accepted through email or can be addressed to:

MAFB JLUS Project Manager Cascade County Planning Division 121 4th St N. Ste. 2H/I Great Falls, Montana 59401

Sincerely,

CASCADE COUNTY PLANNING DIVISION

Susan Conell, Planning Director Cascade County

Malmstrom JLUS Executive Summary

September 2011

What is a JLUS?

- > A Joint Land Use Study is a planning effort mutually undertaken by a military installation and its host communities.
- The Goal of a JLUS is to identify potential land use conflicts between the growth of the civilian community and the operational needs of the military installation and create a planning process to address them.

Why are JLUS efforts important?

- > Encroachment of military operational areas and the construction of civilian facilities surrounding military bases is a significant problem for our military.
- > The lack of existing encroachment and presence of a completed JLUS are competitive advantages to communities seeking to retain or expand their missions.
- Successful implementation of a JLUS will allow our communities to grow without endangering the future of nearby military missions.

What area will be included in the JLUS?

Our JLUS is unique because it is the 1st time a missile field has been included in a JLUS. This effort includes not only the "normal" 3000 foot from the base perimeter in all directions but also includes the runway, accident potential zones and clear zone as well as the transportation corridors used by the Air Force to move the missile components and personnel to and from the base. Additionally, the facilities in the missile field themselves, the MAFs, LZs and LFs are also being included in the study.

Where are we in the process?

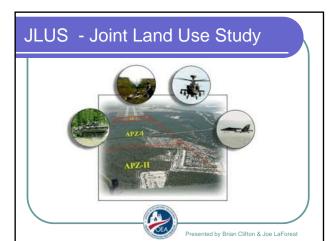
- We are now entering the final phases of the creation of the JLUS document itself. All of the data gathering and analysis is now completed. The members of the Technical Working Group and Policy Committee have each received a draft version of the findings of the study as well as a menu of potential recommendations. Those two committees will be meeting the first week of October to review those draft versions and make any final adjustments to them with the consulting team. Once that work is completed, the draft study will be made available to the public and a final round of public comment and meetings on the document will begin.
- After additional public comments on the draft document are received, the two committees will meet a final time to finalize the JLUS study and submit it to each of the counties and City of Great Falls for implementation. The final version will contain a specific of recommendations for each of the jurisdictions based on the specifics of the missile operations within that jurisdiction.
- > Each jurisdiction will independently review the JLUS and implement the portions which they deem appropriate after holding public meetings on the proposed actions.

What has already been accomplished?

Although the documents have not yet been completed, several of the counties have already taken important steps to implement the sections of the study dealing with communications between the base and civilian planners. Internal processes have been changed in Cascade, Fergus, Judith Basin and Chouteau Counties to include the base planners into county's planning processes. We already have a success story here in Cascade County as a result of this increased communication between our planning staff and the Military staff at Malmstrom.

Where can I get more information?

- Information about the status of the study, past public presentations and a listing of upcoming public meetings can be found on the web at <a href="mailto:ma
- The Technical Working Group will meet in the County Commission Chambers (325 2nd Ave N) on October 4th at 9:00 AM.
- A Public Presentation will occur in the County Commission Chambers (325 2nd Ave N) on October 5th from 6: to 7:30 PM.
- The Policy Committee will meet in the County Commission Chambers (325 2nd Ave N) on October 6th at 9:00 AM.



A JLUS is:

- A cooperative land use planning effort between military installations and the surrounding communities
- It promotes compatible community growth that support military training and operational missions
- A tool for the development of land use regulations.

JLUS is not an AICUZ/IENMP:

- The Military Services have their Compatible Use Zones (AICUZ) & Installation Operational Noise Management (IONMP) Programs to share with the local community
- The JLUS Program was created to aid local governments in understanding the implications of the AICUZ, IONMP and safety zones found on a military base.

What to Expect?

- A typical JLUS will indentify actions that could and should be taken by the community & installation to solve existing encroachment issues & prevent future ones.
- A JLUS helps a community to understand the economic & physical impact of the installations operations as well as evaluate impacts of development decisions on the viability of the mission present & future.
- The end product hopefully will guide local government in the application of planning & development controls in support of an ongoing military mission.

Many Faces of Encroachment:

Ability to Sustain Training, Readiness, & Installation Viability

- Urban Growth & Development
- Population Encroachment
- Urban Lighting, Smoke & Dust
- Breeding Seasons
- Environmental Protection
- Archeological Digs
- Communications Towers

Examples?

The JLUS program was initiated in 1985 Studies Completed 1985-2007

51 Local Studies - 2 Statewide Guidelines

- Fairchild AFB Spokane, WA
- Hill AFB Ogden, UT
- Ft. Riley Kansas
- Ellsworth AFB Rapid City, SD
- Arizona JLUS Statewide Guidelines
- California JLUS Statewide Guidelines

JLUS Process Overview:

- Base Commander Nominates facility to Service Branch.
- Military Service Branch confirms nomination and forwards to OEA
- OEA conducts site visit to confirm need
- Local governments agree to participate Cascade County is sponsor.
- Local sponsor endorses & steering committee organized
- Grant Application filed
- **OEA Awards Grant**
 - Approved for \$165,993 on September 28,2009
- Cascade County has issued an RFP for Consultant
- Steering Committee & Cascade County will select Consultant
- Study Conducted & Completed
- Recommendations adopted & implemented by local government & the installation
 - OEA will remain active in the process to assist as needed in the implementation or for additional funding.

Typical Stages:

- Organize

 - Identify Community Sponsor Appoint Community JLUS Working Committees
 - Develop Scope of Work
 Apply for OEA Grant
- Plan
- Identify installations operations and effect on community
- ldentify encroachment issues within noise and accident potential zones

 Explore strategies to address encroachment issues
- Implement
 - Revise community comprehensive plan/zoning
 - Limit new development within sensitive zone

 - Limit new development warm serisative zones Revise building codes for sound attenuation Enact real estate disclosure requirements Conservation partnering with non-governmental organizations

Who Represents DoD?

Office of the Secretary of Defense Office of Economic Adjustment

> Garry E. Gontz Project Manager

Suite 200 400 Army Navy Drive Arlington, VA 22202

Phone: 703-604-5142 Fax: 703-604-5843 garry.gontz@wso.whs.mil

Who Represents the Community?

State Officials City & County Officials City & County Planning Airport Authority Officials Private Sector Leaders **Business Representatives** Local Professional Planners **Neighborhood Organizations** Residents & Citizens at Large

Typical JLUS Organization:

- Study Sponsor coordination, accountability, grant management
- Policy Committee policy direction, study design/oversight, budget approval, monitoring, report adoption
- Working Groups technical issues, alternatives, report development, recommendations

OEA's Roles:

- Represent Office of the Secretary of Defense
- Confirm need for JLUS
- Provide guidance to complete a community driven JLUS
- Provide funding assistance
- Provide technical assistance
- Facilitate communications

The Installation's Roles:

- Identify encroachment issue
- Recommend JLUS nominations to Deputy Assistant Secretary (DAS)
- Support the JLUS nomination
- Coordinate update of AICUZ or IONMP
- Provide leadership, guidance and technical support to the JLUS Policy Committee
- Implement JLUS recommendations

The Community's Roles:

- Provide leadership
- Finance its part of the JLUS
- Conduct the JLUS
- Provide public information
- Identify issues and opportunities
- Resolve issues
- Implement the JLUS

Conducting & Funding JLUS:

- Community may do JLUS in-house or hire outside consultant
- Typical Cost is \$75,000 to \$200,000
 - 90% OEA Funded
 - 10% Community Funded
 - · Match can come from staff salaries

Expected Results:

The Community & Installation Agree to:

- Implement JLUS recommendations
- Continue to work together to protect the mission of the installation, and public health, safety, and welfare
- Develop Conservation Based Partnerships

What OEA will fund:

- Technical staff assistance in implementation
- Funding assistance to develop an amendment to the comprehensive plan
- Web site development
- Zoning ordinance, subdivision, and building codes updates to implement JLUS
- Develop methods for monitoring effectiveness
- Retain PC & TAC to monitor implementation and continue planning and coordination
- Conduct public outreach
- · Monitor progress of implementation

Specifics for our JLUS:

- First JLUS authorized for a Missile Base
- First JLUS to extend beyond boundaries of Base
 Will include the areas surrounding the Missile Alert Facilities, Landing Zones and Launch Facilities
- Multiple County jurisdictions are involved
- Cascade County will be the host agency
- Effort will be lead by Brian Clifton, Cascade County Public Works Director
- Total Project Budget = \$ 197,798
- Budget for Consultants = \$ 150,000
- Study area includes elements of 23,500 square miles
- Study will include the Clear Zone, APZ-I & APZ-II

Current Status

- Consultant / Firm selected (Matrix)
 - Checking references
- Cost estimate review by OEA (complete)
- Policy Committee review of cost & schedule (pending)

Adjacent Counties Involvement

- Policy Committee participation
- Technical Committee participation
- Formally adopt and implement JLUS recommendations

Questions?	



CASCADE COUNTY PLANNING DIVISION

SERVING CASCADE COUNTY, MONTANA

September 6, 2011

Subject: Malmstrom Air Force Base Joint Land Use Study (JLUS)

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MAFB JLUS Project Manager Cascade County Planning Division 121 4th St N. Ste. 2H/I Great Falls, Montana 59401

Sincerely,

CASCADE COUNTY PLANNING DIVISION

Susan Conell, Planning Director Cascade County



What is a JLUS?

- A Joint Land Use Study is a planning effort mutually undertaken by a military installation and its host community.
- In this case, since Malmstrom is adjacent to the City of Great Falls but is not actually in the city, it is a joint effort of the City, County and MAFB.
- > A JLUS study must be nominated by the military and approved by the Department of Defense as well as the civilian authorities.
- Funding is supplied by the Office of Economic Adjustment which is a part of the Department of Defense, with the local match being met by City and County staff time.
- > The Goal of a JLUS is to identify potential land use conflicts between the growth of the civilian community and the operational needs of the military installation and create a planning process to address them.

Why are JLUS efforts important?

- > Encroachment of military operational areas and the construction of civilian facilities surrounding military bases is a significant problem for our military.
- New weapon systems and equipment typically require larger training areas and many of the largest military ranges are now limited in capability by the proximity of housing and commercial development.
- > The lack of existing encroachment and presence of a completed JLUS are competitive advantages to communities seeking to retain or expand their missions.
- Successful implementation of a JLUS will allow a community to grow without endangering the future of nearby military missions.
- ➤ Malmstrom Air Force Base and the 120th Fighter Wing at MANG represent approximately 40% of our local economy as well as a significant number of our community volunteers. Loosing either mission would have a profound negative impact on our community both economically and socially.

What area will be included in the JLUS?

- Normally a JLUS includes only the area within 3000 feet of the base itself, but our JLUS is very unique.
- Our JLUS has been expanded three times and a fourth expansion is currently in the works. The 1st expansion allows us to include the ground transportation corridors used by the Air Force to move the missile components to and from the base.
- > The 2nd expansion added the 165 missile field facilities scattered over 23,500 square miles of Central Montana as well as the flight paths used by the helicopters.
- The 3rd expansion was of critical importance to the future of Malmstrom because it represented a significant change in DOD and Air Force policy. The runway at

- Malmstrom went from a forbidden topic to an asset to be protected. We have been allowed to include the runway as well as the Clear zones and Accident Potential Zones in the JLUS.
- The 4th expansion that is currently underway is also both a major change in JLUS policy and important to the future of Cascade County. Recently I was invited to speak about our JLUS at a national conference attended by both **Patrick O'Brien,** the Director of the OEA and Assistant Secretary of the Air Force Terry Yonkers. I used that opportunity to successfully demonstrate the importance of establishing protected air corridors between the Hayes MOA and MANG and MAFB. As a result we expanded the JLUS to include National Guard assets as well as Air Force assets and raised the visibility of the Hayes MOA training complex.

Where are we in the process?

- The original JLUS scope of work and the first three expansions are funded.
- Cascade County has been named the lead agency and has been providing the majority of the process support.
- > A Policy committee including representation from throughout the area has been formed.
- A Technical advisory committee has been formed and populated with planning professionals from the base, affected communities and counties.
- > The consultant selection process has been completed and the data gathering phase is underway. Matrix Corporation was the selected consultant team.
- Numerous joint meetings of the City, County and MAFB planning departments have been held and processes are already in place to facilitate future cooperation between the three departments.
- A permanent committee of all counties included in the Missile field has been formed within MACo and several meetings have been held with the impacted county commissioners.
- Joint meetings between all of the Missile counties planners and the MAFB planning department have occurred.
- Legislation to create "Military activity areas" within Montana law is being crafted so that the recommendations of the JLUS study can be more easily implemented in the rural counties.
- > The latest revision to the study is currently being crafted for formal approval by the Air Force and OEA.
- Information about the status of the study, past public presentations and a listing of upcoming public meetings can be found on the web at malmstromilus.com.

Contact Info: Planning Director Susan Conell - 454-6905

Commissioner Joe Briggs - 454-6810



CASCADE COUNTY PLANNING DIVISION SERVING CASCADE COUNTY, MONTANA

For Immediate Release:

Contact:

Anita McNamara, Planner, AICP Cascade County Planning Division

Phone: 406-454-6905

Email: amcnamara@co.cascade.mt.us

Malmstrom Air Force JLUS Planning Study Group to Hold Second Meeting

Great Falls, Montana, February 17, 2011 - The second meeting of the Malmstrom Air Force (MAFB) Great Falls Joint Land Use Study (JLUS) Technical Working Group (TWG) will be held Wednesday, Feb 23, 2011 at 9:00 am. The meeting will be held at the Cascade County Commissioner's Annex located at 325 2nd Ave N. in Great Falls. The JLUS is an ongoing community land use planning effort between MAFB, and surrounding communities to promote compatible growth while protecting the health, safety, and welfare of the public and address encroachment to Malmstrom AFB. The JLUS effort started early last year and is expected to conclude in the summer of 2011.

The TWG includes representatives from Cascade County, City of Great Falls, Montana Department of Transportation, Association of Realtors, Chouteau County, Fergus County, Wheatland County, Lewis and Clark, Teton County, Judith Basin County, Great Falls Development Authority, property owners, and businesses. The TWG will review JLUS products prepared to date at the meeting and provide objective information to the Malmstrom JLUS Policy Committee. Meetings will be run by a facilitator and no official actions will be taken. Meetings are open to any interested persons.

To date, the JLUS consultants have identified a list of areas of concern related to compatible development and protecting the community's health, safety, and welfare and will be further discussing and finalizing this information with the TWG on February 23, 2011. For more information, you can visit the study's website at www.malmstromjlus.com.

For additional information, Contact: Anita McNamara, Planner, AICP, Cascade County, Phone: 406-454-6905, email: amcnamara@co.cascade.mt.us.



CASCADE COUNTY PLANNING DIVISION SERVING CASCADE COUNTY, MONTANA

For Immediate Release:

Contact:

Anita McNamara, Planner, AICP Cascade County Planning Division

Phone: 406-454-6905

Email: amcnamara@co.cascade.mt.us

Malmstrom Air Force JLUS Planning Study Group to Hold Meetings

Great Falls, Montana, September 30, 2011 - The fifth meeting of the Malmstrom Air Force (MAFB) Great Falls Joint Land Use Study (JLUS) Technical Working Group (TWG) will be held Tuesday, October 4, 2011 at 9:00 am. The meeting will be held in the Cascade County Commission Chambers located at 325 2nd Ave N. (Courthouse Annex Building) in Great Falls. The JLUS is an ongoing community land use planning effort between MAFB, Cascade County, the City of Great Falls and surrounding counties to promote compatible growth while addressing potential encroachment to the missions of Malmstrom AFB. The JLUS effort started early last year and is expected to conclude in the fall of 2011.

The TWG includes representatives from Cascade County, City of Great Falls, Montana Department of Transportation, Association of Realtors, Chouteau County, Fergus County, Wheatland County, Lewis and Clark, Teton County, Judith Basin County, Great Falls Development Authority, property owners, and businesses. The meeting of the TWG will be a review of the JLUS products prepared to date and will provide objective information to be passed on to the Malmstrom JLUS Policy Committee. The meeting will be run by a facilitator and no official actions will be taken. All JLUS meetings are open to any interested persons.

To date, the JLUS consultants have identified a list of areas of concern related to compatible development and will be further discussing and finalizing this information with the TWG on October 4, 2011. For more information, you can visit the study's website at www.malmstromjlus.com.

Also, a community meeting has been scheduled for Cascade County and surrounding area on Wednesday, October 5, 2011 at 6 pm in the Cascade County Commissioners Chambers located at 325 2nd Avenue N. Other community meetings have been scheduled for October 4, 2011 at 6 pm in the Lewistown area in the Sheriff Complex located at 121 8th Avenue. There will also be a community meeting held at the Choteau Library on October 6, 2011 at 6 pm located at 17 Main St. in the Town of Choteau. These informational meetings will be an excellent opportunity to ask any questions you may have.

For additional information, Contact: Anita McNamara, Planner, AICP, Cascade County, Phone: 406-454-6905, email: amcnamara@co.cascade.mt.us.



CASCADE COUNTY PLANNING DIVISION SERVING CASCADE COUNTY, MONTANA

For Immediate Release:

Contact:

Anita McNamara, Planner, AICP Cascade County Planning Division

Phone: 406-454-6905

Email: amcnamara@co.cascade.mt.us

Public Review Period of Malmstrom Joint Land Use Study Extended to 60 days

Great Falls, Montana, October 6, 2011 – During the fifth meeting of the Malmstrom AFB Joint Land Use Study (JLUS) Policy Committee (PC) held on Thursday, October 6, 2011, it was determined that the public review and comment period of the Draft JLUS Report be extended from 30 to 60 days. The JLUS is an ongoing community planning effort between MAFB, Cascade County, City of Great Falls and surrounding counties to sustain the economic health of the region, protect public health, safety, and welfare while sustaining the current and future missions of Malmstrom AFB and the Missile Complex. The JLUS effort started early last year and is expected to conclude by June 2012.

The new date for submittal of public comments is **December 5, 2011**. The review period was extended to allow community members ample time to review the 300-page document, ask questions and develop comments.

To access a copy of the Draft Report Malmstrom AFB JLUS and a public comment sheet, please visit the study's website at www.malmstromjlus.com.

For additional information, Contact: Anita McNamara, Planner, AICP, Cascade County, Phone: 406-454-6905, email: amcnamara@co.cascade.mt.us.

MALMSTROM AIR FORCE BASE JOINT LAND USE STUDY



CASCADE COUNTY PLANNING DIVISION SERVING CASCADE COUNTY, MONTANA

September 8, 2011

Subject: Malmstrom Air Force Base Joint Land Use Study (JLUS)

Dear Stakeholder:

The Cascade County Planning Staff, in partnership with Malmstrom AFB, the City of Great Falls, Chouteau County, Fergus County, Wheatland County, Lewis and Clark County, Teton County, Judith Basin County, Great Falls Development Authority, and Montana Department of Transportation, are kicking off the Malmstrom Air Force Base (MAFB) Joint Land Use Study (JLUS) outreach meetings phase of the study.

The goal of a JLUS is to promote compatible civilian development patterns near military installations through identification of potential conflicts with military needs, identification of types of development that are mutually beneficial and the creation of permanent formal processes for better communications between local planning efforts and military planners. The JLUS is not a regulatory document but is instead a list of guidelines that each jurisdiction can choose among for incorporation into planning documents as it sees fit.

The MAFB JLUS will be produced by and for those partners mentioned above. Cascade County is responsible for the coordination and management of JLUS activities and is providing the required in kind match as the grant recipient. Direct funding for this JLUS effort is being provided a grant from the Department of Defense Office of Economic Adjustment.

As part of the MAFB JLUS, a policy committee of elected officials from the project area has been developed to guide the JLUS efforts and make a recommendation on the final report. Adoption and implementation of the recommendations contained in the final JLUS report will be at the discretion of each affected community and county government.

The MAFB JLUS is expected to be completed by the fall of 2011 and the resident's participation in the process is very important. Several JLUS stakeholder meetings will take place between October 4th and October 6th. We hope that you are able to attend the meeting that best represents your interest and availability.

The meetings will consist of a brief introduction to the MAFB JLUS and will provide an opportunity for attendees to share specific concerns or general comments about the project. Please share this information with others who you believe may be interested in participating. Stakeholder meetings are being scheduled throughout the seven counties involved and all are open to the public.

The following schedule is for the meetings in October:

Tuesday, October 4, 2011

6:00 to 7:30 p.m. Location: 121 8th Avenue, South Lewistown, MT in the Sheriff Complex

Wednesday, October 5, 2011

6:00 to 7:30 p.m. Location: 325 2nd Ave N., Rm. 105, Great Falls, MT in the County Commissioner's

Chambers

Thursday, October 6, 2011

6:00 to 7:30 p.m. Location: 17 Main St., Choteau, MT in the Choteau Library

The website <u>www.malmstromjlus.com</u> is available for your use. The website provides summary notes of the project, and will provide summary notes of stakeholder notes, future meetings, agendas, minutes, land use planning documents, and other helpful materials.

Please direct any questions regarding the JLUS to Anita McNamara, Planner, at either amcnamara@co.cascade.mt.us or 406-454-6905. Written comments will be accepted through email or can be addressed to:

MAFB JLUS Project Manager Cascade County Planning Division 121 4th St N. Ste. 2H/I Great Falls, Montana 59404

On behalf of Cascade County, the City of Great Falls, Malmstrom AFB, Chouteau County, Fergus County, Wheatland County, Lewis and Clark, Teton County, Judith Basin County, Great Falls Development Authority, and Montana Department of Transportation, we look forward to your participation in the JLUS process.

Sincerely,

CASCADE COUNTY PLANNING DIVISION

Susan Conell, Planning Director Cascade County

Appendix E

Relevant Local Regulations





WHEATLAND COUNTY



RESOURCE USE PLAN

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INTRODUCTION

It is the intent of this document and Wheatland County Commissioners to protect the custom and culture of county citizens through a variety of actions. Wheatland County and its citizens and therefore its government, has a continued commitment to maintaining the traditions of the quality of life known by all. This quality of life assures the enjoyment of a quiet lifestyle, enhanced by the natural beauty of prairie, mountains, rivers, streams and wildlife. Private property is abundant, with the rights of property owners respected and protected.

The Commissioners as well as Planning Board and community-based subcommittee have come together in cooperation with the intent of formulating a plan that will achieve the protection of the quality of life, as well as encourage coordination between federal, state and local governments. This coordination will encourage the federal and state governments to consider the needs of the citizens and resources of Wheatland County.

The American concept of government, of the people, by the people, and for the people, is best served when government affairs are conducted as close to the people as possible, in this case at the county level. It is the Commissioners duty to operate the government with the best interest of its citizens, while protecting and preserving the tax base. The Commissioner's find it desirable to address the use and management of the counties resources, setting forth in a fashion that will encourage economic stability, through the process of planning, formulation, development and implementation.

Through the process of cooperation at the local, state and federal agencies, citizens of Wheatland County will be ensured access to a full range of multiple uses as well as being included in the process of policy formulation and implementation.

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WHEATLAND COUNTY RESOURCE USE PLANNING GUIDANCE

Preamble

For many years, Wheatland County has worked with private, state and federal land managers in a cooperative, collaborative and/or coordinated manner. Areas of the county are owned and managed by private, state and federal entities. The use and management of these lands have substantial, significant and important impacts on the county and its people. Therefore, the Wheatland County Board of Commissioners are legitimately interested in participating effectively in the land and resource planning processes of the various private, state and federal land managers.

This document offers such policy guidance and is proposed as an appendix to the Wheatland County Growth Policy of Comprehensive Plan.

Guidance Purpose

The purpose of this guidance is to facilitate the county's meaningful participation in cooperative, coordinated or collaborative natural resource planning efforts that are initiated by the various private, state and federal land managers. Specifically, the guidance is intended to:

- Help ensure the citizens of Wheatland County have access to natural Resources for the full range of multiple uses, according to the following parameter: the resources and resource uses should be managed, maintained and enhanced for the long-term environmental health and socio-economic benefit of Wheatland County.
- Help ensure the development of land and resource management plans that provide a reasonable degree of predictability, reliability, defensibility and accountability.

Guidance Principals

To the extent practical and appropriate, it is the policy of Wheatland County to plan for the management of natural resources within the county to ensure that:

- Ecological processes, which affect the chemical, physical and biological components of the aquatic and terrestrial ecosystems and fully support designated beneficial uses, are present and functioning to provide the diversity of forest, shrub land, grassland, riparian and aquatic communities of the county.
- Within the natural capability of the ecosystem, the conditions needed to maintain or achieve self-sustaining or viable populations of desired plant and animal species are supported.
- Natural processes are recognized and accepted as essential to health of ecological communities across the county. Fire is allowed to play a role where appropriate. Life, investments and valuable resources are protected using a combination of fire management strategies and local land use planning tools.

- The grazing of grasslands by large and small ungulates is recognized as an essential process in the evolution of grasslands. Responsible livestock grazing practices are recognized as an essential process in maintaining healthy grasslands.
- Wheatland County, in conjunction with state and federal agencies, county and city
 governments, private land managers and the public are working together to identify and
 resolve issues involving plant and animal species with needs that cross administrative and
 ownership boundaries.
- People and communities benefit from programs and infrastructure that support livestock grazing and an array of natural resource products and services.
- People enjoy a variety of recreational settings and opportunities. The settings range primitive to developed.
- Mineral and energy resources are explored, developed and produced in an orderly and environmentally sound manner.
- Areas adversely affected by past management activities are restored and any related public health or safety issues are corrected.
- The county acts as a partner with adjacent landowners to capitalize on the contribution all lands make to the long-term health of the resources.
- Land ownership patterns contribute to the open rural landscape and view sheds of Central Montana. The county acts as a partner with the various private, state and federal land managers to capitalize on the contribution all lands make to this unique place.
- Land tenure adjustments consolidate ownerships to improve the quality of resource management.
- Right-of-ways and conservation easements are acquired to maintain the integrity of resources and provide public access.
- Heritage resources are recognized and managed for the benefit of the American public.
- Resource management alternatives are realistic; meaning they are affordable, achievable, implementable and legally defensible.
- The scale and scope of a natural resource planning effort are clearly defined and appropriate to the management objective or concern. They are useful monitoring effectiveness and implementation. They are consistent enough to yield impact analysis; plan and monitoring that are useful and understandable to both the general public and professionals.
- Management plans are developed based on realistic and achievable staff and funding levels and are implemented as written and approved.
- Monitoring by the land and resource manager (or designate) provides an accurate
 description of resource conditions, trends, and management effectiveness/failure and plan
 implementation. Monitoring reports are useful and understandable to both the general
 public and professionals. Monitoring supports the budget process by compiling, among
 other things, the cost of failure to implement plans and/or failure to execute management
 actions.
- The monitoring database provides statistically significant area and site-specific information. The monitoring database serves as the basis for implementation and programmatic decisions, plan revision/amendment and lawsuit defense.

Local Needs and Values

Certain natural resource management plans must comply with the NFMA, FLPMA, etc. legislatively provided requirement of "consistency to the extent possible" with locally adopted plans and policies. This requirement enables the values and needs of Wheatland County to be addressed, within the constraints of state or national policy.

Local Negative Impacts

The statutory requirements of due process, full disclosure of impacts, impact mitigation, Environmental Justice, etc. are legislatively provided mandates which help guarantee that implementation of state or national policies do not disproportionally burden Wheatland County citizens.

Private Land Managers

Private landowners have the authority and responsibility for planning and management of the private lands in the county. The Commissioners recognize the range of multiple use values the private lands and resources may provide, and be managed for.

Private landowners play a vital role in maintaining the open rural landscape and viewsheds of Central Montana. The Commissioners recognize their valuable contribution of expertise and good stewardship practices in land and resource planning and management.

The Commissioners further recognize that compatible management strategies on adjacent lands and resources are essential to the effective planning and management of resources with needs that cross ownership and administrative boundaries. Examples of these cross boundary situations include fish, wildlife and their habitats, ecosystem management and split-estate (surface/mineral) situations. If a planner is required to plan and manage in these situations, the Commissioners recommend the planner give due consideration the monitoring, management direction and impact on these adjacent lands and resources.

The Commissioners recommend that private landowners utilize an interdisciplinary approach and consider the appropriate agency criteria when making decisions and determinations relating to agency planning processes.

Worldwide Character

The Wheatland County Commissioners recognize the worldwide and long-range character of environmental problems. If planners are required to ensure their plan does not simply shift negative impacts outside the planning area, Wheatland County will assist the planners in achieving compliance to help prevent a decline in the quality o mankind's world environment by providing meaningful comment, information and other assistance as practical and appropriate. The Commissioners recognize that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Participation in Planning Process

It is the policy of the Wheatland County Commissioners to consider and decide on a case-by-case basis which resource management planning processes to participate in, and at what level of involvement. The Commissioners will only participate in a private land and resource management planning process upon invitation of the landowner.

The Commissioners recognize there are a variety of ways to participate in these planning processes. Each level of participation possesses differing responsibilities and benefits. The levels of participation include, but are not limited to:

- Commenting Some planners base their decisions on the due consideration of the written record. The Commissioners prefer to provide the planner with both meaningful written comments and copies of the appropriate county plans and/or policies.
- Consultation Face-to-face meetings help develop working relationships with the various private, state and federal planners/managers in Wheatland County. The commissioners prefer to follow up consultations with meaningful written comment and copies of the applicable county plans and/or policies.
- Collaboration- Federal and state agencies are not bound by the result of any collaborative process, but make decisions based on the NEPA or MEPA process. The Commissioners prefer to focus the energies of collaborative processes towards improving and amending the plans and policies of the county.
- Coordination- Some resource management plans have a mandate to be consistent to the extent possible with the plans and policies of the county. The Commissioners prefer to fully consider the "record" when making county determinations regarding consistency. The "record" generally consists of the current trends and conditions, management alternatives and their impacts, and public comments.
- Cooperation- The Montana "Sunshine" laws and the non-public elements of many resource management-planning processes present special challenges to county officials. The Commissioners prefer to contract an individual or firm, guided by the plans and policies of the county, to represent the interests of the county when participating on non-public planning teams.

When participating in a land and/or resource planning process of the various private, state and federal land managers, it is the policy of Wheatland County, to the extent practical and appropriate, to:

- Conduct a parallel process considering the planner's administrative record and public comment when providing formal comments to the planner.
- Utilize the planner/manager's applicable criteria, guidance, standards and/or case history when evaluating a planning/decision document.
- Initiate participation early in the planning process.
- Help the people of the county to participate early in, and effectively throughout, the planning process.
- Provide constructive comments to the planner by studying, developing and describing appropriate alternatives to recommended courses of action in any proposal which

- involves unresolved conflicts concerning alternative uses of available resources within the county.
- Provide expertise to the planner on local socio-economic factors and other information as practical and appropriate, including information on local custom, culture and economic factors.
- Provide the planner with written comments for inclusion in the plan's administrative record.

Purpose of County Participation in Planning Process

The purpose of Wheatland County's participation in land and/or resource planning processes initiated by the various private, state and federal managers is to:

- Facilitate the early transfer of information between the various private, state and federal planners and Wheatland County to create a better planning product and decrease plan preparation costs.
- If a plan is required to "be consistent to the extent possible" with the formally adopted and approved plans and policies of Wheatland County, it is the policy of the county to assist the entity in achieving compliance by providing meaningful comment, information and other assistance as practical and appropriate.
- Help facilitate and encourage the effective participation of Wheatland County residents in the planning and decision making processes.
- Effectively participate in the entire planning process of the planner to represent the interest of Wheatland County citizens.
- If a plan is required to adequately consider the impact of the plan and/or management on the environment, custom, culture and economy of Wheatland County, assist the planner in achieving compliance by providing meaningful comment, information and other assistance as practical and appropriate and request mitigation as appropriate.
- Work with the people of Wheatland County and the planners to create a better planning product and more public/stakeholder acceptance.

Recognition of Planner/Manager Responsibilities

The Wheatland County Commissioners recognize that the existence of a county plan or policy does not relieve planners of their responsibilities for the scope, objectivity and content of their planning, management or decision documents. In addition, the various private, state and federal managers have a legal responsibility for the condition, trend and management of land and resources under their jurisdiction.

The Commissioners recommend planners and managers actively seek out and consider outside sources of information and expertise. In particular, adjacent land managers and the public may have extraordinary knowledge and management skill. These extraordinary sources of knowledge are sometimes referred to as traditional or indigenous knowledge.

The Commissioners recommend that when planners and managers give due consideration to substantive comments, they should also consider both the context of the comment and

"expertise" of the commenter. "Expertise" generally includes, but is not limited to education, advance degrees and/or training, managerial and/or personal skill, knowledge of co-adjacent lands etc.

The Commissioners further recognize that the failure to implement an entity's plans and/or failure to execute management actions may be destructive to the land and resources and may create unnecessary legal and planning costs. Failure to implement can occur in a variety of ways, including implementation to the plan with differing timetables, priorities or allocations other than those specified in the approved plan. Such failures can have a significant negative impact on Wheatland County and its citizens. The Commission recommends planners/managers follow through on the implementation of approved plans and approved management actions.

Scoping Ongoing

While scoping in ongoing throughout the planning process, the Wheatland County Commissioners recognize their responsibility to share new information and issues in a timely manner so that planners may incorporate the new information as early as possible into the planning process.

Glossary of Terms

Due Process - The planning and decision making process is fair and procedurally and substantively. Procedurally means: Did the process follow the legally defined steps? Substantively means: Does the process look fair and result in a rational decision?

Environmental Justice - it is the fair treatment of people of all races and incomes with respect to the development, implementation and enforcement of environmental laws, regulations and policies.

FLPMA - Federal Lands Policy Management Act - This is the federal law providing management direction to the Bureau of Land Management.

Land Tenure Adjustment - the changing of a land manager's ownership through a variety of means, including sale, purchase, exchange and easement.

Manager - A person, group or entity that implements a plan. Usually planner and manager are the same person group or entity at different phases of the planning, implementing monitoring cycle.

Multiple Uses - The many ways land and resources can be utilized, including products (i.e.: habitats, recreation, grazing, oil/mineral, timber, etc.), functions (i.e.: watershed, viewshed, etc.) and values (i.e.: solitude, etc.).

NFMA - National Forest Management Act - This is the federal law providing management direction to the Forest Service.

Planner - A person, group or entity that prepares a plan. This is not the Wheatland County Planner.

Scoping - The collection of information and issues; usually at the beginning of a planning or decision-making process.

Scoping Ongoing - The incorporation of new information as it becomes available throughout the planning process.

Sunshine Laws - State laws that generally require meetings to be notice and open to the public and require documents to be available for public review and copying.

WHEATLAND COUNTY

Wheatland County is located in south central Montana. The county was formed from parts of Fergus, Meagher and Sweet Grass Counties. It is sparsely populated with only 1.4 persons per square mile and a total population of 2,000. The county covers an area of 1,428 square miles (913,000 acres). Sixteen percent of the lands are owned by the federal and state governments (7% federal and 9% state) and 84 percent are privately owned.

The county is relatively small by Montana standards with only 1428 square miles in the county. Wheatland County runs about 38 miles in a north-south direction and is about 43 miles across. It has 2 incorporated towns, Harlowton, the county seat, and Judith Gap. Harlowton is located along the Musselshell River, which runs through the county.

Irrigated and partially irrigated croplands (hay, wheat, barley and oats) are located in the valleys. Pasture also exists in river and stream bottoms. These uses total in excess of 768,836 acres. There are more than 414,000 acres of range providing excellent forage for cattle and sheep. Woodland and forest trees are predominately lodge pole pine, ponderosa pine and Douglas fir.

The county's economy has been historically based on agriculture, forestry and mining and railroading. Wheatland County ranks 33rd in the state in beef production and 4th in sheep production. Hay, pasture and small grains are the major crops of the area. The county ranks 9th in wild hay production. Approximately one fourth of the population is dependent upon agriculture. Other major Wheatland County employers include the school districts, Wheatland Memorial Hospital, US Forest Service and a variety of other federal and state offices. The economy has also broadened and differentiated from agriculture to some extent. Wind energy, tourism, retirement, telecommuting and stone quarries have become an important part of the economy.

Wheatland County was created by an act of the state legislature and officially became the 41st county of Montana as of April 1, 1917. Harlowton is the county seat for Wheatland County and is located along the bluffs of the Musselshell River. The area is known for its railroad history, with Harlowton as the starting point for the Milwaukee Road's Electric line heading west of the mountains to Idaho. The original settlement was named Merino for the sheep and wool industry, but was changed to Harlowton in 1900 in honor of Richard Harlow's Montana Railroad. The unincorporated town of Two Dot sits in the shadow of the Crazy Mountains and is located west of Harlowton. Judith Gap is another incorporated town, and was named for the divide in the Judith Basin between the Big Snowy and Little Belt Mountains. The town of Shawmut, also unincorporated, sits along the mainline for the Chicago, Milwaukee, St. Paul and Pacific Railroad, which operated here from 1908 until 1980.

The economy continues to be heavily dependent on natural resources. Harlowton continues to serve as the area's regional service center, while the county's other communities have remained small and in some cases have simply disappeared from lack of economic viability. Wheatland County's greatest challenge for the future will be dealing with its economy. During the past decade the slow down of growth and diversification in the county's economy caused

Wheatland County's greatest challenge for the future will be dealing with its economy. During the past decade the slow down of growth and diversification in the county's economy caused reflect in declining real income and earned income, an out-migration of the young working age groups, an increased percentage of lower and fixed income population and declining business activity. These trends are typical of most of America's small rural farming and ranching communities.

Wheatland County has confronted these challenges directly by significantly increasing opportunities for community growth. The county is now known as nationally recognized location for harvesting renewable resources, most specifically wind energy. Recent areas of economic growth also include rock harvesting and telecommunication opportunities.

CUSTOM AND CULTURE

The history of Wheatland County is steeped in tales of cattle and sheep ranching. Ranching began in earnest in the 1880's when boundaries of the Crow Indian Reservation were moved further east. Gradually homesteaders took up land and in time the range was divided with fences. Today, there are approximately 137 farms/ranches actively producing cattle and sheep and are important parts of the county's economy.

Early farmers and ranches established water rights through the doctrine of prior appropriation. The earliest adjudicated rights in Wheatland County date to 1875. As subsequent efforts were made to control the water, landowners brought suit to protect their prior appropriation rights. Today, holders of water rights are still struggling to preserve their rights against encroachment.

The beneficial use of natural resources has been the basis for Wheatland County's economy, custom and culture. The winds throughout the area have received few compliments but a good number of curses over the years. However, the much criticized gales were directly responsible for the first permanent white settler's decision to come to the area. Early settlers found the continuously blowing wind freed the lands of its snow cover, ideal for livestock grazing during the winter. The settlers also utilized the wind by using windmills for over a century to pull water from the ground. The early settlers of this land worked hard to establish their livelihood and today's resident's work equally hard to maintain that livelihood.

Wheatland County is home to several Hutterite Colonies. These colonies are a religious group originating from the Reformation of the 16th century. In the early 1500's, this group came to be known as the Anabaptists as they believed in the rebaptizing of adults. The Anabaptists additionally shared the belief in the separation of Church and State and they are committed pacifists.

In recent years recreation use of the land in Wheatland County has grown rapidly. The county contains Lebo Lake, Bair, Martinsdale and Deadman's Basin Reservoirs. The Musselshell River provides for agriculture use as well as a recreational setting. Montanans and out-of—state visitors come to the county for recreation; hunting, fishing, and camping, boating, golfing and other outdoor activities. The potential for conflict between these users and those residents who make their living on the land is great. Cooperative efforts on both sides have kept the conflict to a minimum. Diverse recreational activities have resulted in uses that directly affect open-space issues in Wheatland County.

Private property rights and interests are important to the residents of Wheatland County. Private ownership and incentives provided by that ownership is a driving force behind the culture and lifestyle of the county. The early settlers were diligent in pursuing legal protection of their property rights. Today's residents continue with that diligence.

ECONOMICS

One of the biggest problems facing local governments today is to maintain a strong tax base. In order for any community to provide needed schools, health care, police protection and other services, industry and commerce within the community must be encouraged and strengthened.

A primary purpose of this Plan is to foster cooperation and coordination between federal and state management agencies, other counties and Wheatland County. These interests include, but are not limited to grazing, farming, timber, mining, recreation, wildlife and all other activities related to, and reliant upon the availability of natural resources on federal, state managed, and private lands within their respective jurisdictions.

This plan is a dynamic document, changing as more information becomes available and new situations arise. Economic and demographic data essential to the Wheatland County Growth Policy and Resource Use Component will be included in later up-dates. These data should include both current and historical data for the past decades and should give an indication of the trends. Data to be added may include:

- 1. Total personal income by major component (industry).
- 2. Full-time and part-time employment by major industry.
- 3. Transfer payments by major component (industry).
- 4. Farm income and expenses.
- 5. Total population and population by age categories.
- 6. Households by type.

Counties and states are not allowed to tax the federal lands within their boundaries. The federal government has several mechanisms to reimburse local government for the loss of taxes. It is important to know the amount of federally owned land and the kind and amount of reimbursement that local governments will receive. More importantly, the county must understand how activities and management actions on these federal, state, and privately controlled lands impact the economic support structure of the local community. Payments to support local communities are derived from federal lands through the following means:

- 25% of Forest Reserve Fund
- Payments in Lieu of Taxes (PILT)
- Taylor Grazing Act Section 3 and Section 15
- Refuge Revenue Sharing Act

Wheatland County is directly affected by management activities on federal, state and private lands. Recreation, livestock grazing, and timber production are the primary resource areas that provide income and promote community stability.

Therefore, it shall be the policy of Wheatland County to:

1. GOAL: Protect agricultural land and promote the continuation of agricultural pursuits.

Objective 1A: Protect private property rights.

Objective 1B: Encourage reliance on self-determination.

Objective 1C: Ensure open market conditions.

2. GOAL: Recognize and manage to protect the private rights and interests in irrigation and water development structures on public lands.

3. GOAL: Develop and implement an economic policy on the role of public lands in relation to reviving and supporting economic stability for Wheatland County.

Objective 3A: Encourage research activities to address rural economic issues.

Objective 3B: Enhance the ability of the county government to better serve the county.

Objective 3C: Create committees to effect greater county involvement in public land planning processes.

Objective 3D: Encourage research activities to address rural economic issues and questions.

Objective 3E: Increase the capacity for public land resources to provide more economic return for rural economies.

Objective 3F: Increase the number of adequate broadband T1 lines available for government, business, and non-profit organizations.

4. GOAL: No net loss of private lands.

Objective 4A: Identify and implement mechanisms that preserve or increase the amount of private land in Wheatland County to enhance the tax base and encourage rural development in Wheatland County.

Objective 4B: Increase the capacity for public land resources to provide more economic return for rural economies.

5. GOAL: Develop programs with assistance to enhance the effectiveness of local government in the public land planning process and the effects resource uses have on the economy of Wheatland County.

Objective 5A: Work toward reducing state and federal red tape to facilitate development and multiple uses of public lands in a cost-effective and wise manner.

6. GOAL: Recognize the importance of agricultural production to the economic well being of Wheatland County.

Objective 6A: Maintain the current amount of rangeland vegetation, by actively reversing the colonization of rangelands by conifers and weeds.

CONSTITUTIONAL PRINCIPLES AND PRIVATE PROPERTY

The U.S. Constitution created a form of government characterized by:

- 1. Limited powers granted to the federal government.
- 2. Separation of those limited powers into legislative, judicial and executive branches.
- 3. Creation of a process where the branches act to check and balance the power of the other branches.

The Resource Use Committee, the Planning Board and the people of Wheatland County accept, support and sustain the Constitutions of the United States and the State of Montana. The Constitution of the United States, Article 1, Section 8, clauses 17 and 18 limits the authority of the federal government to own only specific lands.

- 1. GOAL: That all lands in Wheatland County be managed in coordination with the Planning Board, its representatives, and thereby the citizens of this county.
- 2. GOAL: Reaffirm the fundamental rights of mankind as enumerated in the Declaration of Independence and acknowledge the limited nature of government as intended by the nation's founding fathers.
- **3. GOAL:** Protect private property and private property rights and promote the continuation of private economic pursuits.

Objective 3A: Protect private property rights.

Objective 3B: Protect local custom and culture.

Objective 3C: Maintain traditional economic structures through self-determination.

Objective 3D: Open new economic opportunities through reliance on free markets.

Objective 3E: Enhance environmental quality.

Objective 3F: Protection and preservation of privately owned land is desirable in Wheatland County.

4. GOAL: Ensure Due Process.

Objective 4A: Public notice

Objective 4B: Opportunity to be heard.

Objective 4C: The right of cross-examination.

Objective 4D: Disclosure

Objective 4E: Finding of fact.

Objective 4F: Conflicts of interest and the appearance of conflict or impropriety.

Objective 4G: Prompt decisions.

Objective 4H: Records of proceedings.

Objective 4I: Ground rules for fair play.

Objective 4J: Substantive due process.

LAND TENURE, DISPOSITION, ACQUISITION AND USE

Eighty four percent of the land in Wheatland County is private. It is this land that comprises the County tax base that must support most county services. The Planning Board recognizes that land is essential to local industry and residents.

1. GOAL: That land tenure adjustments for any government agency should provide for no net loss of private land, private property rights and interests including investment-backed expectations, or loss of property tax revenue to Wheatland County.

Objective 1A: Exchanges of government land with private landowners to adjust property lines for improvement of management of either or both will be sought.

Objective 1B: Isolated tracts of state and federally managed lands, which could be better and more efficiently managed by the private sector, will be identified and recommended for sale or trade.

2. GOAL: That the design and development of all federal and state land dispositions and acquisitions, including land adjustments and exchanges, be carried out to the benefit of the residents of Wheatland County.

Objective 2A: That the county suffer no net loss in tax revenue.

Objective 2B: That private property interests are protected and enhanced.

Objective 2C: That citizens of Wheatland County will suffer no adverse aggregate economic impacts.

Objective 2D: That all government entities investigate and attempt to increase local economic development by increasing the amount of privately controlled land within the county.

Objective 2E: All governing bodies investigate and attempt to increase opportunities for local economic development by increasing the private use of all lands within the county.

Objective 2F: Federal and state land agencies should not acquire any private lands or rights in private lands within Wheatland County without first ensuring compliance with the items listed above.

Objective 2G: Federal and state-managed lands that are difficult to manage, or which lie in isolated tracts should be considered for exchange or sale.

Objective 2H: The general public and the Wheatland County Board of Commissioners should be notified of, consulted with, and otherwise involved in all federal and state land adjustments in Wheatland County.

Policy 1: The County should have the opportunity to investigate and evaluate all proposed changes to determine if the proposal is in the best interest of the county. Further, the county and other government agencies should collaborate and coordinate with each other in implementing proposed planning activities.

Policy 2: The County will have the opportunity to collaborate, coordinate and make recommendations on proposed public or private land withdrawals for hazardous and non-hazardous waste storage, as well as the types of such waste.

Objective 2I: As discussed herein, before federal and state land agencies change land use, impact studies on the proposed change should be conducted at the expense of the agency proposing the change, and mitigation measures should be adopted in coordination with Wheatland County. Impact studies should, as needed, address community stability, local custom and culture, grazing rights, flood prone areas, access, and other concerns identified as a concern to the local community.

COMMUNITY STABILITY

Historically the custom and culture of Wheatland County is a story retold in many western counties. The settlement of the county is a history of the livestock, ranching, mining, wildlife, and railroads. It was led by hardy individuals willing to work and develop the resources of the land to bring forth a stable community. The settlement of the Wheatland County is based on the beneficial use of the land.

The people of Wheatland County have traditionally earned their livelihood from activities associated with natural resources. The economy of the county was in the past, and is today, dependent upon the availability and utilization of natural resources. Directly or indirectly, the majority of the people employed in Wheatland County are dependent upon ranching and farming, mining, recreation, and other activities related to the availability of natural resources.

A portion of the land producing the resources critical to the economy of Wheatland County is either managed by federal or state agencies, or is affected by land management policies of those federal or state agencies. The county economy is partially dependent on businesses operating on federal and state lands. These include energy development, livestock grazing, mining, other commercial activities, and recreation. These businesses are the base for economic stability of the county. They are important to the effective use of private land in the county. Effective use of the private land in Wheatland County is impacted by the management style and techniques used on federal and state managed land and water.

Recognizing the critical tie between use of private, federal and state lands and how they impact the economic stability of the county, the board will actively and positively work to provide a voice for individual citizens, and for local communities in the planning process for the future of Wheatland County.

LIVESTOCK GRAZING

Agricultural production in Wheatland County is necessary to the livelihood and well being of all its citizens. The county must strive to protect our ranching heritage and the vital natural resources needed to keep ranching families in business.

Livestock grazing is one of many management tools that may be used to maintain or enhance the range resource. Improving the range resource through livestock grazing benefits watersheds, water quality, wildlife, and recreation as well as providing needed forage for livestock production.

Grazing by large and small ungulates is recognized as essential in the evolution of grasslands. Responsible livestock grazing practices are recognized as an essential process in maintaining healthy grasslands.

Certain natural resource management plans must comply with the NFMA, FLPMA, etc. legislatively provided requirement of "consistency to the extent possible" with locally adopted plans and policies. This requirement enables the values and needs of Wheatland County to be addressed, within the constraints of state or national policy.

1. GOAL: Continue agriculture use on federal and state lands consistent with historical practice.

Objective 1A: Retain the use of public lands for grazing.

Objective 1B: Recognize and protect all private property rights.

Objective 1C: Retain an environment for working ranches.

Objective 1D: Support the agriculture industry.

Objective 1E: Encourage better management of lands and land improvements on livestock range that is also key big game habitat.

Objective 1F: Support the tax base of the county.

Objective 1G: Utilize a coordinated resource management and planning approach to ensure involvement of all interests.

Objective 1H: Enhance and protect riparian areas.

Objective 1I: Encourage consistent management of wildlife populations.

In order to accomplish these goals and objectives, Wheatland County proposes the following:

- Policy 1: Use sound management practices and the development of innovative grazing plans.
- Policy 2: Have in place, a rapid-response process to address land resource issues.
- Policy 3: Work cooperatively with the involved ranchers and other interested parties to address resource concerns on a site-specific basis.
- Policy 4: Use prescribed fire and other approved methods to control encroachments and to enhance, maintain or increase current grazing levels.
- Policy 5: Use a practical and common sense approach to resource management.
- **2. GOAL:** Manage rangelands so as to maintain and enhance desired plant communities, and for the benefit of watersheds, wildlife, water quality, recreation and livestock grazing.
- **Objective 2A:** Comply with the all applicable state and federal laws, including the Public Rangelands Improvement Act.
- Objective 2B: Encourage effective planning and management to maintain and enhance desired plant communities.
- Policy 1: Encourage development of a management plan for each specific allotment.
- Objective 2C: Encourage including all grazing improvements, such as water development, juniper/sagebrush control, re-seeding, fencing, salting plans, herding plans, and grazing systems in Allotment Management Plans and allow for the flexibility and updating of the plan during the ten year period.
- Objective 2D: Encourage utilization of standards and guidelines that are scientifically proven.
- Objective 2E: Encourage decision-making as to improvements on an allotment basis, because they are an integral part of the use of state leases, private leases, private lands, other allotments, and the overall operation of each ranch enterprise.
- Policy 2: Encourage compliance with the multiple-use concept mandated by statutes. All planning effort will adhere to the careful and considered consultation, coordination and cooperation requirements established by statutes.
- **3. GOAL:** Encourage participation in meaningful coordination between Wheatland County and all federal and state land management agencies.
- Objective 3A: Encourage appropriate compliance with all federal and state statutes.

Objective 3B: Encourage county actions to preserve, support, and increase the county tax base.

Objective 3C: Develop and encourage programs to enhance the effectiveness of local government in the public land planning process

Objective 3D: Allow for allotment planning that will utilize a coordinated resource management and planning approach to ensure grazing on federal and state lands in the future.

Policy 1: Encourage mechanisms to allow subleasing of grazing rights or allotments on state or federal ground.

Policy 2: Encourage mechanisms to allow flexibility of grazing allotments or grazing lease agreements.

4. GOAL: Enable the Wheatland County Commissioners to take an active role by responding in writing to any allotment management plans. (AMP's)

Objective 4A: Ensure county participation on every agency decision affecting the county.

Objective 4B: Have written documentation recorded on behalf of the county showing the comments describing issues of importance to the county.

Objective 4C: Support the county tax base.

Objective 4D: Review federal and state agency plans and regulations to ensure they are consistent with the growth policy for Wheatland County.

Objective 4E: Encourage sharing of grazing databases that determines where the grazing permits are located in the county and show the condition of those areas.

Objective 4F: Develop relationships to enhance the effectiveness of local governments in the public land planning process to promote good forest management, riparian management, and grazing management.

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IRRIGATION AND AGRICULTURE

Irrigated agriculture makes a major contribution to the economic base of the county, and is of critical importance to economic stability. Alfalfa, grass and grain hays, livestock pasture and small grains constitute the majority of crops in Wheatland County. Other specialty crops, such as canola, and peas are also important crops. These irrigated crops are integral to the production of livestock in Wheatland County, and to the stability of the custom, culture, and economy of the county.

1. GOAL: Productive watersheds must be maintained for the preservation of irrigated agriculture.

Objective 1A: Maintain healthy forests for productive watersheds.

2. GOAL: Water rights and irrigation ditch easements are to be protected.

Objective 2A: Encourage the re-adjudication process protects existing water rights.

3. GOAL: Encourage maintenance of water storage and conveyance structures.

MANAGEMENT OF VEGETATION

The Taylor Grazing Act and the Federal Land Policy and Management Act mandate maintenance and improvement of vegetation on the federally managed lands to provide forage for livestock and forage and habitat for wildlife. The Public Rangelands Improvement Act of 1978 states (43 U.S.C. § 1901) that: [federally managed lands were producing] "less than their potential for livestock, wildlife habitat, recreation, forage, and water and soil conservation benefits." Further, in § 1901, that: [unsatisfactory conditions on public rangeland] "prevent expansion of the forage resource and resulting benefits to livestock and wildlife production."

The Congress also found that such conditions preventing an expansion of the forage resource and other unsatisfactory conditions on the public rangelands "may ultimately lead to unpredictable and undesirable long-term local and regional climatic and economic changes."

In order to eliminate such conditions the Congress called for intensive planning and improvement of the federally managed rangelands so that "they become as productive as feasible for all rangeland values."

FIRE MANAGEMENT

Fire suppression will be guided by the need to achieve the highest level of protection for human safety and private property. The blanket fire suppression policy of the past has contributed to juniper/Ponderosa or Douglas fir encroachment and sagebrush expansion harming watersheds, wildlife, and plant communities. Fire suppression will be necessary in areas where fire would endanger human safety and private property, or valuable vegetation that will support and expand multiple uses.

- **1. GOAL:** Encourage utilization of fire management and appropriate response to support and expand multiple uses and achieve management goals.
- Objective 1A: Ensure utilization of fire suppression in areas where fire would endanger human safety and private property, or valuable vegetation that will support and expand multiple uses.
- Objective 1B: Participate in consideration of an "appropriate management response" policy for areas where invading and expanding shrubs and trees are impacting the land.
- **Objective 1C:** Encourage development of policies for grazing rest prescriptions related to either wildfires or prescribed burns on a site-specific basis.
- Objective 1D: Encourage the adoption of the following policies by regulatory entities.
- **2. GOAL:** Obtain the maximum federal and state funding available to support local law enforcement and related activities, which may include fighting fire and, search and rescue.
- Policy 1: Where rest prescriptions are appropriate, they may include the year of the burn, light late-season use in the year following the burn or moderate late season use in the second year following the burn.
- Policy 2: Post-fire grazing will not be limited when monitoring and evaluation produces relevant, accurate data that demonstrates grazing will not unduly harm the range.
- Policy 3: In the planning of prescribed burns, where feasible, market the renewable resource before burning.

ROADS: ACCESS AND TRANSPORTATION

It is the policy of Wheatland County to develop and maintain a transportation plan that optimizes accessibility for county residents and the public to all areas of the county including federal and state managed lands. To that end, Wheatland County proposes the following for their growth management plan.

1. GOAL: Maintain the legal historic right to travel over county roads granted by easement, federal and state lands wherever necessary in pursuit of mining, ranching, farming, logging, recreational activities, motorized vehicle use, and all other legal historic uses.

Objective 1A: Support the economy of the county.

Objective 1B: Keep all right-of-ways going to and inside of pubic lands open for the enjoyment of all the public.

Objective 1C: Identify mechanisms to help maintain the uses of the roads.

Objective 1D: Enhance the opportunities for further economic development.

Objective 1E: Control the spread of noxious weeds.

Objective 1F: Protect the environment.

Objective 1G: Encourage adoption of rules controlling off road recreational use of 4 wheelers and other ORV's.

2. GOAL: Protect private property rights in the county.

Objective 2A: Access to and/or across federal and state managed lands within the county should not entail encumbrances or restrictions on private property rights.

3. GOAL: Wheatland County will develop a coordinated approach to the issues of roads and right-of-ways with state and federal agencies.

Objective 3A: The prevailing federal law with respect to roads and right-of-ways is RS 2477 (the Act of July 26, 1866) which states in Section 8: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

Objective 3B: Federal statute defines federal land right-of-ways as follows: Any road, trail, access or way upon which construction has been carried out to the standard in which public right-of-ways were built within historic context. These right-of-ways may include, but not be limited to, horse paths, cattle trails, irrigation canals, waterways, ditches, pipelines or other means of water transmission and their attendant access for maintenance, wagon roads, jeep trails, logging roads, homestead roads, mine to market roads, and all other ways.

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Objective 3C: Road closures and obliterations in the county will not occur where there may be possible RS 2477 right-of-ways, without meaningful coordination and concurrence between Wheatland County, local interested parties, and relevant federal and state land management agencies.

4. GOAL: Wheatland County, in coordination with federal agencies and state land management agencies will work to develop a complete inventory of all roads and right-of-ways in Wheatland County.

Objective 4A: Inventory will include, but is not limited to, a database, maps, GIS locations and photographs.

LAW ENFORCEMENT

1. GOAL: Preserve and protect the peace and dignity of the people of Wheatland County protect their rights and privileges established under the Montana Constitution and the Constitution of the United States.

Objective 1A: Develop interagency cooperative agreements to insure full cooperation of federal and state law enforcement agencies with the Wheatland County Sheriff.

Objective 1B: Wheatland County Sheriff is to be advised of all law enforcement activities in Wheatland County.

Objective 1C: Wheatland County Sheriff is to have prior notification by any federal law enforcement agency of any investigations, searches, arrests, or any other law enforcement activities.

Objective 1D: Wheatland County Sheriff is to have prior notification by any state law enforcement agency of any investigations, searches, arrests, or any other law enforcement activities.

2. GOAL: Obtain the maximum federal and state funding available to support local rescue, and other activities as needed.

Objective 2A: Apply for and have state and federal agency support and concurrence to budget and appropriate funds for local law enforcement and related activities.

Objective 2B: Develop interagency cooperative agreements with respect to budget and appropriated funds for local law enforcement and related activities.

Objective 2C: Enhance the county law enforcement-training program through available state and federal funds and state and federal training programs and facilities.

Objective 2D: Create a written policy and/or protocol for working with federal and state law enforcement agencies.

3. GOAL: To hire additional staff as needed, jail and dispatch personnel as well as sworn officer personnel.

NOXIOUS WEEDS

Wheatland County has an aggressive weed control program in place, including a full-time County Weed Supervisor, a County Weed Board, and a comprehensive County Weed Management Plan. Said Plan is incorporated in this Plan by reference. Several other subordinate weed plans exist, including a coordinated cooperative interagency weed management plan and a number of local weed control groups.

1. GOAL: Eradicate to the extent possible noxious weeds within Wheatland County, and minimize the potential for any infestations that may become established and/or exist in the county.

Objective 1A: Support the Board of Commissioners as the weed authority for Wheatland County.

Objective 1B: Encourage an increase in the county weed budget and procure as much alternative funding for weed control as possible.

Objective 1C: Increase ongoing programs to identify the location of all noxious weeds, and initiate management and eradication.

Objective 1D: Support the Federal Public Rangeland Improvement Act, which virtually mandates cooperation in noxious weed control in order to improve unsatisfactory conditions of Federally managed rangelands.

Objective 1E: Support cooperative weed control agreements and Weed Control Groups.

2. GOAL: Develop educational opportunities to enhance public awareness of noxious and other weed problems.

OBJECTIVE 2A: Support local educational assets, such as Extension Service and Conservation Districts, in their efforts to make the public more aware of weed problems and new solutions.

OBJECTIVE 2B: Encourage decision-making as to improvements on an allotment basis, because they are an integral part of the use of state leases, private leases, private lands, Forest and other allotments, and the overall operation of each ranch enterprise.

OBJECTIVE 3B: Encourage compliance with the multiple-use concept mandated by statutes. All planning effort will adhere to the careful and considered consultation, coordination, and cooperation requirements established by statutes.

FOREST MANAGEMENT

Sound science and common sense support the premise of active forest management on the forested lands in Wheatland County. Forest management practices should include a stable timber-harvesting program, which is essential to maintain healthy forest ecosystems and to provide employment and economic security to individuals and businesses in Wheatland County. Investment in equipment and technology cannot be made without economic stability. The Lewis and Clark National Forest and the Montana Department of Natural Resources have the capability to demonstrate that proactive forest management can meet the needs of forest health, multiple use and economic stability.

The Lewis and Clark National Forest should be managed and administered for outdoor recreation, livestock grazing, timber harvesting, watershed protection and wildlife in the best interests of the American people. These resources should be maintained in perpetuity so that future generations would have the opportunity to use and enjoy them.

The use of wood products to our nation is important. Estimates show the demand for wood products is increasing about one percent per year. Many individuals, businesses, communities, and local governments depend on a stable supply of this renewable resource.

A management policy of no action, or arms length management is unacceptable, irresponsible, and potentially disastrous. What is needed is a cooperative, hands-on, proactive approach to forest management that uses timber harvesting as a tool to accomplish overall forest health and to ensure a healthy and vibrant forest for current and future generations.

The Lewis and Clark National Forest encompasses 1.9 million acres. Of these, 282,000 have a potential for timber production.¹

Wheatland County includes 64,000 acres of the Lewis and Clark National Forest. Dry Douglas fir and Ponderosa pine covers much of the National Forest land in Wheatland County with Spruce and subalpine fir on moist, higher elevation sites.

The present condition of these timberlands is documented in the 1986 Lewis and Clark National Forest Plan, Chapter 3 of final environmental impact statements.

1. GOAL: Achieve good forest heath to ensure a healthy and vibrant forest for current and future generations.

Objective 1A: Protect our environmental capital assets by managing mortality.

Objective 1B: Maintain and restore watershed health by demonstrating active forest management.

¹ USFS land area report 09/30/2008

Objective 1C: Enhance and restore wildlife habitat.

Objective 1D: Promote the early detection and control of insect infestations.

Policy 1: Encourage the creation of a model in Wheatland County that demonstrates how active management can meet economic needs, while maintaining and restoring watershed health.

Policy 2: Work with the Forest Service in partnership to help assess the state of our forest.

Policy 3: Explore harvest methods that enhance wildlife habitat, through vigorous new growth and a natural mosaic.

Policy 4: Encourage the local manufacture and use of the forest and forest by-products.

2. GOAL: Realize a sustainable and continuous supply of timber, forage, firewood, wildlife, fisheries, recreation, and water supplies utilizing multiple use on our public forestlands.

Objective 2A: Support the minimum areas required as single-use, or restrictive-use designations.

Objective 2B: Support the maximum area of land possible to be excluded from single-use or restrictive-use designations, and that excluded land be available for active and sound management.

Objective 2C: Support local land managers on site-specific management decisions.

3. GOAL: Ensure stability in commodity-oriented and aesthetic based planning and decision-making processes. Recognize that both are essential to the well being of Wheatland County.

Objective 3A: Provide stability within the ecological limits of the land so that companies will make needed investments that provide economic stability and jobs.

4. GOAL: Educate the public on the benefits of long-term sustained yield.

Objective 4A: Encourage public education on the reasons why both science and common sense support active management of our public lands.

Objective 4B: Educate public land managers, local school board officials, and County Commissioners on the importance of public lands to local infrastructure maintenance.

WATER RIGHTS

All existing right to the use of any waters for any useful or beneficial purpose are recognized and confirmed by the Montana Constitution. "Existing water right" means a right to the use of water that would be protected under the law, as it existed prior to July 1, 1973.

1. GOAL: Water rights established historically and beneficially used by the citizens of Wheatland County including but not limited to, the purposes of agriculture (irrigation and stock water) domestic use, industrial use, mining and power uses are recognized as private property rights and are to be protected as such.

Objective 1A: Any new or additional development of surface water or groundwater after June 30, 1973 will be consistent with Montana laws and Montana Water Use Act of 1973.

2. GOAL: Allocation of water resources in Wheatland County are governed by applicable Montana laws and the Prior Appropriation Doctrine.

Objective 2A: Any land use inventory, planning or management activities affecting water resources in Wheatland County, either directly or indirectly, is coordinated with local government and is consistent with the Resource Use Management Plan of Wheatland County.

Objective 2B: Use of water resources in Wheatland County is consistent with local culture and community stability with particular emphasis on the economic stability of the community.

Objective 2C: Recognize that water used for recreation, fish, and wildlife purposes provide economic benefit to Wheatland County although these uses are not historically recognized as historic water rights or "existing water rights". These uses are generally non-consumptive uses of water.

DITCHES AND CANALS

Ownership of water rights and ditch rights are distinct property rights.

1. GOAL: Ditch easements are recognized as property rights and will be protected as such.

Objective 1A: Encourage recognition and acknowledgement of the concept that ditch easements include owner rights to enter, inspect, repair and maintain a canal or ditch.

Objective 1B: Implement and encourage the implementation of policies that limit encroachment upon or impairment of easements for canals or ditches, without the permission of the easement owner.

Objective 1C: Adopt and implement policies encouraging the owners of ditch easements to be reasonable in the use of their easement.

WATER AND HYDROLOGY

The North and South Fork of the Musselshell originate in Meagher County and join near the western boundary of Wheatland County to form the Musselshell River. The Musselshell River is the major water shed for four counties, Wheatland, Golden Valley, Musselshell and Petroleum, as well as part of Meagher County, and is a tributary of the Missouri River. Annual run off from the Musselshell originates principally from precipitation in the mountainous portions of the upper watershed. Precipitation received in the lower basin is normally absorbed into the soil profile, but can be a contributor to run off during major precipitation events. The North and South Fort of the Musselshell and other mountain streams contribute heavy run off of snowmelt during spring and early summer. The Musselshell is heavily used for irrigation through the five county area. Recreational use such as fishing and hunting is also an important use.

1. GOAL: Productive watersheds must be maintained for water quality.

Objective 1A: Maintain healthy forests for productive watersheds.

Objective 1B: Support the Clean Water Act's focus of achieving fishable and swimable water quality standards.

WATER QUALITY

1. GOAL: The Montana Water Quality Act (Title 75, Chapter 5, Mont. Code Ann.) provides the authority and standards for water quality in Wheatland County.

Objective 1A: Any land use inventory, planning or management activities affecting point or non-point sources and water quality in Wheatland County, either directly or indirectly, is coordinated through local government and is consistent with the Resource Use Management Plan of Wheatland County.

Objective 1B: All management plans and land use practice modifications proposed by either state or federal agencies premised on water quality issues are coordinated through local government and are consistent with the protection of private property rights.

FLOODPLAINS AND RIVER TERRACES

Floodplains are the relatively broad and smooth valley floors constructed by active rivers and periodically covered with floodwater during periods of over bank flow. Floodplains usually include the riparian and wetland areas. The floodplain is a part of the active erosional and depositional activity of river channels.

River terraces (benches) are abandoned floodplains that formed when their associated rivers flowed at high levels in the past. Many alluvium-filled valleys contain a complex series of river terraces that indicate ancient floodplains. Many of the river valleys and streams in Wheatland County have terraces at their margins which, when irrigated, are some of the most productive farmlands.

1. GOAL: Continue to reduce property damage in the floodplain.

Objective 1A: Continue installation and maintenance of floodplain protection structures.

Objective 1B: Encourage the use of upstream storage structures and water retention, through a combination of:

- 1. On stream storage
- 2. Off stream storage
- 3. Structural storage
- 4. Non-structural storage

Objective 1C: Discourage construction of structures in floodplain areas, and encourage flood proofing of structures situated in floodplain areas.

WETLANDS

Wetlands help regulate water levels within watersheds, improve water quality, reduce flood and storm damages, provide important fish and wildlife habitat and support hunting, fishing, and other recreational activities. Wetlands are most common on floodplains along rivers and streams (riparian wetlands). They also occur in isolated depressions surrounded by dry land (for example, playas, basins, and "potholes"), along the margins of lakes and ponds, and in other low-lying areas where the groundwater intercepts the soil surface or where precipitation sufficiently saturates the soil (vernal pools and bogs). Wetlands include marshes and wet meadows dominated by herbaceous plants; swamps dominated by shrubs, and wooded swamps dominated by trees. Wetland sites may provide critical habitat needs for many species and they support a greater concentration of wildlife species, recreation, and other activities than any other type of location on the landscape.

1. GOAL: Develop a cooperative approach to wetlands issues.

Objective 1A: Work with water, wildlife, agencies, agriculture and landowners to achieve acceptable solutions and mutual benefits, both economic and otherwise, on these issues.

Objective 1B: Participate in the process to develop a consistent definition of wetlands and lands adjacent to wetlands. Including the following components:

- 1. Define wetlands as naturally occurring areas of predominantly hydric soils presently support hydrophytic vegetation because of the existing wetland hydrology.
- 2. Define hydric soil as a soil that in its natural state is saturated, flooded or ponded long enough during the active growing season to have predominantly anaerobic conditions at the surface.
- 3. Define hydrophytic vegetation as a predominance (2/3) of obligate wetland plants and facultative wetland plants.

RIPARIAN AREAS

Riparian areas are the zones bordering lakes, reservoirs, potholes, springs and seeps, wet meadows, vernal pools, and ephemeral, intermittent, or perennial streams. They are of prime importance to water quality, water quantity, stream stability, and fisheries habitat. Abundant water, forage, and habitat attract a proportionately greater amount of use and conflict than their small area would indicate. They are vital to the livestock grazing industry, mining, and many are also well suited for development as high quality agricultural farmland.

- 1. GOAL: Develop a coordinated approach to establishing riparian management plans, which include all uses of the area and impacts and influences.
- Objective 1A: Utilization allowances should be designed to enhance the range resource and provide an accurate and verifiable system for the comprehensive monitoring and evaluation of the entire range resource in a pasture or grazing rotation system. Utilization allowances and monitoring and evaluation systems should not make the mistake of measuring one area while excluding other areas of the range resource.
- Objective 1B: Wheatland County encourages the development of riparian management plans in concert and coordination with landowners, ranchers, and the appropriate state and federal agencies.
 - 1. The county shall encourage defining riparian areas of land directly or indirectly influenced by permanent water. Riparian areas have visible vegetation or physical characteristics reflective of permanent water influence. Excluded are such sites as ephemeral streams or washes that do not exhibit the presence of vegetation dependent upon free water in the soil.
- Objective 1C: Coordinate with other agencies and private entities managing land, waterways, and wetlands containing Threatened or Endangered species.
- **Objective 1D:** The County should receive notification of all state, regional, interstate, and federal actions that have any impact on the water of the county prior to such actions being initiated. It shall be the policy of the county to comment on these actions where appropriate.
- Policy 1: Develop appropriate Memorandums of Understanding to implement the coordinated management of riparian areas.
- Policy 2: The County should work to coordinate proposed actions with this plan prior to adoption and implementation.
- **2. GOAL:** Develop a county water use policy to ensure water quantity and water quality.
- Objective 2A: Ensure that such policies do not unreasonably impact water users within the county.

Objective 2B: Review all water policies periodically to determine that they are appropriate and adequate.

Objective 2C: Engage the county in the development, planning, and the management of the water resources of the county.

Objective 2D: Maintain healthy forests to ensure productive watersheds.

Objective 2E: Encourage cost sharing or cost reimbursement of costs incurred by permittees for riparian protection or improvement.

PREDATOR CONTROL

1. GOAL: Control predatory animals and reduce property damage.

Objective 1A: Maintain trapping as a historic and environmentally sound method of controlling predatory animals.

2. GOAL: Encourage control of disease bearing vectors, predators and rodents that are a recognized threat to public health.

Objective 2A: Encourage protection of private lands bordering federal and state lands from predatory animals and property damage.

Objective 2B: This protection should fall within the boundaries of good husbandry and sound environmental restraints, not to exclude chemical control.

Objective 2C: Encourage retention of and expansion of an animal damage-control plan for the protection of livestock and crops.

Objective 2D: Government and private entities are encouraged to coordinate their pest control actions and regulations with those of Wheatland County.

Objective 2E: Government and private entities are encouraged to prepare and implement plans for controlling predatory animals and rodents in accordance with recognized and proven husbandry practices.

WILDLIFE

Hunting big game, waterfowl, and upland game birds has been a traditional part of life in Wheatland County even before the first settlers. In the early days, hunting was a necessity for survival, and though today it is less essential, it still provides a food resource for many people. Wheatland County is renowned for its fine big game hunting and provides excellent hunting for county residents and visitors. Income for county residents is provided by such activities as employment as guides, selling supplies and equipment to hunters, and providing meals and housing to hunters.

However, an increased population of wildlife in some areas of Wheatland County has taxed the available habitat, forcing the wildlife to move onto private property in large numbers, causing damage to private lands and thus a negative impact on private property.

In regards to the current federal policy on wolf management, Wheatland County does not support this policy.

- 1. GOAL: Maintain and improve wildlife habitat in order to sustain viable and harvestable populations of big game and upland game species, as well as wetland-riparian area habitat for waterfowl, fur-bearers, and a diversity of other game and non-game species.
- **2. GOAL:** Coordinate with the Montana Department of Fish, Wildlife and Parks in consultation with all affected landowners, lessees, and permittees to develop specific Wildlife Management Plans.

Objective 2A: Wildlife Management Plans should include annual head count, population targets, harvest guidelines, special hunts to mitigate damage to private property, and guidelines for future site-specific management plans affecting upland, water fowl and big game habitat.

Objective 2B: Wildlife Management Plans will be directed toward maintaining healthy balanced wildlife populations.

Objective 2C: Encourage rangeland enforced and forest studies to monitor wildlife relationships to the available habitat and the impact on vegetation enhancement projects by wildlife.

Objective 2D: Initiate cooperative studies with willing private landowners on wildlife damage to rangeland and related concerns.

Objective 2E: Reconcile wildlife population fluctuations related to both habitat condition and other non-habitat impacts on reproduction and survival.

Objective 2F: Encourage development of a record keeping system tracking the incidence and disposition of wildlife damage on federal, state and private lands.

Objective 2G: Collaborate and coordinate with federal and state agency on plans and regulations regarding wildlife to ensure coordination with the County Comprehensive Plan.

Objective 2H: Encourage cooperation between federal and state agencies and private landowners to provide stable wildlife populations.

Objective 2I: The opening of access roads for late-season hunts when expected harvest quotas have not been met is especially important.

Objective 2J: The county will coordinate with the Montana Department of Fish, Wildlife and Parks in consultation with all affected landowners, lessees, and permittees to develop specific wildlife population targets, harvest guidelines, and late-season and special hunts when harvest guidelines are not met.

FISHERIES

Fishing has been a traditional part of life in Wheatland County even before the first settlers. In the early days, fishing was a necessary part of survival, and though today it is less essential, it still provides a food resource for many people. Wheatland County is renowned for the blue ribbon streams inside in the county and provides excellent fishing opportunities for county residents and visitors. Income for county residents is provided by such activities as employment as guides, selling supplies and equipment to anglers, and providing meals and housing to anglers.

1. GOAL: Preserve and enhance the fisheries resource in Wheatland County.

Objective 1A: Prevent the spread of diseases such as whirling disease.

Objective 1B: Prevent the degradation of fisheries through over use.

Objective 1C: Maintain healthy forests for productive watersheds.

2. GOAL: Minimize the conflicts between anglers and other resources uses.

RECREATION

Recreation and tourism are an important part of local business viability through out the county. Recreational activities include camping, picnicking, hiking, fishing and OHV's in the summer, hunting in the fall, and snowmobile and cross-country skiing in the winter. Local businesses depend heavily on the influx of visitors to the federal and state lands. Recreational opportunities are important to the local citizens of the county.

- **1. GOAL:** Encourage a broad spectrum of recreation opportunities on the lands in Wheatland County.
- **Objective 1A:** Provide opportunities for primitive recreational activities, non-motorized and motorized uses, camping, and horseback riding uses.
- Objective 1B: Encourage recreation and recreation activities that enhance and encourage opportunities for economic development in Wheatland County.
- **Objective 1C:** Encourage recreational activities on the lands in Wheatland County that increase the capacity for federal and state land resources to provide more economic return to the county.
- **Objective 1D:** Continue to seek out and expand upon cooperative efforts with interested user Groups.
- Objective 1E: Determine on status maps where the areas of interest for recreation are located.
- Objective 1F: When notified that a planning or decision-making effort is beginning, the county should submit comments in writing, describing issues they need to have addressed in support of the county.
- Policy 1: It shall be the policy of Wheatland County to consider, review, and comment upon all draft plans and environmental impact statements affecting land in Wheatland County.
- **2. GOAL:** Encourage recognition of the social, culture, and economic significance of recreation in the region, and encourage implementation of policies that will insure the viability of various recreational opportunities.
- **3. GOAL:** Encourage implementation of plans and programs that provide a balance of motorized and non-motorized summer recreational opportunities in Wheatland County and southwestern Montana.
- **4. GOAL:** Encourage private landowners to cooperate with recreationist in accessing public resources.

ENERGY AND MINERAL RESOURCES

Many energy and mineral resources occur on both private and government-managed lands within Wheatland County. These resources have great economic potential for the citizens of this great county. Wheatland County recognizes that the full development of its abundant mineral resources is desirable and necessary to the economic well being of the county, state, and the nation. Energy and mineral resource extraction is consistent with the local history, custom and culture. Therefore, the following are the policy of Wheatland County.

- **1. GOAL:** Encourage appropriate mineral and energy resource exploration and development in Wheatland County.
- **Objective 1A:** Encourage the elimination of unreasonable or unfounded barriers, prohibitions, and impediments to mineral and energy resource exploration and development.
- **Objective 1B:** Support the retention of existing mineral and energy operations, consistent with sound economic and environmental practices.
- **Objective 1C:** Support large and small-scale mineral and energy resource exploration consistent with sound economic and environmental practices.
- **2. GOAL:** Ensure compliance with all existing state and federal laws regarding oil, gas and mineral exploration and alternative energy or their production.
- **Objective 2A:** Carefully evaluate proposed revisions of the General Mining Law of 1872 for undue adverse impact on the mining industry in the county.
- Policy 1: The County will make recommendations regarding any such proposed revisions of the General Mining Law of 1872 to the appropriate state and federal representatives in order to influence the outcome to favor the custom, culture, and economy of Wheatland County.
- **Objective 2B:** Mineral and energy resource exploration and development are among the historic multiple uses on state and federally managed land; their continuances are compatible with the multiple-use principle

CULTURAL, GEOLOGIC, AND PALEONTOLOGICAL RESOURCES

Wheatland County contains many special features, which by their remote and rugged nature are largely self-protected. Where an imminent threat to these special features is identified, mitigation efforts necessary to protect significant scientific, educational, and recreational value will be identified. Many other special features are susceptible to damage by recreation seekers.

The Montana Constitution addresses Cultural Resources in Article IX, Section 4 thus: "the legislature shall provide for the identification, acquisition, restoration, enhancement, preservation and administration of scenic, historic, archeological, scientific, cultural, and recreational areas, sites, records, and objects, and for their use and enjoyment by the people."

1. GOAL: Encourage the preservation of all parts of our cultural heritage.

Objective 1A: Recognition of special features in Wheatland County, including:

- Historical Native American sites to include: campsites, buffalo jumps, pictographs and quarries.
- Historic sites, some of which are:
 One-room schoolhouses, some of which are located at Big Elk, Bear Creek and Bercail.
 The Chicago Milwaukee Railroad Depot
 The Jawbone Cemetery in the Jawbone Golf Course
 Small communities such as Judith Gap, Shawmut and Two Dot
 The Winnecook Ranch.
- Other historical sites from early settlers and paleo sites.

THREATENED, ENDANGERED, AND SENSITIVE SPECIES

The keystone of good environmental stewardship lies in a healthy resource base. Endangered and threatened species, as well as all plants and all animals, depend on the intricate balance of stable ecological, economic, and social functions of the immediate local community.

Wheatland County will pay particular attention to all species designated in any category or classification for protection, or consideration of protection, under the Endangered Species Act.

1. GOAL: Wheatland County will develop a proactive approach in the designation and management of any species designated in any category or classification for protection or consideration of protection, under the Endangered Species Act or similar designations in Wheatland County.

Objective 1A: Compliance with the full procedural provisions of applicable state and federal statutes.

Objective 1B: Wheatland County will participate fully with federal and state agencies to prepare an analysis of the economic and social impacts such designation will have on the county prior to the designation of any species for protection under the Endangers Species Act.

Objective 1C: Wheatland County will consider the information from the above analysis to develop a coordinated management plan with state and federal agencies for the management of any species designated for protection under the Endangered Species Act in the county.

Objective 1D: Wheatland County will participate and coordinate with federal and state agencies to prepare an analysis of the economic and social imparts such an introduction or reintroduction will have on the county prior to the introduction or reintroduction of any species designated for protection under the Endangered Species Act in the county.

Objective 1E: Any threatened or endangered species designation should not disrupt uses of the land and it should be consistent with Wheatland County's Growth Policy.

Objective 1F: Wheatland County believes that protection of endangered and threatened species can be most effectively achieved by cooperation between private landowners and public land users rather than imposing land-use restrictions and penalties.

WILD AND SCENIC RIVERS

The National Wild and Scenic Rivers Act, 16 U.S.C. 88 1271-1287, provides the guidance for identification and designation of individual river segments for study, and for recommendation for inclusion as a Wild and Scenic River. Section 1271 calls for protection of "certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values."

Under 16 U.S.C. § 1283, any federally managed lands which include, border on, or are adjacent to any river included in, or under consideration for inclusion in, the national system must be managed by the Secretary of Interior so as to protect such rivers in accordance with the purposes of the Act. However, 16 U.S.C. § 1283 Co, provides that the section is not to be "construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without the consent of said party."

1. GOAL: Wheatland County will take a proactive approach in the designation and management of any Wild and Scenic River segments or similar designations in Wheatland County.

Objective 1A: The county will develop it's own management plan for any proposed Wild and Scenic River segment or similar designation in the county.

Objective 1B: Uphold the legal requirements and qualifications set forth by the Wild and Scenic Rivers Act including those providing for the continuation of existing uses, and the regulation of existing uses only so as to prevent unnecessary or undue degradation of the environment.

Objective 1C: Review any proposed Wild and Scenic River recommendations in relation to the impacts on natural resource based industries, the economic stability of the county, and on the custom and culture of the citizens of Wheatland County.

Exhibit 20-4. Development standards for residential zoning districts (see footnotes [4], [5] & [7] for general standards)

Standard	R-1	R-2	R-3	R-5	R-6	R-9	R-10
Residential density	-	-	-	1,875 sq. feet of lot area per dwelling unit	500 sq. feet of lot area per dwelling unit	1,200 sq. feet of lot area per dwelling unit	10 dwelling units per acre
Minimum lot size for newly created lots	15,000 sq. feet	11,000 sq. feet	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet	n/a
Minimum lot width for newly created lots	90 feet	80 feet	60 feet	50 feet	50 feet	50 feet	n/a
Lot proportion for newly created lots (maximum depth to width)	3:1	3:1	2.5:1	2.5:1	2.5:1	2.5:1	n/a
Maximum building height of principal building [1]	35 feet	35 feet	35 feet	45 feet	65 feet	35 feet, single-family 50 feet, multi-family	12 feet to exterior wall
Maximum building height of detached garage [1]	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	16 feet
Maximum building height of other accessory buildings [1]	12 feet	12 feet	12 feet	12 feet	12 feet	12 feet	12 feet
Minimum front yard setback [2]	30 feet	20 feet	20 feet	10 feet	15 feet	10 feet	n/a
Minimum side yard setback [3]	Principal building: 15 feet each side; accessory building: 2 feet each side provided the front of the building is at least 50 feet from the front lot line	Principal building: 8 feet each side; accessory building: 2 feet each side provided the front of the building is at least 40 feet from the front lot line	Principal building: 6 feet each side; accessory building: 2 feet provided the front of the building is at least 40 feet from the front lot line	4 feet; 8 feet if adjoining a R-1, R-2, R-3 district	5 feet; 10 feet if adjoining a R-1, R-2, R-3 district	Principal building: 6 feet each side; accessory building: 2 feet each side provided the front of the building is at least 40 feet from the front lot line	n/a
Minimum rear yard setback [7]	20 feet for lots less than 150 feet in depth; 25 feet for lots 150 feet in depth and over	15 feet for lots less than 150 feet in depth; 20 feet for lots 150 feet in depth and over	10 feet for lots less than 150 feet in depth; 15 feet for lots 150 feet in depth and over	10 feet for lots less than 150 feet in depth; 15 feet for lots 150 feet in depth and over	15 feet	10 feet for lots less than 150 feet in depth; 15 feet for lots 150 feet in depth and over	n/a
Maximum lot coverage of principal and accessory buildings	Corner lot: 40% Other types: 30%	Corner lot: 45% Other types: 35%	Corner lot: 55% Other types: 50%	Corner lot: 60% Other types: 50%	Corner lot: 70% Other types: 60%	Corner lot: 70% Other types: 60%	none

^[1] See the hillside overlay district for more restrictive height requirements which may apply.

^[2] An unenclosed front porch on a single family residence may extend into the front yard setback up to 9 feet, provided the porch does not occupy more than 60 percent of the length of the main part of the house. (Ord. 2950, 2007)

^[3] See side yard requirements for zero lot-line projects.

^[4] Smaller lots and reduced setbacks and frontages may be accomplished through a Planned Unit Development (PUD).

^[5] An existing structure that does not meet the setback requirements stated above can be rebuilt on its original foundation or the original foundation location.

^[6] For townhouses, see Section 17.20.6.050 for additional and superseding requirements. (Ord. 2950, 2007)

^[7] Permitted accessory structures and buildings shall have a minimum rear setback of 2 feet in all residential zoning districts. (Ord. 2950, 2007)

Exhibit 20-4 (continued). Development standards for other zoning districts

	M-1	M-2	C-1	C-2	C-3	C-4	C-5	PLI	GFIA	I-1	I-2
Residential density	500 sq. feet of lot area per dwelling unit	500 sq. feet of lot area per dwelling unit	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Minimum lot size for newly created lots	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet	7,500 sq. feet
Minimum lot width for newly created lots	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet
Lot proportion for newly created lots (maximum depth to width)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	3:1	3:1
Maximum building height of principal building	65 feet except as follows: 35 feet within 200 feet of an R-1, R-2, R-3 district; 45 feet when within 200 feet to 350 feet of an R-1, R-2, R-3 district; and 65 feet when more than 350 feet from an R-1, R-2, R-3 district	65 feet except as follows: 35 feet within 200 feet of an R-1, R-2, R-3 district; 45 feet when within 200 feet to 350 feet of an R-1, R-2, R-3 district; and 65 feet when more than 350 feet from an R-1, R-2, R-3 district	35 feet	65 feet	50 feet	100 feet by right; 101 feet to 160 feet as conditional use	55 feet	100 feet by right; 101 feet to 160 feet as conditional use, except as follows; in the proposed medical district master plan area, 160 feet by right	65 feet	45 feet	none
Maximum building height of accessory building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	n/a	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	24 feet, but may not be higher than the uppermost elevation of the principal building	35 feet	none
Minimum front yard setback of principal and accessory buildings	none	Existing Industrial: 20 feet	15 feet	none	25 feet	none	15 feet	25 feet	25 feet	20 feet	10 feet
Minimum side yard setback of principal and accessory buildings	Commercial: none Residential: 5 feet each side	Commercial: none Residential: 5 feet each side Existing Industrial: 15 feet each side	10 feet each side	10 feet each side	15 feet each side	none	10 feet each side	10 feet each side	none	10 feet each side	10 feet each side, 15 feet when side yard abuts a non- industrial zoning district
Minimum rear yard setback of principal and accessory buildings	10 feet	10 feet	15 feet	1/10 of lot depth but not less than 1/10 of building height	1/10 of lot depth but not less than 1/10 of building height	none	1/10 of lot depth but not less than 1/10 of building height	1/10 of lot depth but not less than 1/10 of building height	none	5 feet	5 feet
Maximum lot coverage of principal and accessory buildings	Corner lot: 70% Other lots: 65%	Corner lot: 70% Other lots: 65%	Corner lot: 50% Other lots: 40%	Corner lot: 70% Other lots: 60%	Corner lot: 70% Other lots: 60%	100%	Corner lot: 70% Other lots: 60%	Corner lot: 70% Other lots: 60%	none	Corner lot: 85% Other lots: 70%	Corner lot: 85% Other lots: 70%

Appendix F

Relevant State of Montana Regulations





RELEVANT EXCERPTS FROM MONTANA CODE ANNOTATED

TITLE 15, CHAPTER 24, section 3005 through 3006.

15-24-3005. Electrical generation facility impact fee for local governmental units and school districts -- wind generation facility impact fee. (1) (a) If an owner or operator of an electrical generation facility, as defined in <u>15-24-3001</u>, is exempt from property taxation pursuant to <u>15-24-3001</u>, the owner or operator of the facility is subject to an initial local government and local school impact fee. In the first 2 years of construction, the impact fee may not exceed 0.75% of the total cost of constructing the electrical generation facility.

- (b) In the case of a generation facility powered by oil or gas turbines, the impact fee may not exceed 0.1% of the total construction cost in the remaining 3 years of the tax exemption period as provided in 15-24-3001.
- (c) In the case of any other generation facility, the impact fee may not exceed 0.1% of the total construction cost in the subsequent 4 years and may not exceed 0.08% of the total construction cost in the remaining 4 years of the tax exemption period as provided in <u>15-24-3001</u>.
- (2) Except as provided in subsection (4), the jurisdictional area of a local governmental unit in which an electrical generation facility or wind generation facility is located is the local governmental unit that is authorized to assess the impact fee pursuant to 15-24-3004(1) or subsection (1) of this section.
- (3) The impact fee must be distributed to the local governmental unit for local impacts and to the impacted school districts.
- (4) Subject to the conditions of <u>15-24-3006</u> and subsection (5) of this section, if the electrical generation facility or wind generation facility is located within the jurisdictional areas of multiple local governmental units of the county or contiguous counties, the local governmental units may enter into an interlocal agreement under Title 7, chapter 11, part 1, to determine how the fee should be distributed among the various local governmental units and impacted school districts pursuant to subsection (3). The county in which the electrical generation facility or wind generation facility is located is authorized to assess the fee under the interlocal agreement.
- (5) For purposes of <u>15-24-3004</u> and this section, a "local governmental unit" means a county, city, or town. If an exempt electrical generation facility or wind generation facility is located within a tax increment financing district, the tax increment financing district is considered a local governmental unit and is entitled to the distribution of impact fees under this section. A tax increment financing district may not receive a distribution of impact fees if an exempt electrical generation facility or wind generation facility is not located within the district.
- (6) Impact fees imposed under <u>15-24-3004(2)(b)</u> or under subsection (4) of this section must be deposited in the county electrical energy generation impact fee reserve account established in <u>15-24-3006</u> for the county in which the electrical generation facility is located. Money in the account may not be expended until the multiple local governmental units have entered into an interlocal agreement.

- **15-24-3006.** Electrical energy generation impact fee reserve account. (1) The governing body of a county receiving impact fees under 15-24-3004(2)(b) or 15-24-3005(4) shall establish an electrical energy generation impact fee reserve account to be used to hold the collections. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.
- (2) Money may be expended from the account for any purpose of an interlocal agreement provided for in <u>15-24-3004</u> or <u>15-24-3005</u>. The county treasurer shall distribute money in the account to each local governmental unit according to the terms of the interlocal agreement.
- (3) Money in the account must be invested as provided by law. Interest and income from the investment of the electrical energy generation impact fee reserve account must be credited to the account.

TITLE 50. HEALTH AND SAFETY CHAPTER 60. BUILDING CONSTRUCTION STANDARDS.

Part 2. State Building Code.

50-60-201. Purpose of state building code. The state building code must be designed to effectuate the general purposes of parts 1 through 4 and the following specific objectives and standards to:

- (1) provide reasonably uniform standards and requirements for construction and construction materials consistent with accepted standards of design, engineering, and fire prevention practices;
- (2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements that tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient use of energy, whether used directly or in a refined form, in buildings;
- (3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements that tend to unnecessarily increase construction costs, unnecessarily prevent the use of proven new materials that have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction;
- (4) ensure that any newly constructed public buildings and certain altered public buildings are readily accessible to and usable by persons with disabilities, according to the principles applicable to accessibility to public buildings for persons with disabilities in the state building code;
- (5) ensure statewide uniformity in the inspection and enforcement of exterior features of all newly constructed public buildings and certain altered public buildings, including building sites, for physical accessibility to people with disabilities;
- (6) encourage efficiencies of design and insulation that enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air-conditioning equipment or with the least possible use of the equipment;
- (7) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems that promote the efficient use of energy;
- (8) provide, to the greatest extent possible, with the advice and consent of the building codes council and the Montana chapter of the international conference of building officials, a broadly uniform system of building code interpretations for the purposes of predictability, fairness, and efficiency.

Part 3. County, City, and Town Building.

50-60-301. County, city, and town building codes authorized -- health care facility and public health center doors -- fee adjustment for model plans. (1) The local legislative body of a county, city, or town may adopt a building code to apply to the county, city, or town by an ordinance or resolution, as appropriate:

- (a) adopting a building code; or
- (b) authorizing the adoption of a building code by administrative action.
- (2) (a) Except as provided in subsection (2)(b), a county, city, or town building code may include only codes adopted by the department.
- (b) A county, city, or town may, as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The incentive-based energy conservation standards adopted

may exceed any applicable energy conservation standards contained in the state building code. New construction is not required to meet local standards that exceed state energy conservation standards unless the building contractor elects to receive a local incentive.

- (3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.
- (4) (a) When the same single-family dwelling plan is constructed at more than one site, the county, city, or town shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:
 - (i) zoning;
 - (ii) footings, foundations, and basements;
 - (iii) curbs;
 - (iv) gutters;
 - (v) landscaping;
 - (vi) utility connections;
 - (vii) street requirements;
 - (viii) sidewalks; and
 - (ix) other requirements related specifically to the exterior of the building.
- (b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the county, city, or town may impose the full examination fee permitted under 50-60-106.

Part 6. Electrical Installations. Section 602.

50-60-602. Exceptions. (1) This part does not apply to:

- (a) the installation, alteration, or repair of electrical signal or communications equipment and traffic signals, street lighting, and other electrical traffic control devices owned or operated by a public utility, city, or county or the state;
- (b) electrical installations on the premises of petroleum refineries, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code;
- (c) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act; or
- (d) the installation, alteration, or repair of low-voltage electrical signal and communications equipment and optical fiber cable.
- (2) The inspection provisions of this part do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or onsite installations, modifications, additions, or repairs.
- (3) A person who plugs in an electrical appliance where an approved electrical outlet is already installed may not be considered as an installer.
- (4) This part does not in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

TITLE 75. ENVIRONMENTAL PROTECTION CHAPTER 20. MAJOR FACILITY SITING. Part 2. Certification Proceedings.

75-20-207. Notice requirement for certain electric transmission lines. Whenever a person plans to construct an electric transmission line or associated facilities under the provisions of <u>75-20-104(8)(a)(ii)</u>, it must provide public notice to persons residing in the area in which any portion of the electric transmission facility may be located and to the department. This notice must be made no less than 60 days prior to the commencement of acquisition of right-of-way by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those persons of the construction and by mailing a summary to the department. The notice must inform the property owners of their rights under this chapter concerning the location of the facility and that more information concerning their rights may be obtained from the department.

75-20-211. Application -- filing and contents -- proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under this chapter and for the permits required under the laws administered by the department in the form that is required under applicable rules, containing the following information:

- (i) a description of the proposed location and of the facility to be built;
- (ii) a summary of any preexisting studies that have been made of the impact of the facility;
- (iii) for facilities defined in <u>75-20-104(8)(a)</u> and (8)(b), a statement explaining the need for the facility, a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;
- (iv) (A) for facilities as defined in $\frac{75-20-104}{8}$ (8)(a) and (8)(b), baseline data for the primary and reasonable alternate locations; or
- (B) for facilities as defined in $\frac{75-20-104}{8}$ (c), baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;
- (v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and
- (vi) other information that the applicant considers relevant or that the department by order or rule may require.
- (b) If a copy or copies of the studies referred to in subsection (1)(a)(ii) are filed with the department, the copy or copies must be available for public inspection.
- (2) An application may consist of an application for two or more facilities in combination that are physically and directly attached to each other and are operationally a single operating entity.
- (3) The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.
- (4) An application must also be accompanied by proof that public notice of the application was given to persons residing in the county in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application.

Montana Department of Environmental Quality Permits and Approvals

Permit Approval Name	Nature of Permit	Authority
Section 401 Water Quality Certification	Provides a review of potential adverse water quality impacts potentially associated with discharges of dredged or fill materials in wetlands and other waters of the U.S.	Section 401 of the Clean Water Act
Montana Joint Application: Short-term Water Quality standard for Turbidity (318 authorization)	Authorizes short-term surface water quality standards for turbidity.	Montana Water Quality Act (75-5-101, MCA)
MPDES Water Quality Discharge Permit	Permits construction and industrial activities that would result in the discharge of wastewater to waters of the state.	Montana Water Quality Act (75-5-401 et seq., MCA)
General Permit for Discharges Associated with Construction Activity	Submit Notice of Intent for coverage under General Permit to authorize storm water discharges to surface waters of the state associated with the construction activities.	Montana Water Quality Act (75-5-401 et seq., MCA)
General Permit for Storm Water Discharges Associated with Industrial Activity	Permits storm water discharges from qualifying industrial activities.	Montana Water Quality Act (75-5-401 et seq., MCA)
Underground Storage Tank Construction Permit	Permits for construction of underground tank or underground piping supporting fuel storage backup generator.	Montana Underground Storage Tank Act (75-5- 501 et seq., MCA)
Public Water Supply and Wastewater System Approval	Review of engineering plans and specifications for a new public water supply or public wastewater system that regularly serves 25 or more persons daily for any 60 or more days in a calendar year.	75-6-112, MCA: Plan Review and Approval
Montana Joint Application: 310 Permit	Permits construction activities in or near perennial streams on public and private lands.	Montana Natural Streambed and Land Preservation Act (75-7- 101 et seq., MCA)
Certificate of Compliance	Authorizes construction and operation of certain transmission lines with a design capacity greater than 69 kV	Major Facility Siting Act (75-20-101 et seq., MCA)
Montana Joint Application: Floodplain Development Permit	Allows construction activities within a designated 100-year floodplain.	Montana Floodplain and Floodway Management Act (76-5-401 through 406, MCA)
Opencut Mining Permit (if new gravel sources are needed for the project)	Permit to excavate 10,000 cubic yards or more total aggregate from one or more pits regardless of surface ownership.	Open Cut Mining Act (84-4-401 et seq., MCA)

1	SENATE BILL NO. 417
2	INTRODUCED BY E. BUTTREY
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MILITARY AREA COMPATIBILITY ACT;
5	ALLOWING A GOVERNING BODY TO DESIGNATE MILITARY AFFECTED AREAS UNDER CERTAIN
6	CIRCUMSTANCES; PROVIDING FOR MILITARY AFFECTED AREA REGULATIONS; REQUIRING MAPS AND
7	LEGAL DESCRIPTIONS OF THE MILITARY AFFECTED AREA; REQUIRING A PUBLIC HEARING BEFORE
8	DESIGNATION OF A MILITARY AFFECTED AREA; ALLOWING CREATION OF A JOINT REGULATION
9	BOARD; PROVIDING FOR PRIOR NONCONFORMING USES IN A MILITARY AFFECTED AREA; ALLOWING
10	REGULATIONS TO BE PART OF ZONING ORDINANCES; REQUIRING A PERMIT SYSTEM; REQUIRING THE
11	REGULATIONS TO PROVIDE FOR ENFORCEMENT; ESTABLISHING AN APPEALS PROCESS; PROVIDING
12	FOR A VARIANCE FROM THE REGULATIONS; AND PROVIDING PENALTIES AND REMEDIES FOR
13	VIOLATIONS."
14	
15	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16	
17	NEW SECTION. Section 1. Short title. [Sections 1 through 13] may be cited as the "Military Area
18	Compatibility Act".
19	
20	NEW SECTION. Section 2. Legislative findings purpose. The legislature finds and declares that:
21	(1) the ability of the United States military to train and operate effectively in Montana is crucial to the
22	nation's defense;
23	(2) increasing development pressures in and around existing military facilities and training areas
24	represent a potential threat to the continued viability of military missions in Montana;
25	(3) local governments should be empowered to implement land use policies designed to protect existing
26	military missions from encroachment and encourage expansion of military missions in Montana; and
27	(4) it is the purpose of [sections 1 through 13] to promote public health, safety, and general welfare by
28	the delineation of military affected areas and by granting local governments the ability to develop regulations to
29	ensure that surrounding land uses are compatible with uses in military affected areas.
30	



NEW SECTION. Section 3. Military affected areas -- definitions. For the purposes of [sections 1 through 13], the following definitions apply:

- (1) "Airport" has the meaning provided in 67-1-101.
- (2) "Governing body" has the meaning provided in 67-7-103.
- (3) (A) "Military affected area" means the land and space above the ground surface of an area used for military purposes or in close proximity to military facilities or an area used for military purposes that IS DIRECTLY AFFECTED OR THAT will be DIRECTLY affected by military uses.
- (B) THE TERM DOES NOT MEAN AN AREA OVER WHICH MILITARY AIRCRAFT OPERATE WHEN NO OTHER COMPONENTS OF MILITARY FACILITIES OR MILITARY USES EXIST.
- (4) "Military facilities" and "military uses" include but are not limited to military airports, military installations, intercontinental ballistic missile alert facilities or launch control centers, missile locations, access roads to missiles or missile-related facilities, and sites formerly used for military training that may be contaminated with hazardous wastes or explosive ordnance.
 - (5) "YDNL" has the meaning provided in 67-1-101.

<u>NEW SECTION.</u> Section 4. Designation of military affected areas -- public hearing required -- joint regulation board authorized. (1) A governing body of a political subdivision within which military operations occur may, in consultation with the appropriate military authority, designate a military affected area and may adopt, administer, and enforce military affected area regulations.

- (2) The designation of a military affected area must be accompanied by maps and legal descriptions of the military affected area.
- (3) (a) Before a governing body designates a military affected area and adopts or amends regulations governing the military affected area, the governing body shall hold at least one public hearing.
- (b) The notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county commission or the commissioners of a regional airport authority and as provided in 7-1-4127 if the governing body is a city commission, a town council, or the commissioners of a municipal airport authority.
- (4) If a military affected area encompasses land within the boundaries of more than one political subdivision, the governing bodies of the political subdivisions may by ordinance or resolution create a joint military affected area regulation board. The joint board must have two members appointed by the governing body of each political subdivision participating in its creation, and a presiding officer must be elected by a majority of the

members appointed. The joint board shall consider the zoning regulations and ordinances of each affected political subdivision in developing its recommendations, but the board's recommendations are not binding on the governing bodies of any of the affected political subdivisions.

(5) A GOVERNING BODY MAY NOT DESIGNATE LAND THAT IS MORE THAN 1,200 FEET FROM A LAUNCH CONTROL CENTER OR MISSILE LOCATION AS PART OF A MILITARY AFFECTED AREA.

- <u>NEW SECTION.</u> **Section 5. Military affected area regulations -- contents.** (1) Regulations adopted for the military affected area must be reasonable, be designed to promote the public health, safety, and general welfare, and protect and facilitate the military missions executed within the military affected area. At a minimum, these regulations must give consideration to:
- (a) the safety of persons physically present in a military affected area and the persons and property in the vicinity of the area;
 - (b) the character of the military operations conducted or expected to be conducted within the area;
- 14 (c) the nature of the terrain;
 - (d) the future development of the military affected area; and
 - (e) United States department of defense recommendations for the safety zones, noise contours, and flight path restrictions for the appropriate type of military operation and the compatibility of surrounding land uses with the recommendations; AND
- (F) EXISTING AND POTENTIAL FUTURE USES OF THE LAND PROPOSED TO BE INCLUDED IN A MILITARY AFFECTED
 AREA.
 - (2) Military affected area regulations <u>MUST BE LIMITED TO ADDRESSING CURRENT AND KNOWN FUTURE</u>
 MILITARY USES AND may BE ADOPTED ONLY TO:
 - (a) limit electromagnetic emissions that may interfere with military operations;
 - (b) describe the military affected area by referencing maps other than those required under [section 4(2)] and describing existing hazards and natural terrain that intrude into the military affected area;
 - (c) designate and describe zones within the military affected area, along with the height limitations for structures and trees within each zone, considering local conditions and needs;
 - (d) show the contours for decibel levels of 65 YDNL or greater on the maps that designate a military affected area if a study has been conducted pursuant to United States department of defense regulations and require that information to be considered before any building may occur within the military affected area;



(e) specify the permitted and conditional land uses within each zone of the military affected area by addressing:

- (i) residences, schools, hospitals, day-care centers, or other concentrations of people, indoors or outdoors, that are incompatible with activities within the military affected area;
 - (ii) land uses that are incompatible with the decibel levels described in subsection (2)(d); and
- (iii) other land uses that are incompatible with United States department of defense recommendations regarding compatible use of land within a military affected area.

NEW SECTION. Section 6. Regulations relative to zoning ordinances. (1) Subject to subsection (3), if a governing body has adopted a zoning ordinance or resolution, any regulations adopted under [sections 1 through 13] may be made a part of the zoning ordinance or resolution and may be administered and enforced in connection with it.

- (2) If a political subdivision has a planning board, zoning commission, or joint military affected area board, a governing body may request the assistance of those boards or commissions in designating a military affected area or adopting, amending, or repealing military affected area regulations.
- (3) When a conflict exists between the regulations adopted pursuant to [sections 1 through 13] and any zoning ordinances or resolutions applicable to the same area that the regulations are intended to govern, the more stringent limitation or requirement prevails.

NEW SECTION. Section 7. Prior nonconforming uses. (1) All regulations adopted under [sections 1 through 13] must be reasonable and may not require the removal or alteration of any structure or require cessation or alteration of a use that is lawfully in existence when the regulations become effective. Those structures or uses must be treated as prior nonconforming structures or uses that may remain or continue, but regulations may prohibit their expansion or their reconstruction or replacement following destruction or substantial damage. For the purposes of this subsection, "substantial damage" has occurred when 80% or more of a structure is deteriorated or decayed or has been torn down or destroyed.

(2) A NONCONFORMING STRUCTURE OR USE THAT IS DESTROYED OR SUBSTANTIALLY DAMAGED BY FIRE, FLOOD, OR OTHER NATURAL DISASTER MAY NOT BE RESTORED AS A NONCONFORMING STRUCTURE OR USE UNLESS A VARIANCE IS ISSUED BY THE APPEALS BOARD PROVIDED FOR IN [SECTION 10] OR UNLESS THE RESTORATION OCCURS WITHIN 24 MONTHS OF THE DAMAGE HAVING OCCURRED AND THE RESULTING STRUCTURE OR USE OCCUPIES THE SAME PHYSICAL

1 FOOTPRINT AND IS USED FOR THE SAME PURPOSE AS THE ORIGINAL NONCONFORMING STRUCTURE OR USE. A
2 NONCONFORMING STRUCTURE OR USE IS CONSIDERED TO BE SUBSTANTIALLY DAMAGED WHEN 80% OR MORE OF A
3 STRUCTURE IS DAMAGED OR DESTROYED.

(2)(3) The regulations may require the owner of structures to permit the political subdivision, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of a hazard in the vicinity of the military affected area.

<u>NEW SECTION.</u> **Section 8. Permit system.** (1) The regulations adopted pursuant to [sections 1 through 13] must provide for a permit system for erecting new structures, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures within the military affected area.

(2) A permit may not be granted that would allow the establishment of an incompatible use or that would allow a nonconforming use or structure to become a greater hazard or cause greater incompatibility with the military affected area.

<u>NEW SECTION.</u> **Section 9. Enforcement.** The governing body or its designated agent or agency is responsible for enforcing the regulations adopted pursuant to [sections 1 through 13]. The regulations must provide for an enforcement officer and an appeal process from the decision of the enforcement officer, who may be an existing employee of the local government.

<u>NEW SECTION.</u> **Section 10. Appeals.** (1) The governing body that designated the military affected area shall act as a military affected area appeals board or appoint a military affected area appeals board that functions in the same manner as a board of adjustment provided for in Title 76, chapter 2. If the governing body appoints a military affected area appeals board, the board must have at least three members.

- (2) The provisions of 76-2-223 and 76-2-225 through 76-2-228 apply to the governing body of a county or a military affected area appeals board appointed by that governing body and the provisions of 76-2-323 and 76-2-325 through 76-2-328 apply to the governing body of a municipality or a military affected area appeals board appointed by that governing body when considering grievances relating to regulations, variances, or permits.
 - (3) If a governing body has appointed a board of adjustment under the provisions of 76-2-221 through 76-2-228 or 76-2-321 through 76-2-328, the governing body may designate the members of that board as the military affected area appeals board, in which case the terms of the members for the purposes of [sections 1]



through 13] are concurrent with their terms as members of the board of adjustment.

NEW SECTION. Section 11. Variance. (1) A person intending to erect or increase the height of a structure or use property in a manner that is not in accordance with the requirements of the regulations adopted pursuant to [sections 1 through 13] may apply to the governing body or an enforcement officer appointed for this purpose by the governing body for a variance from the regulations.

- (2) If an enforcement officer has been appointed by the governing body, the decision of the officer is final unless it is appealed to either the governing body or the military affected area appeals board, if one exists.
- (3) A variance must be granted when a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship and when the variance would not be contrary to the public interest MILITARY MISSIONS.
- (4) A variance must be granted for a nonconforming use when there is no immediate hazard to safe flying operations or to persons and property in the vicinity of the military affected area and when the noise or vibrations from normal and anticipated normal military operations would not be likely to cause damage to structures.
- (5) A variance granted under this section may require the owner of a structure to allow the political subdivision, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of a military affected area hazard.
- (6) A person who builds a structure pursuant to a variance from the military affected area regulations or who takes or buys property in a military affected area for which a variance has been granted is considered to be aware that the military affected area existed before the variance was granted and that normal and anticipated normal military operations may result in noise, vibrations, and fumes being projected over the property. A person using a structure built pursuant to a variance may not seek damages from a governing body, a local government, or the federal government for interference with the enjoyment of that structure caused by noise, vibrations, and fumes from normal and anticipated normal military operations.

NEW SECTION. Section 12. Penalty. A person who violates the provisions of [sections 1 through 13] or the regulations adopted under [section 5] is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each day that the violation is not remedied after the governing body has given notification of the violation and held a hearing on the violation. The criminal penalty is a fine of \$500 pursuant to 45-2-104.



NEW SECTION. Section 13. Injunction. A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of [sections 1 through 13] or the regulations adopted pursuant to [sections 1 through 13].

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<u>NEW SECTION.</u> **Section 14. Codification instruction.** [Sections 1 through 13] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1 through 13].

8 - END -



MODEL SUBDIVISION REGULATIONS

September 2006

MODEL SUBDIVISION REGULATIONS

Prepared to comply with the Montana Subdivision and Platting Act (Incorporates the 2005 amendments to the Montana Subdivision and Platting Act)

These Model Subdivision Regulations were developed as a collaborative effort of representatives of the following organizations:
Joint Powers Insurance Authority of the Montana Association of Counties
Montana Association of Planners
University of Montana School of Law, Land Use Clinic
Montana Smart Growth Coalition
Montana Association of Realtors
With special thanks to all others who provided assistance, comments, and suggestions.
The September 2006 update was prepared after JPIA conducted six workshops around that the state, to incorporate comments made at those workshops. This document tracks those changes.
September 2006

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INTRODUCTION

The <u>Montana Model Subdivision Regulations</u> is intended to serve as an example and reference for local governments preparing or revising their own regulations. The <u>Model</u> is an <u>advisory</u> publication.

The <u>Model</u> reflects changes made to the Montana Subdivision and Platting Act through the 2005 legislative session.

We encourage local governments to adapt the <u>Model</u> to match local concerns and needs. Local governments should look carefully at each section of the <u>Model</u> and revise, and add or delete as needed to serve local objectives. In addition to actual regulatory language, the <u>Model</u> contains commentary to clarify issues frequently raised during the subdivision review process. **These comments are not to be incorporated into local regulations.**

DEFINITIONS

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense include the future; the singular, unless otherwise specifically defined in a particular section, includes the plural, and the plural the singular; the word "shall" is always mandatory, and the word "may" indicates use of discretion in making decisions.

1. ACCESS (LEGAL AND PHYSICAL):

- a. Legal access means that each lot in a subdivision either abuts a public (city, county, state, or federal) street or road, or that the subdivider has obtained adequate and appropriate easements across all necessary properties, from a public road to each lot in the subdivision, whether or not a road has been constructed on that property, and has dedicated the easement or a private road for public use.
- b. Physical access means that the street or road conforming to the subdivision design standards provides vehicular access from a public street or road to each lot in the subdivision, either from a public street or road, from a road constructed to local road standards in the obtained easements which is dedicated to public use, or from a private road improved to local road standards which has been dedicated to public use.
- 2. ADJOINING LANDOWNER (ADJACENT PROPERTY OWNER): The owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road, watercourse or deeded right-of-way.
- 3. AGRICULTURE: All aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including, forestry or lumbering operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.
- 4. AGRICULTURAL WATER USER FACILITIES: Those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.
- 5. BLOCK: A group of lots, tracts or parcels within well-defined and fixed boundaries.
- 6. CERTIFICATE OF SURVEY: A drawing of a field survey prepared by a professional land surveyor for the purpose of disclosing facts pertaining to boundary locations.
- 7. CLUSTER DEVELOPMENT: A subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots while allowing other lands to remain undeveloped. [76-3-103(2), MCA].
- 8 COMPREHENSIVE PLAN, MASTER PLAN, OR GROWTH POLICY: means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to Title 76, Chapter 1, MCA, before October 1, 1999, or a policy that was adopted pursuant to Title 76, Chapter 1, MCA, on or after October 1, 1999.

- 9. CONDOMINIUM: A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project, with the land and other parts of the project held in common ownership or use with owners of the other units, pursuant to Title 70, Chapter 23, MCA.
- 10. COVENANT (RESTRICTIVE COVENANT): A limitation contained in a deed or other document that restricts or regulates the use of the real property.
- 11. DEDICATION: The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted. [76-3-103(3), MCA].
- 12. DEQ: The Montana Department of Environmental Quality.
- 13. DIVISION OF LAND: The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the MSPA. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land. [76-3-103(4), MCA].
- 14. DWELLING UNIT: Any structure or portion thereof providing complete, independent and permanent living facilities for one household.
- 15. EASEMENT: Authorization by a property owner for another to use, or restriction on the right of the owner to use, all or a portion of the owner's property for a specified purpose.
- 16. ENGINEER (PROFESSIONAL ENGINEER): A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice engineering in the State of Montana.
- 17. FIRST MINOR SUBDIVISION: A proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA, since July 1, 1973. [76-3-609(2), MCA].
- 18. FLOOD: The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage [76-5-103 (8), MCA]..
- 19. FLOOD OF 100 YEAR FREQUENCY: A flood magnitude which has a one percent chance of occurring in any given year, or is a flood magnitude which is expected to recur on the average of once every 100 years [76-5-103 (9), MCA].
- 20. FLOODPLAIN: The area adjoining the watercourse or drainage that would be covered by the floodwater of a flood of 100 year frequency [76-5-103 (10), MCA].
- 21. FLOODWAY: The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainage [76-5-103 (11), MCA].

- 22. GOVERNING BODY: The governing authority of a county, city, town, or consolidated local government organized pursuant to law [76-3-103 (7), MCA].
- 23. IMPROVEMENT AGREEMENT: A contractual agreement that may be required by the governing body to ensure the construction of such improvements as required by local subdivision regulations. The improvement agreement may require collateral to secure the construction of such improvements, such as the deposit of certified funds, irrevocable letters of credit, performance or property bonds, private or public escrow agreements, or similar financial guarantees.
- 24. LANDOWNER: All individuals, groups, or parties with a title interest in the property. For purposes of 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the parcel under the contract-for-deed (24.183.1104 ARM). For all other purposes of these regulations, the terms "property owner," "landowner," and "owner" mean both the seller and the purchaser under a contract for deed.
- 25. LOCAL SERVICES: Local services are defined as any and all services that local governments, public or private utilities are authorized to provide for the benefit of their citizens.
- 26. LOT: A parcel, plot, or other land area created by subdivision for sale, rent, or lease.

27. LOT MEASUREMENT:

- a. Lot Depth -- The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
- b. Lot Width -- The average width of the lot.
- c. Lot Frontage -- The width of the front lot line.
- d. Lot Area -- The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way or access easements.

28. LOT TYPES:

- a. Corner Lot: A lot located at the intersection of two streets.
- b. Interior Lot: A lot with frontage on only one street.
- c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.
- d. Flag Lot: A lot of irregular shape, the bulk of which is normally situated to the rear of other lots, having as its frontage and access a drive connecting it to a street.
- 29. MAJOR SUBDIVISION: A subdivision that creates six or more lots...
- 30. MINOR SUBDIVISION: A subdivision that creates five or fewer lots

- 31. MOBILE (MANUFACTURED) HOME: A detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, "trailer homes," "house trailers," and "manufactured homes" whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include "modular" or "factory-built buildings" that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.
- 32. MOBILE (MANUFACTURED) HOME SPACE: A designated portion of a parcel of land designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.
- 33. MOBILE (MANUFACTURED) HOME PARK: A tract of land that provides or will provide spaces for two or more mobile homes.
- 34. MOBILE (MANUFACTURED) HOME PAD: That area of a mobile home space which has been prepared for the placement of a mobile home.
- 35. MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY MINIMUM STANDARDS: Minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to Title 76, Chapter 4, Part 1, MCA.
- 36. MONUMENT (PERMANENT MONUMENT): Any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.
- 37. MSPA: Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA.
- 38. NATURAL ENVIRONMENT: The natural environment is defined as the physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light and objects of historic and aesthetic significance.
- 39. OPEN SPACE: Land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.
- 40. OVERALL DEVELOPMENT PLAN: The plan of a subdivision design proposed to be subdivided in stages.
- 41. PLANNED UNIT DEVELOPMENT (P.U.D.): A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use [76-3-103 (10), MCA].
- 42. PLANNING BOARD: A planning board formed pursuant to Title 76, Chapter 1, MCA.

- 43. PLAT: A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.
 - a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body as more specifically set forth in these regulations and the MSPA.
 - b. Final Plat: The final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these regulations and the MSPA. (Title 76, Chapter 3, MCA).
 - c. Amended Plat: The final drawing of any change to a filed platted subdivision, or any lots within a filed platted subdivision.
 - d. Vacated Plat: A plat which has been voided under the provisions of MCA 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616 (1) and/or (2), 7-14-2617, 7-14-4114 (1) and/or (2), and 7-14-3115.
- 44. PRE-APPLICATION SKETCH (OR DRAWING): A legible drawing showing approximate boundaries, dimensions, areas, distances and other pertinent information of a proposed subdivision, all as more particularly set forth in section II-A-4(b).
- 45. PRIVATE IMPROVEMENT: Private improvements are the same types of improvements as defined under PUBLIC IMPROVEMENTS, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.
- 46. PRIVATE ROAD: A road is private if its right-of-way has neither been dedicated nor acquired for public use. A private road may be open to use by the general public or public access may be restricted.
- 47. PUBLIC HEALTH AND SAFETY: The prevailing healthful, sanitary condition of well being for the community at large. Conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards.
- 48. PUBLIC IMPROVEMENT: Any structure or facility constructed to serve more than one lot in a subdivision which is dedicated to the public or otherwise acquired by a government entity for public use. Examples of typical public improvements include parks, streets or roads, sidewalks, curbs, gutters, and street lighting, utilities, and systems for water supply, sewage disposal, drainage, or fire protection.
- 49. PUBLIC ROAD OR STREET: A road or street is public if its right-of-way has been dedicated or acquired for public use.
- 50. RECREATIONAL CAMPING VEHICLE: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.

- 51. RECREATIONAL VEHICLE PARK: A tract of land available to and principally used by the public for camping, where persons can park recreational vehicles for camping and sleeping purposes.
- 52. RECREATIONAL VEHICLE SPACE: A designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle and the exclusive use of its occupants.
- 53. REVIEWING AUTHORITY: The DEQ or local Board of Health or Sanitarian as authorized under Title 76, Chapter 4, MCA.
- 54. RIGHTS-OF-WAY: A linear public way established or dedicated for public purposes by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street, non-motorized vehicle path, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.
- 55. STATE: The State of Montana.
- 56. STREET TYPES: For purposes of these regulations, street types are defined as follows¹:
 - a. Alley: A public or private way reserved as a secondary means of access to the rear or side of lots which abut on and are served by public roads.
 - b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
 - c. Collector: A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
 - d. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
 - e. Half-Street: A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
 - f. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.
 - g. Loop: A local street which begins and ends on the same street, generally used for access to properties.

¹ Street types should reflect a transportation plan or other local documents.

- h. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.
- 57. SUBDIVIDER: Any person, firm or corporation, or other entity which causes land to be subdivided or which proposes a subdivision of land [76-3-103(15), MCA]. When used in these regulations, the term "subdivider" may also include the property purchaser on a contract for deed or its agent, or the landowner's agent, if the landowner has provided the subdivision administrator written notification that the landowner's agent is authorized to act on the landowner's behalf and to receive notices regarding local government decisions concerning the subdivision.
- 58. SUBDIVISION: A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any re-subdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes [76-3-103(16), MCA]².
- 59. SUBDIVISION ADMINISTRATOR: The person or persons authorized by the governing body to perform the duties of review and administration set forth in these regulations.
- 60. SUBSEQUENT MINOR SUBDIVISION: Any subdivision of five or fewer parcels that is not a first minor subdivision.
- 61. SURVEYOR (PROFESSIONAL LAND SURVEYOR): A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.
- 62. SURVEYOR (EXAMINING LAND SURVEYOR): A professional land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.
- 63. SWALE: A drainage channel or depression designed to direct surface water flow.
- 64. TITLE REPORT (ABSTRACT OF TITLE, SUBDIVISION GUARANTEE, OR PLATTING REPORT): A report from a title service company on the condition of title to the property proposed for subdivision, which identifies the owners of record of the property, lien holders, encumbrances, easements and restrictions of record, and all other conditions of title of public record, and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter.
- 65. TOPOGRAPHY: General term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.
- 66. TOWNHOUSE LOT: Arrangement under which units share a common wall, and individuals own their own units and hold separate title to the land beneath the unit.

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² Jurisdictions may choose to include definitions of rural and urban-suburban subdivisions, in order to differentiate between design standards, specific to road design standards.

- 67. TRACT OF RECORD: An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office [76-3-103(17)(a), MCA].
- 68. VICINITY SKETCH: A map at a scale suitable to locate a proposed subdivision, showing the boundary lines of all adjacent properties and streets and other information necessary to determine the general location of the proposed subdivision.
- 69. WILDLIFE: Those animals that are not domesticated or tamed, or as may be defined in a Growth Policy.
- 70. WILDLIFE HABITAT: The place or area where wildlife naturally lives or travels through.

I. GENERAL PROVISIONS

I-A. <u>Title</u>

These regulations will be known and may be cited as "The Subdivision Regulations of (City and/or County);" hereinafter referred to as "these regulations."

I-B. Authority

Authorization for these regulations is contained in the Montana Subdivision and Platting Act ("MSPA"). [Title 76, Chapter 3, MCA.].

I-C. Purpose

The purposes of these regulations are to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services; to protect the rights of property owners; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey (76-3-102, MCA).

These regulations are intended to comply with Part 5 of the MSPA, and are intended to promote:

- 1. The orderly development of the jurisdictional area.
- 2. The coordination of roads within subdivided land with other roads, both existing and planned.
- 3. The dedication of land for roadways and for public utility easements.
- 4. The improvement of roads.
- 5. The provision of proper physical and legal access, including obtaining necessary easements.
- 6. The provision of adequate open spaces for travel, light, air, and recreation.
- 7. The provision of adequate transportation, water, drainage, and sanitary facilities.
- 8. The avoidance or minimizing of congestion.
- 9. The avoidance of subdivisions which would involve unnecessary environmental degradation.
- 10. The avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation, or other public improvements.

- 11. The avoidance of excessive expenditure of public funds for the supply of public improvements and services.
- 12. The manner and form of making and filing of any plat for subdivided lands.
- 13. The administration of these regulations by defining the powers and duties of approving authorities, including procedures for the review and approval of all plats of subdivisions covered by these provisions.

I-D. Jurisdiction³

These regulations govern the subdivision of land within the jurisdictional area of the governing body of (City and/or County).

If a proposed subdivision lies within one mile of a third class city or town or within two miles of a second-class city or within three miles of a first class city, the county governing body must submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If a proposed subdivision lies partly within an incorporated city or town, the preliminary plat must be submitted to, and approved by, both the city or town and the county governing bodies.

If a proposed subdivision is located in a rural school district, the governing body shall provide a summary of the information contained in the subdivision application and preliminary plat to school district trustees.

When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality will combine public hearings and otherwise coordinate the subdivision review process and annexation procedures whenever possible.

These regulations supplement all other regulations, and where they are at variance with other laws, regulations, ordinances, or resolutions, the more restrictive requirements apply. Other regulations include, but are not limited to, zoning regulations, floodplain regulations, building codes, development codes, and fire codes.

I-E. Severability

If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, that judgment will affect only the part held invalid.

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³ Comment: Jurisdiction

The city or town council of a city or town is the "governing body" for the purposes of reviewing subdivisions located within the corporate limits of the city or town. The county commission of a county is the "governing body" for purposes of reviewing subdivisions located within the unincorporated areas of the county. If a proposed subdivision will overlap the corporate boundaries of a municipality, the subdivision must be reviewed and approved, conditionally approved, or denied by both governing bodies [§ 76-3-601(2), MCA].

II. GENERAL PROCEDURES

The provisions of this section apply to Sections III, IV, VII, IX and X.

II-A. Preliminary Plats

II-A-1. Construction Timing

Construction work shall not occur on land proposed for subdivision until the governing body has given conditional approval of the preliminary plat. Construction work undertaken prior to the preliminary plat approval subjects the subdivider to the possibility the work will have to be redone or removed. In addition, section 76-4-121, MCA, regulates subdivision activities.

II-A-2. Transfers of Title

Except as noted below, a final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met (76-3-303, MCA):

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;
- d. That the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner;"
- e. That the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid; and
- f. A copy of the contracts and escrow agreement described above must be submitted to the planning board (or subdivision administrator). The name of the purchaser and purchase price may be blacked out.

II-A-3. Permission to Enter

The governing body or its designated agent(s) or affected agencies identified during the preapplication meeting may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision application constitutes a grant of permission by the subdivider for the governing body, its agents , and affected agencies to enter the subject property. This consent applies to members of the public attending a noticed public meeting for a site visit.

II-A-4. Pre-application Process

- a. Prior to submittal of a subdivision application, the subdivider shall request a preapplication meeting with the subdivision administrator. The meeting shall occur within 30 days after the subdivider submits a written request for the meeting to the subdivision administrator.
- b. At the time of the pre-application meeting request, the subdivider shall provide to the subdivision administrator a sketch of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions.
 - i. The sketch may be a freehand sketch drawn directly on a print of a topographic map of the area proposed for division at a scale of 1 inch to 400 feet or larger that is adequate to show the property and must include the following:
 - A. Information on the current status of the site, including:
 - 1. location;
 - 2. approximate tract and lot boundaries of existing tracts of record;
 - 3. description of general terrain;
 - 4. natural features on the land, including water bodies, floodplains geologic hazards, and soil types;
 - 5. existing structures and improvements;
 - 6. existing utility lines and facilities serving the area to be subdivided;
 - 7. existing easements and rights of way;
 - 8. existing zoning or development regulation standards;
 - 9. existing conservation easements;
 - 10. existing covenants or deed restrictions;
 - 11. existing noxious weeds.
 - B. Documentation on the current status of the site, including:

⁴ **Note:** This section is drafted to make the pre-application meeting mandatory.

- 1. ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;
- 2. water rights, including location of Agricultural Water User Facilities:
- 3. any special improvement districts; and
- 4. rights of first refusal for the property.
- ii. Information on the proposed subdivision, including:
 - A. tract and proposed lot boundaries;
 - B. proposed public and private improvements;
 - C. location of utility lines and facilities;
 - D. easements and rights of way; and
 - E. parks and open space and proposed conservation easements.
- c. At the pre-application meeting:
 - i. the subdivision administrator shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process including, but not limited to, zoning regulations floodplain regulations, building codes and fire codes;
 - ii. the subdivision administrator shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment by the subdivision administrator or planning board on the subdivision application. The subdivision administrator shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and
 - iii. the subdivision administrator shall may identify particular additional information the subdivision administrator anticipates will be required for review of the subdivision application.⁵ This does not limit the ability of the subdivision administrator to request additional information at a later time.
- d. Unless the subdivider submits a subdivision application within [6 months 180 days]⁶ of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application.

⁵ **Note:** This list should be the same as the preliminary plat application required list of submittal materials. Reference the application requirements.

⁶ **Note:** This gives the subdivider six months from the date of the pre-application meeting to file the application. Some jurisdictions may wish to lengthen the time to as long as one year or shorten it to three or four months. It is within the jurisdiction's discretion.

II-A-5. Subdivision Application and Preliminary Plat Submittal⁷

The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application addressing these topics and containing the following materials, all described in more detail in forms provided by the subdivision administrator, as applicable:

- 1. A completed and signed Subdivision Application Form;
- 2. The required review fee;
- 3. A preliminary plat;
- 4. A Vicinity Sketch;
- 5. A topographic map;
- 6. A grading and drainage plan;
- 7. Engineering plans for all Public and Private Improvements;
- 8. Overall development plan if development is in phases;
- 9. Abstract of Title (or Title Report);
- 10. Lienholders' acknowledgement of subdivision;
- 11. Documentation of legal and physical access;
- 12. Documentation of existing easements, including those for Agricultural Water User Facilities;
- 13. Existing covenants and deed restrictions;
- 14. Existing water rights;
- 15. Existing mineral rights;
- 16. Names and addresses of all adjoining property owners;
- 17. Proposed road plans and profiles;
- 18. Approach/access/encroachment permits from Montana Department of Transportation or the local jurisdiction;
- 19. Proposed easements;
- 20. Proposed disposition of water rights;
- 21. Proposed disposition of mineral rights;
- 22. Parkland dedication calculations;
- 23. Environmental assessment and/or summary of probable impacts;
- 24. Transportation impact analysis or transportation plan;
- 25. Fire risk rating analysis and fire prevention plan;
- 26. Weed management plan and re-vegetation plan;
- 27. Property owners' association documents, including draft articles of incorporation, declaration and bylaws;
- 28. FIRM or FEMA panel map and letter identifying floodplain status;
- 29. Required water and sanitation information;
- 30. A form of Subdivision Improvements Agreement, if proposed;

Montana State law now requires each local government to have a list of materials that must be included in a subdivision application. For the purpose of element and sufficiency review only, local governments should adopt a list of required materials that is exhaustive because local governments cannot require materials that are not listed in their subdivision regulations. This list is only suggestive of the materials that local governments may want to require in a subdivision application. Some of the materials are required by the Montana Subdivision and Platting Act, while others may be required by local subdivision regulations.

⁷ Comment: Required Materials in an Application

⁸ **Note:** A model subdivision application form and detailed description of the information required by this list of materials are included in this model under Administrative Materials "A."

- 31. Letter requesting a revocation of agricultural covenants;
- 32. Letter indicating locations of cultural or historic resources;
- 33. Variance request or approval;
- 34. Re-zoning application or approval;
- 35. Flood hazard evaluation:
- 36. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
- 37. Such additional relevant and reasonable information as identified by the Subdivision Administrator during the pre-application meeting that is pertinent to the required elements of this section.

II-A-6. Review Process

For both minor and major subdivisions, the initial review process is as follows:

a. <u>Element Review</u>

- i. Within 5 working days of receipt of a subdivision application and fee, the subdivision administrator shall determine whether the application contains all of the applicable materials required by section II-A-5 and shall give written notice to the subdivider of the subdivision administrator's determination.
 - A. If the subdivision administrator determines that elements are missing from the application, the subdivision administrator shall return the application and identify those elements in the notification, and no further action shall be taken on the application by the subdivision administrator until the application is resubmitted.
 - B. The subdivider may correct the deficiencies and resubmit the application.
 - C. If the subdivider corrects the deficiencies and resubmits the application the subdivision administrator shall have 5 working days to notify the subdivider whether the resubmitted application contains all the materials required by section II-A-5, as applicable.
 - D. This process shall be repeated until the subdivider submits an application containing all the materials required by section II-A-5, or the application is withdrawn.

b. Sufficiency Review

i. Within 15 working days after the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided in subsection (a) above, the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these regulations and shall give written notification to the subdivider of the subdivision administrator's determination.

- A. If the subdivision administrator determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision administrator shall identify specific required information in its notification and return the application to the subdivider, and no further action shall be taken on the application by the subdivision administrator until the material is resubmitted.
- B. The subdivider may correct the deficiencies and resubmit the application, or withdraw the application.
- C. If the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the subdivision administrator shall have 15 working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these regulations.
- D. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these regulations, or the application is withdrawn.
- ii. A determination that an application contains sufficient information for review as provided in this subsection (b) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the subdivision administrator, planning board, or the governing body to request additional information during the review process.
- iii. A determination of sufficiency by the subdivision administrator pursuant to this subsection does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

c. Applicable Regulations

Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new regulations.

II-B. Final Plats

II-B-1. Final Plat Contents

The final plat submitted for approval must conform to the preliminary plat as previously reviewed and approved by the governing body and must incorporate all required modifications and comply with all conditions imposed at the time of subdivision application and preliminary plat approval. The final plat and accompanying documents must comply with the Montana Uniform Standards for Final Subdivision Plats (Appendix A). Final plats of subdivisions approved for phased development shall be filed sequentially in accordance with the approval.

II-B-2. Final Plat Initial Review

a. <u>Final Plat Submittal</u>

The final plat approval application form (an example of which can be found in Administrative Materials Section B), and all supplementary documents must be submitted to the subdivision administrator at least 30 working days prior to the expiration of preliminary plat approval. The submittal shall include, as applicable:

- i. the final plat application;
- ii. the final plat review fee;
- iii. a statement from the project surveyor or engineer outlining how each condition of approval has been satisfied;
- iv. a Title Report or updated Abstract dated no less than 30 days prior to the date of submittal;
- v. the DEQ or local Environmental Health Department approval;
- vi. the final Grading and Drainage Plan, including all road plans and profiles, state or local encroachment permits, and the Traffic Impact Analysis (if required);
- vii. all engineering plans;
- viii. any homeowner association documents, including bylaws, covenants, and/or declarations;
- ix. county and/or city attorney approvals; and
- x. one 11" x 17" and one 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats set forth in Appendix A.

b. Review by Subdivision Administrator

- i. The subdivision administrator shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The subdivision administrator will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee, and copies of the final plat have been received. Final plat applications will not be considered complete by the subdivision administrator until all conditions of preliminary approval have been satisfied.
- ii. If the subdivision administrator determines that the final plat differs from the approved or conditionally approved preliminary plat, the applicant shall be required to submit an amended application pursuant to Section II-B-5.

iii. The subdivision administrator may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.

<u>II-B-3.</u> Restrictive Covenants – Approval, Content and Enforcement by Governing Body

- a. The governing body may require that some or all restrictive covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the governing body, be set forth in a separate heading identifying them as plat approval covenants, and indicating: "These covenant(s) may not be repealed or amended without prior written consent of the (name of the governing body)."
- b. The governing body may require that all restrictive covenants it has required as a condition of plat approval contain the following language: "The (name of the governing body) is a party to this restrictive covenant and may enforce its terms."
- c. If common property is to be deeded to a property owners' association, the covenants and by-laws which govern the association must, at a minimum, provide for the:
 - i. Formation of a property owners' association concurrently with the filing of the final subdivision plat. Articles of Incorporation shall be filed with the Secretary of State's office;
 - ii. Mandatory membership for each property owner. Purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;
 - iii. Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;
 - iv. Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities:
 - v. Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
 - vi. Adjustment of assessments to meet changing needs;
 - vii. Means of enforcing the covenants, and of receiving and processing complaints;
 - viii. Transition of control of the association from the Declarant to the homeowners.
 - ix. Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and
 - x. Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

II-B-4. Public Improvements Agreement; Guaranty

As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements [76-3-507, MCA]. No construction or placement of structures on the lots may occur until improvements related to public health and safety, such as roads or fire fighting facilities, have been installed and engineering plans have been filed. A model subdivision improvements agreement and alternative methods of guaranteeing public improvements, the procedures and requirements for securing an agreement, and suggested conditions for maintenance are provided in Administrative Materials D.

If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the public improvements through a bond or letter of credit, three bids for the cost of installation of the public improvements shall be obtained by the subdivider. The amount of the guarantee shall be calculated by multiplying 125% by the highest bid. As the public improvements are installed, the subdivider shall provide a letter to the governing body indicating such, and including a copy of the engineered plans. The county engineer or consulting engineer designated by the governing body shall review and certify all public improvements have been installed in conformance with the plans and specifications. Prior to the release of the guarantee, a copy of the plans, stamped by the project surveyor or engineer in accordance with their licensing provisions, shall be filed in the clerk and recorder's office with reference to the final subdivision plat.

II-B-5. Amending Approved Preliminary Plats Before Final Plat Approval⁹

- a. If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the subdivision administrator for review.
 - i. Within 5 working days of receiving the proposed changes, the subdivision administrator shall determine whether the changes to the preliminary plat are material pursuant to subsection (b) below.
 - ii. If the subdivision administrator determines the changes are material, the subdivision administrator shall may require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee. 10
 - iii. If the subdivision administrator determines the changes are not material, the subdivision administrator shall accept the changes, notify the subdivider and the governing body of that decision and the governing body shall approve of those changes in a meeting for which notice has been given of non-material changes to the final plat.

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⁹ **Note:** This section is new and is merely an example of how a local government might decide to handle amended preliminary plats prior to final plat approval. A local government is completely free to develop its own process for handling changes to an approved preliminary plat prior to final plat approval without requiring re-submittal of the entire application and preliminary plat.

¹⁰ **Note:** The local government has discretion whether a new application/ fee will be required.

- b. The following changes, although not an exhaustive list, may be considered material:
 - i. configuration or number of lots;
 - ii. road layout;
 - iii. water and/or septic proposals;
 - iv, configuration of park land or open spaces;
 - v. easement provisions;
 - vi. designated access;
 - vii. proposed covenants; or
 - viii. changes to conditions of approval.
- c. A subdivider whose proposed changes to the preliminary plat have been deemed material by the subdivision administrator may appeal the subdivision administrator's decision to the governing body by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
- d. If the subdivider and subdivision administrator determine that a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the governing body through a properly noticed public hearing in order to determine if the condition may be waived or amended.

II-B-6. Final Plat Approval

a. Approval by the Governing Body

The governing body shall examine every final subdivision plat and shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations, or deny it pursuant to (ii) below.

- i. If the final plat is approved, the governing body shall certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.
- ii. If the final plat is denied, the governing body shall write a letter stating the reason for denial and forward a copy to the subdivider. The governing body will return the final plat to the subdivider within 10 working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

b. <u>Inaccurate Information</u>

The governing body may withdraw approval of a final plat if it determines that material information by the subdivider is inaccurate.

II-B-7. Final Plat Filing

After it is approved, the final plat may not be altered in any manner except as provided in II-B-8. The county clerk and recorder may not accept any plat for filing that does not bear the governing body's approval in proper form or that has been altered. The clerk and recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation, and Final Subdivision Plats, contained in Appendix A.

II-B-8. Amending Filed Plats

- a. Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots or modifies six or more lots, or abandons or alters a public road right-of-way or parkland dedication must be reviewed and approved by the governing body.
- b. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The governing body may not approve an amended final plat without the written consent of the owners and lienholders of all lots which will be modified by the proposed amendment.
- c. The governing body may not approve an amendment that will place a lot in non-conformance with the standards contained in Section VI of these regulations or with local zoning regulations unless the governing body holds a public hearing on the amendment and issues a written variance from the standards pursuant to Section XI-B, Variances.
- d. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Filing Final Plats (Appendix A).

III. REVIEW AND APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS

Subdivisions containing five or fewer parcels shall be reviewed as set forth in this section.

First minor subdivisions shall be reviewed pursuant to section III-A and subsequent minor subdivisions shall be reviewed pursuant to section III-B.

III-A. First Minor Subdivision Review

The pre-application process and initial review process set forth in Section II, General Procedures, apply to this section.

III-A-1. First Minor Subdivision Application and Preliminary Plat Submittal

- a. The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application containing the materials identified in section II-A-5 and in the pre-application meeting, and
- b. Sufficient documentary evidence from the public records demonstrating that the subdivision will be the first minor subdivision from a tract of record;

III-A-2. First Minor Subdivision Exceptions

The following do not apply to first minor subdivisions:

- a. preparation of an environmental assessment;
- b. parkland dedication;
- c. public hearing requirements; and
- d. review of the subdivision application for the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety, *if* the subdivision is proposed in a jurisdictional area that has adopted zoning regulations that address those impacts.

III-A-3. First Minor Subdivision Review Process

a. <u>Time Period for Approval, Conditional Approval, or Denial</u>

Within 35 working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section III-A-6 of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.

b. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the 35-working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

III-A-4. First Minor Planning Board Consideration and Recommendation¹¹

a. Recommendation

i. Consideration-Standards

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board shall base its recommendation on compliance of the subdivision application and preliminary plat with the following:

- A. these regulations, including but not limited to the standards set forth in Section VI;
- B. applicable zoning regulations;
- C. The MSPA, including but not limited to 76-3-608(3), as delineated in section III-A-6(a) and (b)(iv) of these regulations; and
- D. other applicable regulations.

ii. Consideration-Evidence

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):

- A. the subdivision application and preliminary plat;
- B. the summary of probable impacts and proposed mitigation;
- C. an officially adopted growth policy;¹²
- D. subdivision administrator's staff report and recommendation; and

¹¹ **Note**: This section should only be included in jurisdictions where the planning board reviews first minor subdivisions. If the planning board does not review first minor subdivisions, remove this section and renumber.

¹² **Note:** The planning board may not base its recommendation solely on the subdivision application's compliance with an officially adopted growth policy. However, it may consider the growth policy as one factor.

E. any additional information authorized by law.

iii. Written Recommendation

Within 10 working days after the public meeting, the planning board shall submit the following, in writing, to the subdivider and the governing body:

- A. recommended findings of fact based on the evidence in subsection (a)(ii) above that discuss and consider the subdivision's compliance with and impact on the items listed in subsection (a)(i) of these regulations;
- B. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat; and
- C. a recommendation for approval or denial of any requested variances (See Section XI-B).

b. Water and Sanitation Information

The planning board or subdivision administrator shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations.¹³ The planning board shall forward all comments regarding water and sanitation to the governing body.

III-A-5. Subdivider's Preference for Mitigation

No later than two working days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the planning board's recommendations as well as any proposed mitigation measures not already discussed with the planning board. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preferences regarding mitigation [76-3-608(5)(b), MCA].

III-A-6. First Minor Subdivision Governing Body Decision and Documentation

a. Prerequisites to Approval

The governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

i. provides easements for the location and installation of any planned utilities, both on and off site;

 $^{^{13}}$ **Note:** The water and sanitation information required to be submitted is detailed in Administrative Materials "A."

- ii. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- iii. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section II-B-4 of these regulations;
- iv. assures that the requirements of 76-3-504 (1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Section VI-O have been considered and will be accomplished before the final plat is submitted; and
- v. assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in Section VI-N have been considered and will be accomplished before the final plat is submitted.

b. <u>Consideration – Standards</u>

In approving, conditionally approving, or denying a first minor subdivision application, the governing body shall consider subsection (a) above and whether the proposed subdivision complies with:

- i. these regulations, including but not limited to, the standards set forth in Section VI:
- ii. applicable zoning regulations;
- iii. other applicable regulations;
- iv. the MSPA, including but not limited to the following impacts: 14
 - A impact on agriculture;
 - B. impact on agricultural water user facilities;
 - C. impact on local services;
 - D. impact on the natural environment;
 - E. impact on wildlife and wildlife habitat; and
 - F. impact on public health and safety.
- v. proposed mitigation.

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¹⁴ **Note:** The local jurisdiction may wish to insert text from its growth policy explaining these impacts, or use Supplement 4 of the Alternative Provisions and Processes as a guide.

c. Consideration – Evidence

In making its decision to approve, conditionally approve, or deny a proposed first minor subdivision the governing body may consider and weigh the following, as applicable:

- i. the subdivision application and preliminary plat;
- ii. the summary of probable impacts and proposed mitigation;
- iii. an officially adopted growth policy;¹⁵
- iv. subdivision administrator's staff report and recommendations;
- v. planning board recommendation;¹⁶ and
- vi. any additional information authorized by law.

d. Water and Sanitation-Special Rules¹⁷

i. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that the application does not comply with previously adopted subdivision, zoning, floodplain or other regulations.

- ii. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the subdivider shall obtain approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.
- iii. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot in order to obtain final plat approval. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are developed.

¹⁵ **Note**: The governing body may not base its decision solely on the subdivision application's compliance with an officially adopted growth policy. However, it may consider the growth policy as one factor.

¹⁶ **Note**: If the planning board does not have the authority to review first minor subdivisions, eliminate this subsection and renumber.

¹⁷ **Note**: The model regulations have taken the affirmative perspective to require water and sewer approval as a condition of approval.

¹⁸ **Note:** Section 76-3-604(7)(a) provides that the governing body *may* require approval by the DEQ as a condition of approval of the final plat. This sentence makes that procedure mandatory.

¹⁹ **Note:** Section 76-3-604(7)(b) provides that the governing body *may* condition approval of the final plat upon the subdivider demonstrating that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot. This sentence makes that procedure mandatory.

- iv. The governing body shall request public comments regarding water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.
- iv. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:
 - A. reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; or
 - B. local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

e. <u>Documentation of Governing Body Decision</u>

- i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the above subsections.
- ii. When the governing body approves, 20 denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
 - A. contain information regarding the appeal process for the denial or imposition of conditions;
 - B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - C. provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
 - D. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.
 - E. set forth the time limit for approval, pursuant to subsection (f) below.

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²⁰ **Note:** Section 76-3-620, MCA, does not make it mandatory for the governing body to provide a letter to the subdivider when it approves a subdivision application. However, we strongly recommend a jurisdiction adopt the language for approvals as well to provide documentation of the decision in case of a challenge.

f. Subdivision Application and Preliminary Plat Approval Period

- i. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.²¹
 - A. At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year.
 - B. The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section II-B-4.
- ii. After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires.
- iii. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

III-A-7. First Minor Subdivisions – Amended Applications²²

- a. If the subdivider changes the subdivision application or preliminary plat before the governing body makes its decision, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.
 - i. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, as determined in subsection (c) below.
 - ii. The 35-working day review period is suspended while the subdivision administrator considers the amended application or preliminary plat.
 - iii. If the subdivision administrator determines the changes are not material, the 35-working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.

years.

22 **Note:** Section 76-3-504(1)(c) requires the subdivision regulations to contain procedures for amended applications. The statute gives no specific guidance on the subject; therefore, this Amended Applications section is only an example of how a local government might decide to handle amended applications.

²¹ **Note:** The governing body must establish the term of the approval or conditional approval of the subdivision application and preliminary plat, which must be at least one but not more than three calendar years.

- iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall either require the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application or require the subdivider to present the changes to the Planning Board for consideration of the changes, only.²³
- b. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsection (a)(ii).
- c. The following changes, although not an exhaustive list, may be considered material:
 - i. configuration or number of lots;
 - ii. road layout;
 - iii. water and/or septic proposals;
 - iv. configuration of park land or open spaces;
 - v. easement provisions;
 - vi. proposed covenants; or
 - vii. designated access.
- d. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the governing body. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
 - i. The 35-working day review period is suspended until the governing body decision on the appeal is made.
 - ii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall require the subdivision application and preliminary plat to be resubmitted pursuant to subsection (a)(iv).
 - iii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 35-working day review period resumes as of the date of the decision.
 - iv. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 35-working day review period provided in subsection (d)(i).

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²³ **Note:** The local government has discretion whether a new application fee will be charged when requiring the subdivider to resubmit the application from the beginning.

III-A-8. First Minor Subdivision Final Plat

The final plat must include the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Section II-B, Final Plats.

III-B. Subsequent Minor Subdivisions

A Subsequent Minor Subdivision is any subdivision with five or fewer lots that is not a first minor subdivision. Subsequent minor subdivisions shall be reviewed as major subdivisions. All the requirements and procedures of Section IV of these regulations must be followed for subsequent minor subdivisions. ²⁴ However, a park dedication is not required.

IV. REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS

IV-A. Review and Approval Procedures for Major Subdivisions

Subdivisions that qualify for major subdivision review are those divisions of land containing six or more lots, or subdivisions of five or fewer lots that do not otherwise qualify for review as first minor subdivisions under 76-3-609, MCA and these regulations.

The pre-application process and initial review process set forth in Section II, General Procedures, apply to this section.

IV-A-1. Subdivision Application and Preliminary Plat Submittal²⁵

- a. The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application containing the materials identified in Section II-A-5 and in the pre-application meeting.
- b. The requirement for preparing an environmental assessment, does not apply, pursuant to 76-3-210, MCA, when:
 - i. The proposed subdivision is totally within an area covered by a growth policy adopted pursuant to sections 76-1-601 through 76-1-606, MCA; and

Montana State law now requires each local government to have a list of materials that must be included in a subdivision application. For the purpose of element and sufficiency review only, local governments should adopt a list of required materials that is exhaustive because local governments cannot require materials that are not listed in their subdivision regulations. This list is only suggestive of the materials that local governments may want to require in a subdivision application. Some of the materials are required by the Montana Subdivision and Platting Act, while others may be required by local subdivision regulations.

²⁴ **Note:** Jurisdictions are free to adopt regulations that provide for review of subsequent minors at least as stringently as a "first" minor but less stringently than a major subdivision. Supplement 2 of the Alternative Provisions and Processes provides some suggestions.

²⁵ Comment: Required Materials in an Application

- ii. The governing body has adopted zoning regulations pursuant to sections 76-2-301 through 76-2-328, MCA (municipal zoning); or sections 76-2-201 through 76-2-228, MCA (county zoning pursuant to a growth policy); and
- iii. The governing body has adopted a strategy for development, maintenance, and replacement of public infrastructure pursuant to section 76-1-601(3)(e), MCA.
- c. The planning board (or governing body where no planning board exists) may waive the requirement for preparing any portion of the environmental assessment when the proposed subdivision is in an area covered by a growth policy adopted pursuant to sections 76-1-601 through 76-1-606, MCA, and the proposed subdivision will be in compliance with the policy.
- d. When an exemption from preparing any portion of the environmental assessment is sought, the applicant shall meet with the planning board, explain why the exemption is appropriate, and if granted the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement must accompany the preliminary plat of the subdivision when it is submitted for review and shall be filed with the final plat.

IV-A-2. Time Period for Approval, Conditional Approval, or Denial

a. Within 60 working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section IV-A-8 of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to Section IV-A-7 of these regulations. The review period of 60 working days begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.

b. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the 60-working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

IV-A-3. Public Hearings and Notices – In General²⁶

a. <u>Hearings</u>

The planning board and the governing body shall each hold a public hearing on the subdivision application when a hearing is required by these regulations.²⁷

b. Notice

- i. The planning board and governing body shall give notice of the times, dates and locations of the hearings by publication in a newspaper of general circulation in the county not less than 15 days prior to the dates of the hearings.²⁸
- ii. At least 15 days prior to the dates of the hearings, the planning board and the governing body shall give notices of the hearings by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
- iii. The subdivider shall post notices at conspicuous places on the site of the proposed subdivision.²⁹

IV-A-4. Planning Board Hearing, Consideration and Recommendation³⁰

a. Hearing

After the subdivision application is deemed to have all the required elements and contain detailed, supporting information that is sufficient to allow for review, and the subdivision administrator has prepared a staff report, the planning board shall schedule and hold a public hearing on the subdivision application.

Montana statute requires the governing body or its designated agent to hold at least one public hearing on

the preliminary plat. Montana Statute [76-1-601(3)(i), MCA] also requires that a community's growth policy contain a "statement explaining how public hearings regarding proposed subdivisions will be conducted." The governing body or its authorized agent or agency should adopt procedures for the conduct of public hearings.

²⁶ Comment: Public Hearings

Note: This section is drafted to reflect two hearings: one before the planning board and one before the governing body. Jurisdictions that do not have a planning board or that choose to have a hearing only by the governing body will need to adopt the changes provided in Supplement 1 of the Alternative Provisions and Processes.

²⁸ **Note:** Subsections i and ii are drafted with the intention that a single published notice may be given and a single mailing may be sent with the dates and times of both hearings to save money and time.

²⁹ **Note**: Posted notices are not required by the MSPA and have advantages (people may not read the legal ads in a newspaper) and disadvantages (someone may tear down the notice) so it is up to the local jurisdiction to decide whether to include this paragraph.

Note: This section is also drafted for jurisdictions where both the planning board and the governing body hold public hearings. Alternatives can be found in Supplement 1 of Alternative Provisions and Processes.

b. Recommendation

i. <u>Consideration-Standards</u>

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board shall base its recommendation on compliance of the subdivision application with the following:

- A. these regulations, including but not limited to the standards set forth in Section VI:
- B. applicable zoning regulations;
- C. The MSPA, including but not limited to 76-3-608(3), as delineated in sections IV-A-8(a) and (b)(iv) of these regulations; and
- D. other applicable regulations.

ii. Consideration-Evidence

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):

- A. the subdivision application and preliminary plat;
- B. the environmental assessment;
- C. the summary of probable impacts and proposed mitigation;
- D. an officially adopted growth policy;³¹
- E. information provided at public hearing(s);
- F. subdivision administrator's staff report and recommendation; and
- G. any additional information authorized by law.

iii. Written Recommendation

Within 10 working days after the public hearing, the planning board shall submit the following, in writing, to the subdivider and the governing body:

A. recommended findings of fact based on the evidence in subsection (b)(ii) above that discuss and consider the subdivision's compliance with and

³¹ **Note:** The planning board may not base its recommendation solely on the subdivision application's compliance with an officially adopted growth policy. However, it may consider the growth policy as one factor.

impact on the items listed in subsection (b)(i) above of these regulations; and

- B. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat.
- C. a recommendation for approval or denial of any requested variances.(see Section XI-B).

c. Water and Sanitation Information

The planning board or planning staff shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations.³² The planning board shall forward all comments regarding water and sanitation to the governing body.

IV-A-5. Subdivider's Preference for Mitigation

No later than two working days before the meeting or hearing at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the planning board's recommendations, as well as any proposed mitigation measures not already discussed with the planning board. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference regarding mitigation.

IV-A-6. Governing Body Hearing ³³

a. After the planning board makes its recommendation, the governing body shall hold a public hearing on the subdivision application.

- b. All comments and documents regarding the subdivision shall be submitted to the subdivision administrator, rather than to the governing body directly, to be forwarded to the governing body.
- c. Upon an objection made at the hearing, the governing body shall determine whether public comments or documents presented for consideration at the governing body's public hearing constitute either:
 - i. information or analysis of information that was presented at the planning board hearing on the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
 - ii. new information or analysis of information that has never been submitted as evidence or considered by the planning board at a hearing on the subdivision

³³ **Note:** This section is also drafted for jurisdictions where both the planning board and the governing body hold public hearings. Alternatives can be found in Supplement 1 of Alternative Provisions and Processes.

³² **Note:** The water and sanitation information required to be submitted is detailed in Administrative Materials "A."

application, in which case the governing body shall proceed as set forth in subsection (d) below.

- d. If the governing body determines that public comments or documents presented at the hearing constitute new information or an analysis of information regarding the subdivision application that has never been submitted as evidence or considered by the planning board at the public hearing on the subdivision application, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to subsections (e) and (f) below.
 - i. If the governing body determines the information or analysis of information is either not relevant or not credible, then the governing body shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or
 - ii. If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall schedule or direct the planning board to schedule a subsequent public hearing pursuant to Section IV-A-7.
 - iii. At the subsequent hearing the planning board or governing body shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- e. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- f. New information or analysis of information is considered to be credible if it is based on one or more of the following:
 - i. physical facts or evidence;
 - ii. supported personal observations;
 - iii. evidence provided by a person with professional competency in the subject matter; or
 - iv. scientific data supported by documentation.

IV-A-7. Subsequent Public Hearing

a. If a subsequent public hearing is held pursuant to section IV-A-6, it must be held within 45 days of the governing body's determination to schedule a subsequent hearing. The planning board or governing body shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

- i. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.
- ii. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
- iii. The subdivider shall post notice of the subsequent hearing at a conspicuous place on the site of the proposed subdivision.
- b. If a subsequent public hearing is held, the 60-working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 60-working day review period resumes on the date of the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

IV-A-8. Governing Body Decision and Documentation

a. Prerequisites to Approval

The governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

- i. provides easements for the location and installation of any planned utilities;
- ii. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- iii. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section II-B-4 of these regulations;
- iv. assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Section VI-O have been considered and will be accomplished before the final plat is submitted;
- v. assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in Section VI-N have been considered and will be accomplished before the final plat is submitted; and
- vi. provides for the appropriate park dedication or cash-in-lieu.

b. <u>Consideration-Standards</u>

In approving, conditionally approving, or denying a subdivision application and preliminary plat, the governing body shall consider subsection (a) above, and whether the proposed subdivision complies with:

- i. these regulations, including, but not limited to, the standards set forth in Section VI;
- ii. applicable zoning regulations;
- iii. other applicable regulations;
- iv. the MSPA, including but not limited to the following impacts:³⁴
 - A. impact on agriculture
 - B. impact on agricultural water user facilities
 - C. impact on local services
 - D. impact on the natural environment
 - E. impact on wildlife and wildlife habitat;
 - F. impact on public health and safety; and
- v. proposed mitigation.

c. Consideration-Evidence

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the governing body may consider and weigh the following, as applicable:

- i. the subdivision application and preliminary plat;
- ii. the environmental assessment;
- iii. the summary of probable impacts and mitigation;
- iv. an officially adopted growth policy;³⁵
- v. comments, evidence and discussions at the public hearing(s);
- vi. subdivision administrator's staff report and recommendations;
- vii. planning board recommendation; and
- viii. any additional information authorized by law.

³⁴ **Note:** The local jurisdiction may wish to insert text from its growth policy explaining these impacts, or use Supplement 4 of Alternative Provisions and Processes as a guide.

³⁵ **Note:** The governing body may not base its decision solely on the subdivision application's compliance with an officially adopted growth policy. However, it may consider the growth policy as one factor.

Notwithstanding the foregoing, the governing body may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

d. Water and Sanitation-Special Rules³⁶

- i. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that the application does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
- ii. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the subdivider shall obtain approval by the DEQ as a condition of approval of the final plat.³⁷ This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.
- iii. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot in order to obtain final plat approval.³⁸ This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.
- iv. The governing body shall collect public comments submitted regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.
- v. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:
 - A. reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

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³⁶ **Note**: The model regulations have taken the affirmative perspective to require water and sewer approval as a condition of approval.

³⁷ **Note:** Section 76-3-604(7)(a) provides that the governing body *may* require approval by the DEQ as a condition of approval of the final plat. This sentence makes that procedure mandatory.

³⁸ **Note:** Section 76-3-604(7)(b) provides that the governing body *may* condition approval of the final plat upon the subdivider demonstrating that there is an adequate water source and at least one area for a septic system and replacement drain field for each lot. This sentence makes that procedure mandatory.

B. local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

e. Documentation of Governing Body Decision

- i In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the preceding subsections.
- ii. When the governing body approves,³⁹ denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
 - A. contain information regarding the appeal process for the denial or imposition of conditions;
 - B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - C. provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
 - D. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.
 - E. set forth the time limit for approval, pursuant to subsection (f) below.

f. Subdivision Application and Preliminary Plat Approval Period

- i. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.
 - A. At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year.
 - B. The governing body may extend the approval for more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement between the governing body and the subdivider, provided for in Section II-B-4.

³⁹ **Note:** Section 76-3-620, MCA, does not make it mandatory for the governing body to provide a letter to the subdivider when it approves a subdivision application. However, we strongly recommend a jurisdiction adopt the language for approvals as well to provide documentation of the decision in case of a challenge.

- ii. After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required.
- iii. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

IV-A-9. Amended Applications⁴⁰

- a. If the subdivider changes the subdivision application or preliminary plat after the subdivision administrator makes a determination of sufficiency pursuant to section II-A-6 but before the Planning Board hearing, the subdivider shall submit the amended application to the subdivision administrator for review.
 - i. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, pursuant to subsection (d) below.
 - ii. The 60-working day review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
 - iii. If the subdivision administrator determines the changes are not material, the 60-working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
 - iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall either require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application or obtain written permission from the subdivider for an additional 15-working day period to evaluate the sufficiency of the proposed changes.⁴¹
- b. If the subdivider changes the subdivision application or preliminary plat after the Planning Board hearing but before the governing body hearing, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.
 - i. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the

⁴⁰ **Note:** Section 76-3-504(1)(c) requires the subdivision regulations to contain procedures for amended applications. The statute gives no specific guidance on the subject; therefore, this Amended Applications section is only an example of how a local government might decide to handle amended applications.

⁴¹ **Note:** It is up to the jurisdiction whether or not to impose a new fee. The statute neither requires nor prohibits a new fee.

subdivision application or preliminary plat are material pursuant to subsection (d) below.

- ii. The 60-working day review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
- iii. If the subdivision administrator determines the changes are not material, the 60-working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
- iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall either:
 - A. require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee;⁴² or
 - B. schedule a new Planning Board hearing to take comment on the amended application or preliminary plat. Notice of the subdivision administrator's determination to schedule a new planning board hearing shall be provided as set forth in section IV-A-3. A supplemental staff report shall be prepared to address the changes to the original application
- v. If a new Planning Board hearing is held pursuant to subsection (b)(iv)(B) above, the 60-working day review period is suspended for the time period between notice of the subdivision administrator's determination and 10 working days after the date of the second Planning Board hearing.
- c. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsections (a)(ii) and (b)(ii).
- d. The following changes, although not an exhaustive list, may be considered material:
 - i. configuration or number of lots;
 - ii. road layout;
 - iii. water and/or septic proposals;
 - iv. configuration of park land or open spaces;
 - v. easement provisions;
 - vi. proposed covenants; or
 - vii. designated access.

⁴² **Note:** The local government has discretion whether a new application fee will be charged.

- e. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the governing body by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
 - i. The 60-working day review period is suspended until the governing body decision on the appeal is made.
 - ii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall determine whether the subdivision application should be resubmitted or scheduled for rehearing in front of the planning board pursuant to subsections (b)(iv)(A) or (B).
 - iii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 60-working day review period resumes as of the date of the decision.
 - iv. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 60-working day review period provided in subsection (i) above.

IV-B. Major Final Plats

The final plat must have the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Section II-B, Final Plats.

V. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW⁴³

V-A. Purpose

The MSPA provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3. These regulations address the more commonly used exemptions.

V-B. General Criteria to Determine Whether a Proposal is an Attempt to Evade the MSPA

The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading the MSPA, shall consider all of the surrounding circumstances. These circumstances include the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

V-C. Divisions of Land Entirely Exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act [76-3-201, MCA]

The governing body will examine the divisions of land set forth in this section to determine whether or not the requirements of the MSPA and these regulations apply to the division. The fee for this examination is set forth in Section XI-A. The requirements of these regulations and the MSPA do not apply unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, or as otherwise specifically provided, when:

- a. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30. Before a court of record orders a division of land, the court shall notify the governing body of the pending division and allow the governing body to present written comments on the subdivision.
- b. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.
 - i. This Exemption Applies:
 - A. to a division of land of any size;

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⁴³ Comment:

Local governments are required to prevent the misuse of the exemptions from local subdivision review by adopting criteria that define the proper and improper use of the exemptions. These criteria should be used by the governing body or reviewing authority to determine whether a proposed method of disposition is an attempt to evade subdivision review. The 2005 amendments to the Montana Subdivision and Platting Act also allow a subdivider to appeal to the governing body a decision that a division of land is for the purpose of evading subdivision review unless the governing body made the original decision.

- B. if the land that is divided is only conveyed to the financial or lending institution to which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time the land was divided, to any party other than those identified in the preceding sentence subjects the division of land to the requirements of the MSPA and these regulations.
- C. to a parcel that is created to provide security under this subsection. The remainder of the tract of land, if applicable, is subject to the provisions of the MSPA and these regulations.

ii. Statement of Intent

Under policies by many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a person who is buying a tract using financing or contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.

iii. <u>Use of Exemption</u>

This exemption is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance construction of a home or other structure on the proposed lot.

This exemption may not be properly invoked unless (1) the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title) and (2) a lending institution requires the landowner to hold title to a small parcel of the tract because the smaller tract is required as security for a building construction loan.

iv. Required Materials

When this exemption is to be used, the landowner must submit to the subdivision administrator:

- A. a statement of how many interests within the original tract will be created by use of the exemption;
- B. the deed, trust indenture or mortgage for the exempted interest (which states that the interest is being created only to secure a construction mortgage, lien or trust indenture);
- C. a statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted interest is conveyed; and

D. a signed statement from a lending institution that the creation of the interest is necessary to secure a loan.

v. <u>Rebuttable Presumptions</u>

The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:

- A. it will create more than one new building site;
- B. the financing is not for construction or improvements on the exempted parcel, or for re-financing;
- C. the person named in the "statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed" is anyone other than the borrower of funds for construction;
- D. title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs:
- E. there exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
- F. it appears that the principal reason the interest is being created is to create a building site and using the interest to secure a loan is a secondary purpose; or
- G. the division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture.
- c. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
- d. A division of land creates cemetery lots;
- e. A division of land is created by the reservation of a life estate;
- f. A division of land is created by lease or rental for farming and agricultural purposes;
- g. A division of land is in a location over which the state does not have jurisdiction; or
- h. A division of land is created for public rights-of-way or public utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of the MSPA and these regulations.

V-D. Divisions of Land Which May be Exempt from Review and Surveying

- a. Generally condominiums are subject to review as subdivisions, but under certain circumstances they may be exempt from review, provided they are constructed on land divided in compliance with these regulations and the MSPA, and:
 - i. The approval of the original division of land expressly contemplated the construction of the condominiums and 76-3-621, MCA, is complied with; or
 - ii. The condominium proposal is in conformance with applicable zoning regulations where local zoning regulations are in effect.
- b. Generally, subdivisions created by rent or lease are exempt from the surveying and filing requirements of the MSPA and these regulations, but must be submitted for review and approved by the governing body before portions may be rented or leased.
 - i. When the land upon which an improvement is situated has been subdivided in compliance with the MSPA, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the MSPA or these regulations;
 - ii. The sale, rent, lease, or other conveyance of one or more parts of a building, structure or other improvement, whether existing or proposed, is not a division of land and is not subject to the requirements of the MSPA or these regulations.
- c. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority is not subject to the MSPA or these regulations, provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities.
- d. A division of state-owned land is not subject to the MSPA or these regulations unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.
- e. The MSPA and these regulations do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.
- f. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA, and are exempted from the surveying and platting requirements of the MSPA and these regulations. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the state obtained property for a highway right-of-way is not required. [44 A.G. Op. 25 (1992)]. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

V-E. Divisions of Land Exempt from Review but Subject to Survey Requirements and Zoning Regulations

Unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the MSPA, but are subject to the surveying requirements of 76-3-401, MCA, and zoning regulations adopted under Title 76 chapters 2 or 3. A division of land may not be made under this section unless the County Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid. The Clerk and Recorder shall notify the subdivision administrator if a land division described in this section or 76-3-207(1), MCA, is submitted to the Clerk and Recorder prior to the survey being submitted to the subdivision administrator for evasion review.

V-E-1. Relocation of Common Boundary [76-3-207(1)(a), MCA]

a. Statement of Intent

The intended purpose of this exemption is to allow a change in the location or the elimination of a boundary line between adjoining properties outside of a platted subdivision and to allow a one-time transfer of a tract to effect that relocation or elimination without subdivision review.

b. Required Information

Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification set forth in ARM 24.183.1104 (1)(f) [Appendix A] must be included on the certificate of survey. Certificates of survey showing the relocation of common boundary lines must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) that is being affected.

c. <u>Use of Exemption</u>

The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land outside of a platted subdivision, without creating an additional parcel. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land.

d. Rebuttable Presumptions

The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA if:

- i. the reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation; or
- ii. the proposed relocation creates a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

V-E-2. A Gift or Sale to a Member of the Immediate Family [76-3-207(1)(b), MCA]

a. Statement of Intent

The intent of this exemption is to allow a landowner to convey one parcel outside of a platted subdivision to each member of his or her immediate family, without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property. The term "immediate family" means the spouse, children (by blood or adoption), or parents of the grantor [76-3-103(8), MCA]. This exemption may be used only by grantors who are natural persons and not by non-corporal legal entities such as corporations, partnerships, and trusts.

b. <u>Required Information</u>

A certificate of survey (or recording of an instrument of conveyance) that uses this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner's certification of compliance [ARM 24.183.1104(1)(f)] found in Appendix A. Also, the certificate of survey or instrument of conveyance must be accompanied by a deed or other conveying document.

c. <u>Use of Exemption</u>

One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under the MSPA and these regulations. However, the use of the exemption may not create more than one new parcel per eligible family member.

d. Rebuttable Presumptions

- i. Any proposed use of the family gift or sale exemption to divide a tract that was previously created through the use of an exemption will be presumed to be adopted for purposes of evading the MSPA.
- ii. The use of the family gift or sale exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the MSPA.
- iii. A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption will result in the presumption the method of disposition is adopted for the purpose of evading the MSPA and these regulations.
- iv. The use of the exemption to create more than one additional or remaining parcel of less than 160 acres in size is presumed to be adopted for the purpose of evading the MSPA and these regulations.

V-E-3. Divisions of Land Proposed for Agricultural Use Only [76-3-207(1)(c), MCA]

a. Statement of Intent

This exemption is intended to allow a landowner to create a parcel for gift, sale, or agreement to buy and sell, outside a platted subdivision, without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings, which require water or sewer, will be built on it.

b. Required Information

A certificate of survey that uses this exemption to create a parcel for agricultural use only requires a covenant running with the land in accordance with 76-3-207(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey. [ARM 24.183.1104(f)(iii) in the Appendix] The certificate of survey must be accompanied by a separate, recordable, document reciting the covenant.

c. <u>Use of Exemption.</u>

- i. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.
- ii. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.
- iii. Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the covenant is revoked.

d. <u>Rebuttable Presumptions.</u>

The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA:

- i. The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the members of the governing body.
- ii. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings have been or will be built on it.
- iii. The parcel must meet the criteria for an agricultural designation under section 15-7-202, MCA.

<u>V-E-4.</u> Relocation of Common Boundaries Involving Platted Subdivisions [76-3-207 (1)(d), (e) and (2)(a), MCA]

a. Statement of Intent

- i. The MSPA allows certain revisions to subdivisions platted since July 1, 1973, which include relocation of common boundaries and the aggregation of lots for five or fewer lots within a platted subdivision or the relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision (but a restriction or requirement on either continues to apply), without review.
- ii. If a change is made to a platted subdivision which results in an increase in the number of lots or redesigns or rearranges six or more lots, the governing body must review and approve the amended plat and an amended plat must be filed with the clerk and recorder.

b. <u>Use of exemption</u>⁴⁴

Relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision [76-3-207(1)(e), MCA] is allowed, because no additional parcels are created. Subdivision review is not necessary because the relocation does not create any additional division of land.

c. Rebuttable presumption

- i. If the resulting lots are inconsistent with the approved subdivision and the uses in it, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- ii. If the resulting lots do not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

V-F. Procedures and Review of Subdivision Exemptions

V-F-1. Submittal

Any person seeking exemption from the requirements of the MSPA shall submit to the subdivision administrator (1) a certificate of survey or, if a survey is not required, an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption. For purposes of 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the parcel under the contract-for-deed (ARM 24.183.1104)

⁴⁴ **Note:** The conjunctive wording in 76-3-207 (d), MCA, has been interpreted as an alternative—no review is generally necessary if common boundaries are relocated within a platted subdivision or if fewer than five lots are aggregated in a platted subdivision.

V-F-2. Review

When a division of land for which an exemption is claimed is submitted to the subdivision administrator, the subdivision administrator shall cause the documents to be reviewed by the designated agents of the governing body (e.g., county attorney, sanitarian, treasurer, and clerk and recorder). The subdivision administrator and governing body agents shall review the claimed exemption to verify that it is the proper use of the claimed exemption and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

- a. Landowners or their agents are encouraged to meet with the subdivision administrator to discuss whether a proposed land division or use of an exemption is in compliance with the criteria in this Section V.
- b. The subdivision administrator shall make a written determination of whether the use of the exemption is intended to evade the purposes of the MSPA, explaining the reasons for the determination.
- c. If the subdivision administrator finds that the proposed use of the exemption complies with the statutes and the criteria set forth in this section, the subdivision administrator shall notify the governing body and advise the clerk and recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the subdivision administrator finds that the proposed use of the exemption does not comply with the statutes and the criteria in this Section V, the subdivision administrator shall advise the clerk and recorder not to file or record the documents, and the materials will be returned to the landowner.
- d. The subdivision administrator shall consider all of the surrounding circumstances when determining whether an exemption is claimed for the purpose of evading the MSPA. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

V-F-3. Appeals

- a. Any person whose proposed use of an exemption has been denied by the subdivision administrator because the proposed division of land has been deemed an attempt to evade the MSPA, and these regulations, may appeal the subdivision administrator's decision to the governing body. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the MSPA or these regulations, and, thereby rebut a presumption.
- b. If the governing body concludes that the evidence and information overcome the presumption that the exemption is being invoked to evade the MSPA or these regulations, it may authorize the use of the exemption in writing. A certificate of survey claiming an exemption from subdivision review, which otherwise is in proper form, and which the governing body has found not to be an attempt to evade the MSPA or these regulations, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

c. If the person proposing to use an exemption chooses not to rebut a presumption when the subdivision administrator deems the use of the exemption an attempt to evade the MSPA and these regulations, or if the governing body determines that the proposed use of an exemption was for the purpose of evading the MSPA or these regulations, the landowner proposing to use the exemption may submit a subdivision application for the proposed land division.

V-G. Remaining Parcels of Land

Occasionally parcels of land are created after the rest of the land has been subdivided or after an exemption is used to divide the land. The term "remainder" has been used to refer to that portion of an original tract which is not itself created for transfer but which is left after other parcels are segregated for transfer.

A "remainder" less than 160 acres in size, contiguous to a proposed subdivision, will be considered a lot in that subdivision and will not evade review as a "remainder." If an exemption by a certificate of survey is used, the remaining tract of land is a separate parcel which must be surveyed.

A landowner claiming that a parcel is a "remainder" shall present evidence that the parcel is in fact intended to be retained and not to be transferred. Examples of such evidence include the existence of the landowner's residence on the parcel or building plans for a structure to be built by or for the landowner.

V-H. Identification Codes

To assist in the implementation of this review process and to monitor those parcels by exemption the Clerk and Recorder may cause the following identification codes to be added to the numbering of recorded certificates of survey filed after the effective date of these regulations.

CO ... Court order [76-3-201(1)(a), MCA]

ME ... Mortgage Exemption [76-3-201(1)(b), MCA]

LE ... Life Estate [76-3-201(1)(e), MCA]

RB ... Relocation of Common Boundary [76-3-207(1)(a), MCA]

FC ... Family Conveyance [76-3-207(1)(b), MCA]

AE ... Agricultural Exemption [76-3-207(1)(c), MCA]

OS ... Occasional Sale (used prior to April 6, 1993)

AL ... Aggregation of Lots [76-3-207(e), MCA]

VI. DESIGN AND IMPROVEMENT STANDARDS 45

All subdivisions approved by the governing body must comply with the provisions of this section, except where granted a variance pursuant to Section XI-B, Variances. The governing body may not grant variances from the provisions of Section VI-D, Floodplain Provisions. For subdivisions created by rent or lease, planned unit developments, and condominiums, refer to sections VII, VIII, and IX of these regulations.

VI-A. Conformance with Regulations

The design and development of a subdivision must conform with any applicable zoning or other regulations.

VI-B. Natural Environment

The design and development of subdivisions must provide satisfactory building sites, which are properly related to topography, and should, to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, trees and other existing vegetation.

VI-C. Lands Unsuitable for Subdivision

Land that the governing body determines is unsuitable for subdivision because of natural or human caused hazards may not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques.

VI-D. Floodplain Provisions

Land located in the floodway of a 100-year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the governing body to be subject to flooding may not be subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations.

If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider shall provide in detail to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC), a flood hazard evaluation, including the calculated 100 year frequency water surface elevations and the 100 year floodplain boundaries. This detailed evaluation must be performed by a licensed professional engineer experienced in this field of work. The evaluation must follow the "guidelines for obtaining 100-year flood elevations in Approximate Zone A or unmapped areas" which may be found at the following website: www.mtfloods.org.

The subdivider shall be responsible for assuring the DNRC submits its report to the subdivision administrator, prior to the hearing or meeting on the subdivision application.

The above requirement is waived if the subdivider contacts the Water Resources Division and that agency states in writing that available data indicate that the proposed subdivision is not in a

⁴⁵ **Note:** These standards have been changed very little from the 2003 model.

flood hazard area. However, the DNRC may require additional information following the above guidelines to ensure there are no flood hazards.

VI-E. Improvement Design

Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared by a professional engineer or a professional land surveyor as their respective licensing laws allow in accordance with the MSPA and these regulations.

VI-F. Lots

Each lot must contain a satisfactory building site and conform to health department regulations, applicable zoning regulations and these regulations.

- a. No lot may be divided by a municipal or county boundary line.
- b. No lot may be divided by a public road, alley or utility right-of-way or easement.
- c. Each lot must abut and have access to a public or private street or road. Alleys may not be used to provide the primary access to a lot.
- d. Corner lots must have driveway access to the same street or road that provides access to interior lots.
- e. Corner lots must be designed to provide acceptable sight distances for safe vehicular movement.
- f. No lot may have an average depth greater than three times its average width.
- g. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
- h. Through lots are prohibited except when they are essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

VI-G. Blocks

- a. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
- b. Unless impractical, block length must not be more than 1,600 feet.
- c. Blocks must be wide enough to allow for two tiers of lots unless a narrower configuration is essential to provide separation of residential development from traffic arteries, or to overcome specific disadvantages of topography and orientation, or unless the governing body approves a design consisting of irregularly shaped blocks indented by cul-de-sacs.

d. Rights-of-way for adequate and safe pedestrian access, at least 10 feet wide, must be provided where deemed essential to provide circulation to schools, playgrounds, shopping, transportation, and other community facilities.

VI-H. Streets and Roads⁴⁶

a. Design

- i. The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.
- ii. Roads must meet the design specifications in Table 1.
- iii. Where streets terminate, either a cul-de-sac or "T" turnaround must be provided at the terminus. Cul-de-sacs and "T" turnarounds must conform to the design specifications in Table 1.
- iv. All streets must either be dedicated to the public or be private streets to be owned and maintained by an approved property owners' association.
- v. Residential driveways must not have direct access to primary highways. Any vehicular access onto a state highway must be approved by the Montana Department of Transportation.
- vi. Local streets must be designed so as to discourage through traffic.
- vii. Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the governing body may require frontage roads or other treatment as may be necessary to adequately protect residential properties and to separate arterial and local traffic.
- viii. Half streets are prohibited except when they are essential to the development of the subdivision and when the governing body is satisfied that the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
- ix. The alignment of all streets and roads must provide adequate sight distances.
- x. Intersections. The following requirements apply to intersections:

-

⁴⁶ Comment: Streets, Roads, and Bridges

Local governments must adopt standards for the construction of streets, roads, bridges, sidewalks, curbs, and gutters. These design standards must mirror the standards adopted by the county road department or the city street department.

- A. streets must intersect at 90 degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the center line of the roadway being intersected.
- B. two streets meeting a third street from opposite sides must be offset at least 125 feet for local roads and 300 feet for arterials or collectors.
- C. no more than two streets may intersect at one point.
- D. intersections of local streets with major arterials or highways must be avoided.
- E. intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds of the intersecting roadways.
- F. hilltop intersections are prohibited, unless no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited. If no alternative to a hilltop intersection exists, additional traffic control devices will be required.
- G. the grade of approaches to major highways may not exceed five percent.
- xi. Names of new streets or roads aligned with existing streets must be the same as those of the existing streets. Proposed street names may not duplicate or cause confusion with existing street names.
- xii. Proposed road plans and profiles as required by Section II-A-5 are subject to approval by the Public Works director or Road Department Superintendent.

b. Improvements

- i. All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage must be constructed in accordance with the specifications and standards prescribed in these regulations using materials approved by the governing body.
- ii. Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. Subgrades must be properly rolled, shaped, and compacted, and must be approved by the governing body.
- iii. Streets and roads must be designed to ensure proper drainage. This may require surface crowning, culverts, curbs and gutters, drainage swales and storm drains.
- iv. Where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain proper easements of sufficient width to satisfy the requirements of Table 1.

Easements must be granted by each property owner in a signed and notarized document. (Administrative Materials Section E contains a model road access easement).

The location of any road easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.

- v. Existing trees and other vegetation must be preserved whenever appropriate. Plantings may be required for buffering, screening, or prevention of soil erosion and are subject to approval by the governing body.
- vi. Street lights will be required in subdivisions proposed within or adjacent to areas with existing street lighting. Street lighting may be required in other areas when necessary to protect public safety.
- vii. Street or road signs and traffic control devices of the size, shape, and height approved by the governing body must be placed at all intersections. Traffic control devices must conform to the standards contained in the *Manual on Uniform Control Devices* available from the Montana Department of Transportation.
- viii. When required by the United States Postal Service, the developer must provide an off-street area for mail delivery.

TABLE 1: Road Design Standards 1 Minimum Design Standards	for Subdivisions ⁴⁷ Collector	Local Road
 Minimum right-of-way width a. level terrain b. hilly terrain 	60 ft.	50 ft. 60 ft.
 2. Minimum roadway width ¹ 3. Minimum curb radius or edge of pavement at 	26 ft.	24 ft.
intersections	25 ft.	15 ft.
4. Maximum grades5. Approaches onto Public Roads	8%	10%
a. minimum sight distance	200 ft.	150 ft.
b. minimum width	35 ft.	30 ft.
c. maximum grade for 20'	5%	5%
6. Curvature ²		
 a. design speed 	30 mph	20 mph
b. maximum curve	23	53.5
c. minimum radius	249 ft.	107 ft.
7. Cul-de-sacs/Turnarounds		
a. maximum road length	-	1000 ft.
b. cul-de-sac: minimum outside		
right-of-way radius	-	40 ft.
c. cul-de-sac: minimum outside		35 ft.
roadway radius d. "T" turnaround: backup lengths (2	required)	30 ft. each
	2 required) -	30 It. Cacii
8. New bridges	2.50	24.0
a. curb-to-curb widths ³	26 ft.	24 ft.
b. design load capacity	20 tons	20 tons
c. vertical clearance	14.5 ft.	14.5ft.

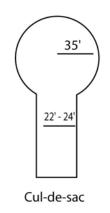
¹ Where parking will be permitted add eight feet on each side. If guardrail installation is required or a shoulder is desired, add two feet to each side of roadway.

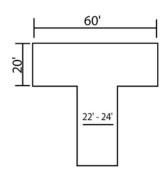
⁴⁷ Comment:

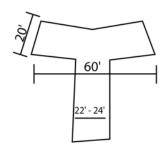
Local jurisdictions are encouraged to review these suggested design standards carefully and make any reasonable revisions to meet local circumstances relating to terrain and traffic volumes. The governing body may wish to adopt special road standards for subdivisions that, because of the number, size, shape, and location of lots or expected traffic loads, can be adequately served by roads built to lower standards. Graphics on the following page illustrate a number of the requirements.

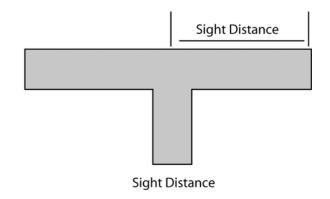
² Curvature is based on a super-elevation of .08/ft.

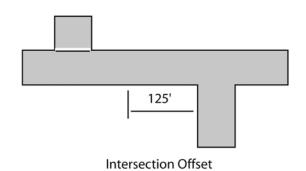
³ Width of the bridge roadway surface should match the width of the roadway system it joins.

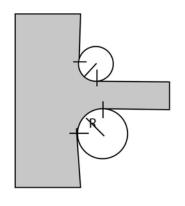












VI-I. **Drainage Facilities**

- The drainage system and facilities required for any surface run-off affecting the a. subdivision are subject to approval by the governing body. Subdivisions containing lots less than 20 acres in size must also be reviewed and approved under Title 76, Chapter 4, MCA, by the DEQ.
- b. A grading and drainage plan as required by Section II-A-5(6) is subject to approval by the Public Works Director or Road Department Superintendent.
- Curbs and gutters or swales will be required based on the character of the area, density of c. development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended in conformance with current specifications of local and state authorities.
- d. Culverts and bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts and bridges must be constructed and installed according to applicable local and state standards. Culverts and other drainage facilities must be large enough to accommodate potential run-off from upstream drainage areas.
- The subdivider must provide suitable drainage facilities for any surface run-off affecting e. the subdivision. These facilities must be located in street rights-of-way or in perpetual easements of appropriate widths.
- f. Drainage systems must not discharge into any sanitary sewer facility.
- Drainage systems must be designed and certified by a professional engineer. g.
- h. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainageways or facilities. Drainage easements must be shown on the plat and a signed statement granting the easements must appear on the plat.

Water Supply Systems⁴⁸ VI-J.

For subdivisions that will create one or more parcels containing less than 20 acres, the a. proposed method of supplying domestic water to each lot in the subdivision must comply with the design standards adopted by the Montana DEQ and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.303, and 17.36.305. By this reference these DEO standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.

⁴⁸ Comment:

Local governments are required to adopt standards in their regulations that either meet DEQ's standards or those set forth in 76-3-604 and 76-3-622. The local governing body may adopt these standards by reference, as shown above, or may restate the standards in full in its local regulations. If the governing body wishes to adopt standards more stringent than comparable standards adopted by DEO, it must follow the requirements of section 76-3-511, MCA.

- b. The governing body may not approve the final plat of a subdivision containing lots of less than 20 acres in size, unless the subdivision has been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA.
- c. If the lots are 20 acres or greater in size, the subdivider shall demonstrate that there is an adequate water source on each lot prior to final plat approval.
- d. Any central water supply system must provide adequate and accessible water for fire protection.

VI-K. Sewage Treatment Systems

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of disposing of sewage from each lot in the subdivision must comply with the design standards adopted by the DEQ and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.312, and 17.36.320 through 17.36.326. By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. For subdivisions that will create one or more parcels containing less than 20 acres, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA before the governing body can approve the final plat.
- c. For subdivisions containing parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot before the governing body may approve the final plat.

VI-L. Solid Waste

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of must comply with the standards adopted by the DEQ and contained in the Administrative Rules of Montana (ARM) 17.36.309. By this reference this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- c. Before the governing body will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by the DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act sections 76-4-101, *et seq.*, MCA.
- c. For subdivisions that will create one or more parcels containing 20 acres ore more and less than 160 acres, the proposed method of storing and disposing of solid waste generated within the subdivision in the subdivision must comply with the local environmental health department regulations.

VI-M. Utilities

- a. The subdivider must provide adequate and appropriate easements for the construction and maintenance of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.
- b. Utilities must be placed underground, wherever practical. Underground utilities, if placed in a street right-of-way, must be located between the roadway and the right-of-way line to simplify location and repair of lines. Underground facilities must be installed after the street has been brought to grade and before it is surfaced.
- c. Where practical, overhead utility lines must be located at the rear property line.
- d. Utility facilities must be designed by utility firms in cooperation with the subdivider. These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities.
- e. Utility easements located between adjoining lots must be centered on lot lines. If easements are placed in the street, they must be located between the roadway and the right-of-way line.
- f. Utility easements must be 15 feet wide unless otherwise specified by a utility company or governing body.
- g. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, or local or state highway department.
- h. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat:

"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement' to have and to hold forever."

VI-N. Water Course and Irrigation Easements

- a. Except as noted in subsection (b), below, the subdivider shall establish within the subdivision ditch easements that:
 - i. are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

- ii. are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
- iii. prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- b. The subdivider need not establish irrigation easements as provided above if:
 - i. the average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
 - ii. the water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land; and
 - iii. the fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.
- c. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the county clerk and recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of 10 feet is required on each side of irrigation canals and ditches for maintenance purposes.

VI-O. Disposition of Water Rights

If a subdivision will create lots averaging less than five acres in size, the subdivider shall submit evidence with the final plat that the subdivider has:

- a. reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserved and severed any remaining surface water rights from the land;
- b. if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

c. reserved and severed all surface water rights from the land proposed for subdivision.

VI-P. Park Land Dedication – Cash in Lieu – Waivers -- Administration⁴⁹

- a. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:
 - i. 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller:
 - ii. 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;
 - iii. 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
 - iv. 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.
- b. A park dedication is not required for:
 - i. minor subdivisions;
 - ii. subdivision lots larger than five acres;
 - iii. nonresidential subdivision lots;
 - iv. subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
 - v. subdivisions which will create only one additional parcel.
- c. The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
- d. The governing body will waive the park dedication requirement if it determines that:

⁴⁹ Comment: As provided in 76-3-621(2), MCA, if a proposed subdivision will be located entirely within an area for which the governing body has established density requirements in an adopted growth policy or zoning regulations, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or zoning regulations. These requirements are in lieu of those provided in subsection a., below, and may not exceed 0.03 acres per dwelling unit.

- i. A. the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and
 - B. the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection VI-P (a);
- ii A. the proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and
 - B. the provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under subsection VI-P(a) above;
- iii. the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (d)(i) and (ii) above, is reduced by an amount equal to or exceeding the area of the dedication required under subsection VI-P(a); or
- iv. A. the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and
 - B. the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection VI-P(a).
- e. The local governing body may waive the park dedication requirement if:
 - i. the subdivider provides land outside the subdivision that affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
 - ii. The area of land to be subject to long-term protection, as provided in subsection (e)(i), equals or exceeds the area of dedication required under subsection VI-P(a).
- f. Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under subsection VI-P(a) to a school district, adequate to be used for school facilities or buildings.
- g. The governing body will administer funds dedicated to the public under this section in accordance with 76-3-621, MCA.
- h. For the purposes of this park dedication requirement:
 - i. "cash donation" means the fair market value of the unsubdivided, unimproved land; and

ii. "dwelling unit" means a residential structure in which a person or persons reside.

VI-Q. Fire Protection⁵⁰

All subdivisions must be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit the effective and efficient suppression of fires in order to protect persons, property, and forested areas. Measures must include:

- a. The placement of structures so as to minimize the potential for flame spread and to permit adequate access for fire fighting equipment.
- b. The presence of adequate fire fighting facilities on site, including an adequate water supply and water distribution system.
- c. The availability, through a fire protection district or other means, of fire protection services adequate to respond to fires that may occur within a subdivision.

VI-R. Special Requirements for Subdivisions Proposed in Areas of High Fire Hazard

For areas identified as wildfire hazard areas by the United States Forest Service, the Montana Department of Natural Resources and Conservation, a local fire protection authority, or a local growth policy, the following apply:

- a. A Fire Prevention and Control Plan must accompany the submission of any application for preliminary plat approval.
- b. The Fire Prevention and Control Plan must include the following items:
 - i. an analysis of the wildfire hazards on the site, as influenced by existing vegetation and topography;
 - ii. a map showing the areas that are to be cleared of dead, dying, or severely diseased vegetation;
 - iii. a map of the areas that are to be thinned to reduce the interlocking canopy of trees;
 - iv. the identification of roads, driveways, and bridges that are sufficient for emergency vehicle access and fire suppression activities. Slopes of all roads and driveways must be provided.
- c. At least two entrances/exits must provide escape routes for residents and access to the subdivision by fire-fighting vehicles. Bridges providing access to the subdivision must be built to a design load of 20 tons and constructed of non-flammable materials. Road rights-of-way must be cleared of slash.

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⁵⁰ Comment:

In setting fire protection standards, local officials should consult the current edition of the <u>Uniform Fire</u> Code, International Fire Code Institute, and local fire codes.

- d. Building sites may not be located on slopes greater than 25 percent or at the apex of "fire chimneys" (topographic features, usually drainageways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).
- e. The Fire Prevention and Control Plan must be implemented before the governing body will approve the final plat, and will be considered part of the subdivider's obligations for land development. The local fire chief, or designee, will inspect and approve the implementation of the Fire Prevention and Control Plan. The Plan will not be considered fully implemented until the fire chief has given written notice to the planning board or subdivision administrator that the Plan has been completed as approved by the (planning board).
- f. Provisions for the maintenance of the Fire Prevention and Control Plan shall be included in the covenants, conditions, and restrictions for the development. A property owners' association must be formed and designated to enforce the covenants, conditions, and restrictions.
- g. Open space, park land, and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences and other buildings from densely forested areas.
- h. A water supply of sufficient volume for effective fire control must be provided in accordance with standards set by (the appropriate local fire protection authority).*
- * In the absence of such standards, the subdivider must at least provide the following for effective fire control:
 - a. A central water system with a minimum continuous flow of 1,000 gallons per minute; or
 - b. Cisterns, reservoirs or fill ponds:
 - i. For single dwelling units: minimum capacity of 2,500 gallons;
 - ii. For 6 or more dwelling units: minimum capacity of 500 gallons per dwelling unit.

VI-S. Noxious Weeds

A weed control plan shall be developed and implemented for every new subdivision. An agreement with the [name of county] Weed Control Board shall be signed and notarized by the subdivider, and the agreement must be recorded with the final plat.⁵¹

⁵¹ **Note:** The particular jurisdiction may add to this provision as local conditions warrant and the Weed Control Board requests.

VII. AREAS THAT WILL PROVIDE MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES - LAND SUBDIVISIONS CREATED BY RENT OR LEASE

VII-A. Definition

A subdivision created by rent or lease, including a mobile home/manufactured home or recreational vehicle park, is any tract of land divided by renting or leasing portions of it. The land is owned, however, as one parcel under single ownership (which can include a number of persons owning property in common). Plans, not plats, are submitted to the subdivision administrator for review. The plan shows spaces, not lots. The plan must comply with applicable zoning.

<u>VII-B.</u> <u>Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes⁵²</u>

a. <u>Recreational Camping Vehicles</u>

Developments which are subject to subdivision review because they will provide two or more spaces for recreational camping vehicles will be reviewed under section VII-F Recreational Vehicle Park Standards, below.

b. Mobile/Manufactured Homes

Developments which are subject to subdivision review because they will provide two or more spaces for mobile/manufactured homes will be reviewed under section VII-E Mobile/Manufactured Home Park Standards, below.

c. Subdivisions for Lease or Rent, Generally

- i. Land subdivision created by rent or lease will be reviewed under the procedures described in Section IV, Major Subdivisions, or Section III, Minor Subdivisions, as may be appropriate, except that the subdivider shall submit an unsurveyed final plan drawn to scale, rather than a final plat, following the Final Plat procedure in Section II.
- ii. Land subdivisions created by rent or lease are subject to the applicable standards contained in Section VI.

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⁵² Comment:

The MSPA defines the term "subdivision" to include areas, regardless of their size, that provide or will provide multiple spaces for recreational camping vehicles or mobile homes regardless of whether the spaces will be made available for rent by the general public for a fee. A development which is a subdivision under the MSPA because it will provide multiple spaces for recreational camping vehicles or mobile homes may also be subject to regulation by the Montana Department of Public Health and Human Services (DPHHS) under Title 50, Chapter 52, MCA, if it will be a "trailer court," "work camp," "youth camp," or "campground" as those terms are defined in section 50-52-102, MCA. If so, the governing body should condition its MSPA approval of the development on the subdivider's obtaining the appropriate license from DPHHS.

VII-C. Procedures for Review

VII-C-1. Review and Approval

Subdivisions which will provide multiple spaces for recreational camping vehicles or mobile homes and subdivisions created for rent or lease are exempt from the surveying and filing requirements of the MSPA. However, these subdivisions must be submitted for review and approved by the governing body before portions of the subdivision may be rented or leased.

a. Submittal

The subdivider shall submit a completed application in accordance with Section II-A-5 and a plan of the proposed development, conforming to the requirements for preliminary plats.

b. <u>Review</u>

The procedure used to review subdivisions for rent or lease will depend on the number of spaces within the proposed subdivision. Proposed subdivisions containing six or more spaces must be reviewed pursuant to Section IV of these regulations. Proposed subdivisions containing five or fewer spaces must be reviewed pursuant to Section III of these regulations. The subdivider shall submit to the subdivision administrator the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plan must show the space layout and the proposed location of the mobile home, recreational vehicle, or other unit on the land included in the plan.

VII-C-2. Improvements

The subdivider shall install all required improvements before renting or leasing any portion of the subdivision. The governing body or its agents will inspect all required improvements in order to assure conformance with the approved construction plans and specifications.

VII-C-3. Final Plan Review

In lieu of filing a final plat, the subdivider shall submit a final plan to the subdivision administrator complying with the requirements of Final Plats in Section II. The final plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be maintained in the (office of the city clerk, clerk and recorder, planning or other).

VII-C-4. DPHHS License

If a subdivision that will provide multiple spaces for recreational camping vehicles or mobile homes is also a "trailer court," "work camp," "youth camp," or "campground" as those terms are defined in section 50-52-102, MCA, the governing body will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the Montana Department of Public Health and Human Services under Title 50, Chapter 52, MCA.

VII-D. Design Standards for Subdivision Spaces Created by Rent or Lease

VII-D-1. Design Standards

Subdivisions created by rent or lease must comply with the provisions of Section VI.

VII-D-2. Additional Provisions

The governing body may require provision for:

- a. storage facilities on the lot or in compounds located within a reasonable distance;
- b. a central area for storage or parking of boats, trailers, or other recreational vehicles;
- c. landscaping or fencing to serve as a buffer between the development and adjacent properties;
- d. an off-street area for mail delivery; and
- e. street lighting.

VII-E. Mobile/Manufactured Home Park Standards

VII-E-1. Mobile/Manufactured Home Spaces

- a. Mobile/manufactured home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.
- b. All mobile/manufactured homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines of the park.
- c. The mobile/manufactured home pad must be located at least 10 feet from the street that serves it.
- d. The size of the mobile/manufactured home pad must be suitable for the general market to be served and must fit the dimensions of mobile/manufactured homes anticipated.
- e. A mobile/manufactured home pad may not occupy more than one-third (1/3) of the area of its space. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space.
- f. The governing body may require that the mobile/manufactured home pad be improved to provide adequate support for the placement and tie-down of the mobile home.
- g. No mobile/manufactured home or its attached structures, such as awnings and carports, may be located within 20 feet of any other mobile home or its attached structures.
- h. No detached structure, such as a storage shed, may be located within five feet of any mobile/manufactured home or its attached structures.

- i. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile/manufactured home space. The driveway must be located to allow for convenient access to the mobile/manufactured home, and be a minimum of 10 feet wide.
- j. One guest parking space must be provided for each 10 mobile/manufactured home spaces. Group parking may be provided.
- k. The limits of each mobile/manufactured home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground must be approximately the same as those shown on the approved plans. Precise engineering of space limits is not required either on the plans or on the ground.
- 1. Each mobile/manufactured home must be skirted within 30 days after it is moved to a space within the mobile/manufactured home park. The skirting must be of a fire-resistant material similar to that of the mobile/manufactured home exterior.

VII-E-2. Streets

Streets within a mobile/manufactured home park must meet the standards specified in Section VI-H Streets and Roads. Streets must be designed to allow safe placement and removal of mobile homes.

- a. Streets must be designed to provide safe access to public roads.
- b. Roads within the mobile/manufactured home park must be designed to provide safe traffic circulation and parking.
- c. One-way roads must be at least 15 feet wide; two-way roads must be at least 24 feet wide.

VII-E-3. Electrical Systems

Electrical systems must be designed and installed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installations must be designed and constructed in accordance with the applicable state electrical standards.

VII-E-4. Gas Systems

- a. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the applicable provisions of the "National Fuel Gas Code" (NFPA Pamphlet 54-1981) and the "Standard for the Storage and Handling of Liquefied Petroleum Gases" (NFPA Pamphlet 58-1981).
- b. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquefied petroleum gas container.

c. Each mobile/manufactured home lot must have an accessible, listed gas shutoff installed. This valve must not be located under a mobile home. Whenever the mobile home lot gas outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

VII-F. Recreational Vehicle Park Standards

VII-F-1. Recreational Vehicle Spaces

- a. Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic and access to spaces.
- b. Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking.
- c. Recreational vehicles must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.
- d. No recreational vehicle space may be located less than 25 feet from any public street or highway right-of-way.

VII-F-2. Density

The density of a recreational vehicle park must not exceed 25 recreational vehicle spaces per acre of gross site area.

VIII. PLANNED UNIT DEVELOPMENTS

VIII-A. Purpose

The purpose of this section is to provide flexibility in applying certain subdivision standards, allowing the subdivider creativity in subdivision design. Section 76-3-103(10), MCA defines a planned unit development as "a land development project consisting of residential clusters, industrial parks, shopping centers or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use."

VIII-B. Procedures

If the governing body designates a proposed development plan as a PUD, the preliminary plat may then be submitted for review. Submittal must comply with requirements and procedures contained in the following Sections:

- IV. Major Subdivisions
- II-B Applicable sections for Final Plats

VIII-C. Standards

VIII-C-1. Design Standards⁵³

PUDs must comply with the standards contained in Section VI Design and Improvement Standards. However, the governing body may modify the design and improvement standards contained in Section VI-F Lots, Section VI-G Blocks, Section VI-H Streets and Roads, and Section VI-P Park Land Dedication upon request of the subdivider when the plan for a PUD includes provisions for efficient traffic circulation, adequate light, air, and open space. In such cases, no application for a variance under Section XI-B Variances of these regulations is necessary.

VIII-C-2. Streets

The arrangement, type, extent, width, grade and location of all streets must be considered in their relation to existing and planned streets, to topographical conditions, and to public convenience and safety.

VIII-C-3. Open Space

Each PUD must comply with the requirements of Section VI-P(d) of these regulations. The open space must be:

The local government may grant exceptions to the design standards contained in Section VI of these regulations when proposed PUDs include provisions for efficient traffic circulation, adequate light, air and open space. These subdivision regulations must state the circumstances under which modified design standards will be approved.

⁵³ Comment: Exceptions

- a. Owned by a property owners' association; or
- b. Dedicated to public use, if acceptable to the governing body; or
- c. A combination of (a) and (b) above.

The governing body may waive dedication or cash donation requirements when the subdivider agrees to create a property owners' association for the proposed subdivision and deed to the association land to be held in perpetuity for use as parks or playgrounds.

IX. CONDOMINIUMS

IX-A. Procedures

Unless exempted by section 76-3-203, MCA, all condominium developments are subdivisions subject to the terms of the MSPA as follows:

IX-A-1. Review Where Land Will Not be Divided

If no division of land will be created by a condominium subdivision, the subdivision must be reviewed under the procedures contained in Section VII, Subdivisions Created by Rent or Lease, with the following exception: final approval will not be given until the subdivider has either installed all required improvements, or has entered into a subdivision improvements agreement pursuant to Section II-B-4 Public Improvements Agreement; Guaranty.

IX-A-2. Condominium Subdivisions Involving Land Divisions

If a proposed condominium development will involve a division of land, the subdivision must be reviewed under the procedures contained in Sections:

IV-A Review and Approval Procedures for Major Subdivisions

II-B Applicable sections for Final Plats.

IX-B. Standards

IX-B-1. Design Standards

Condominium developments must comply with applicable standards contained in Section VI, Design and Improvement Standards.

IX-B-2. Unit Ownership Act

Condominium developments must comply with all provisions of the Unit Ownership Act, Sections 70-23-102 through 70-23-703, MCA.

X. CLUSTER DEVELOPMENT 54

The [governing body] has adopted a growth policy that meets the requirements of 76-1-601, MCA, and further adopts the following to promote cluster development and preserve open space.

X-A. Cluster Development, Option I

- a. As authorized by 76-3-509, MCA, the following apply to subdivisions proposed under this section:
 - i. An area of open space must be preserved that is at least as large as the area that will be developed.
 - ii. Open space must be preserved through an irrevocable conservation easement, granted in perpetuity as provided in Title 76, Chapter 6, prohibiting further subdivision of the parcel.
 - iii. Unless the subdivision will be provided with community sewer or water, each lot in the cluster must be a minimum of one acre.
 - iv. Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a cluster development.
 - v. The maximum number of parcels permissible in a cluster development is the maximum number of parcels that are authorized by the administrative rules adopted by the DEQ under Title 76, Chapter 4, MCA.
 - vi. The maximum size of parcels allowed within a cluster development is () acres.
- b. Park dedication requirements for clustered subdivisions created under this section are waived.

X-B. Cluster Development, Option II

- a The following apply to cluster developments created under this option:
 - i. The development must preserve an area of open space that is at least as large as the area that will be developed.
 - ii. The proposal must provide a mechanism for the maintenance of the open space in perpetuity. The open space may be dedicated to a homeowners' association for the purpose of maintenance, and may be used for agricultural or other purposes that enhance the preserved area.
 - iii. Unless the subdivision will be served by a community sewer or water system, each lot in the cluster must be a minimum of one acre in size.

⁵⁴ **Note:** These options are examples, only. Refer to 76-3-509, MCA, and Supplement 4 of Alternative Provisions and Processes for other provisions. The law provides for an expedited review, if it is desired.

- iv. Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a cluster development.
- b. Park dedication requirements are waived for clustered subdivisions created under this section.

XI. ADMINISTRATIVE PROVISIONS

XI-A. Fee Schedule⁵⁵

XI-A-1. Preliminary Plat Review

To cover costs of reviewing plans, advertising, holding public hearings, and other activities associated with the review of a subdivision proposal, the subdivider shall pay a non-refundable fee at the time of application for preliminary plat approval. The fees, payable to the county (or city) treasurer or planning department, are as follows:

Number of Proposed Lots or Dwelling Units	<u>Fee</u>
1-5 (first minor subdivisions)	<u>(\$)</u>
6 or more (major subdivisions)	
or subsequent minor subdivisions	(\$) plus (\$) per lot
Expedited subsequent minors	(\$)

XI-A-2. Other Reviews

Exemptions (Not to exceed \$200)

Mobile/Manufactured Home Parks and Spaces (Could be based on number of spaces)

Condominiums (Could be based on number of units).

XI-A-3. Final Plat Review and Inspection

To cover the cost of on-site inspection of the subdivision and review of the final plat and supplementary materials, the subdivider shall pay a non-refundable fee at the time of application for final approval to the county (or city) treasurer or planning department at the following rate:

<u>(\$)</u>

⁵⁵ Comment: Fee schedules

The governing body should develop and adopt fee schedules based on actual subdivision review and processing costs. Fees may include a review fee for Subdivision Improvements Agreements, Homeowners' Association documents, amending an application or plat, etc. Local governments may prefer to establish a fee schedule through a separate ordinance, and include it by reference rather than stating the fee schedule in the body of the regulations.

XI-B. Variances

XI-B-1. Variances Authorized

The governing body may grant variances from Section VI, Design and Improvement Standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations.

The governing body will not approve a variance unless it finds that:

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
- b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self imposed;
- c. The variance will not cause a substantial increase in public costs; and
- d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

XI-B-2. Variances from Floodway Provisions Not Authorized

The governing body will not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA.

XI-B-3. Procedure

The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The planning board will consider the requested variance and recommend its approval or denial to the governing body.

XI-B-4. Conditions

In granting variances, the governing body may impose reasonable conditions to secure the objectives of these regulations.

XI-B-5. Statement of Facts

When a variance is granted, the motion to approve the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

XI-C. Amendment of Regulations

Before the governing body amends these regulations it will hold a public hearing on the proposed amendment. Notice of the time and place of the public hearing must be published in a newspaper of general circulation in the county not less than 15 days or more than 30 days before the date of the hearing.

XI-D. Administration

XI-D-1. Enforcement

Except as provided in 76-3-303, MCA, and these regulations, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. If unlawful transfers are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the MSPA and these regulations. The cost of this action shall be imposed against the party not prevailing.

XI-D-2. Violation and Penalties

Any person, firm, corporation, or other entity who violates any of the provisions of the MSPA or these regulations is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of the MSPA or these regulations shall be deemed a separate and distinct offense.

XI-D-3. Appeals

- a. A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.
- b. A party identified in subsection (d) below who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.
- c. For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.
- d. The following parties may appeal under the provisions of subsection (b) above:
 - i. the subdivider;

- ii. a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
- iii. the county commissioners of the county where the subdivision is proposed; and
- iv. one of the following municipalities:
 - A. a first-class municipality as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;
 - B. a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits;
 - C. a third-class municipality, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

APPENDIX A UNIFORM STANDARDS FOR MONUMENTATION, CERTIFICATES OF SURVEY, AND FINAL SUBDIVISION PLATS

24.183.1101 UNIFORM STANDARDS FOR MONUMENTATION

- 1. The following standards govern the monumentation of land surveys:
 - a. The terms "monument" and "permanent monument" as used in these regulations mean any structure of masonry, metal or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.
 - b. All metal monuments must be at least one-half inch in diameter and 18 inches in length with a cap not less than 1 inch in diameter marked in a permanent manner with the license number of the surveyor in charge of the survey and either the name of the surveyor or the company employing the surveyor. Metal monuments marking a public land survey corner as described in 70-22-101, MCA, must be at least 24 inches long and 5/8 inch in diameter with an appropriately stamped metal cap at least 2 inches in diameter. A monument marking a public land survey corner may also consist of a cap as described in this rule set firmly in concrete.
 - c. Before a subdivision plat or certificate of survey may be filed for record the surveyor shall confirm the location of as many monuments as, in the surveyor's professional judgment, are necessary to reasonably assure the perpetuation of any corner or boundary established by the survey and to enable other surveyors to reestablish those corners and boundaries and retrace the survey. The surveyor shall clearly identify on the face of the plat or certificate of survey all monuments pertinent to the survey, and the descriptions of these monuments must be sufficient to identify the monuments.
 - d. The surveyor shall set all monuments prior to the filing of a plat or certificate of survey except those monuments that will be disturbed by the installation of improvements or that, because of severe weather conditions, may, in the surveyor's judgment, be more appropriately and accurately set after the weather has improved. In these two circumstances the surveyor may set monuments after the survey document is filed if the surveyor certifies on the survey document that the monuments will be set by a specified date. The surveyor shall set monuments, the placement of which has been deferred because of severe weather conditions, within 240 days of the date on which the survey document was filed.
 - i. If during the later monumentation of the corners of a plat or certificate of survey that were not monumented before the plat or certificate was filed, the surveyor finds that it is necessary to set a reference monument to a corner, the surveyor shall prepare and file an amended certificate of survey or subdivision plat.
 - ii. The failure of the surveyor to set the monuments by the date certified on the record of survey will be deemed a violation of these rules.
 - e. The surveyor shall set monuments at the following locations:
 - i. At each corner and angle point of all lots, blocks and parcels of land created by the survey.

- ii. At every point of intersection of the outer boundary of a subdivision with an existing road right-of-way line of record or a road right-of-way line created by the survey.
- iii. At every point of curve, point of tangency, point of reversed curve, point of compounded curve and point of intersection on each road right-of-way line created by the survey.
- iv. At the intersection of a boundary line and a meander line. Meander line angle points need not otherwise be monumented.
- f. If the placement of a required monument at its proper location is physically impractical, the surveyor may set a reference or witness monument. This monument has the same status as other monuments of record if its location is properly shown. If the surveyor relies upon any existing monument in conducting a survey, he or she shall confirm the location of the monument and show and describe it on the resulting certificate of survey or subdivision plat.

24.183.1104 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY

- 1. A certificate of survey may not be filed by a county clerk and recorder unless it complies with the following requirements:
 - a. A certificate of survey must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches, or 24 inches by 36 inches, overall to include a 1 ½ inch margin on the binding side.
 - b. One signed copy on cloth-backed material or on 3 mil or heavier matte stable-base polyester film or equivalent and one signed reproducible copy on a stable-base polyester film or equivalent must be submitted.
 - c. If more than one sheet must be used to adequately depict the land surveyed, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed or referred to on one sheet.
 - d. A certificate of survey must show or contain on its face or on separate sheets referred to on its face the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.
 - i. A title or title block including the quarter-section, section, township, range, principal meridian and county, and, if applicable, city or town in which the surveyed land is located. Except as provided in (1)(f)(v), a certificate of survey must not bear the title "plat," "subdivision" or any title other than "Certificate of Survey."
 - ii. The name(s) of the person(s) who commissioned the survey and the names of any adjoining platted subdivisions and the numbers of any adjoining certificates of survey previously filed.
 - iii. The date the survey was completed and a brief explanation of why the certificate of survey was prepared, such as to create a new parcel, retrace a section line or retrace an existing parcel of land.

- iv. A north arrow.
- v. A scale bar. (The scale must be sufficient to legibly represent the required information and data.)
- vi. The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 24.183.1101(1)(c).
 - A. If additional monuments are to be set after the certificate of survey is filed, these monuments must be shown by a distinct symbol, and the certificate of survey must bear a certification by the surveyor as to which they will be set.
 - B. All monuments found during a retracement that influenced the position of any corner or boundary indicated on the certificate of survey must be clearly shown as required by ARM 24.183.1101(1)(c).
- vii. The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the survey.
- viii. Witness and reference monuments and basis of bearings. For purposes of this rule the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown in the certificate of survey. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the certificate of survey shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.
- ix. The bearings, distances and curve data of all boundary lines. If the parcel surveyed is bounded by an irregular shoreline or a body of water, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.
 - A. The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel that has one or more riparian boundaries as the parcel existed at the time of survey.
 - B. For purposes of this rule a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.
- x. Data on all curves sufficient to enable the re-establishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For non-tangent curves, which must be so labeled, the certificate of survey must include the bearings of radial lines or chord length and bearing.
- xi. Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.
- xii. A narrative legal description of the parcel surveyed as follows:

- A. If the parcel surveyed is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.
- B. If the survey depicts the retracement or division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the parcel or lot number of the parcel surveyed.
- C. If the parcel surveyed does not fall within (1)(d)(xii)(A) or (B), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the parcel surveyed.
- D. If the certificate of survey establishes the boundary of a parcel containing one or more interior parcels, the information required by this subsection is the legal description of the encompassing parcel.
- E. The requirement of this rule does not apply to certificates of survey that depict a partial retracement of the boundaries of an existing parcel or establish the location of lines or corners that control the location of an existing parcel.
- xiii. Except as provided by (1)(f)(iv), all parcels created by the survey, designated by number or letter, and the dimensions and area of each parcel. (Excepted parcels must be marked "Not included in this survey.") If a parcel created by the survey is identifiable as a 1/32 or larger aliquot part of a U.S. government section or as a U.S. government lot, it may be designated by number or letter or by its aliquot part or government lot identification.
- xiv. The location of any easement that will be created by reference to the certificate of survey.
- xv. The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the certificate of survey has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3- 625, MCA) and the regulations adopted under that Act.
- xvi. A memorandum of any oaths administered under 76-3-405, MCA.
- xvii. Space for the county clerk and recorder's filing information.
- e. Certificates of survey that do not represent a division of land, such as those depicting the retracement of an existing parcel and those prepared for informational purposes, must bear a statement as to their purpose and must meet applicable requirements of this rule for form and content.
- f. Procedures for divisions of land exempted from public review as subdivisions. Certificates of survey for divisions of land meeting the criteria set out in 76-3-207, MCA, must meet the following requirements:
 - i. A certificate of survey of a division of land that would otherwise be a subdivision but that is exempted from subdivision review under 76-3-207, MCA, may not be

filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and citing the applicable exemption.

- ii. If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it bears a signed and acknowledged recitation of the covenant.
- iii. If a certificate of survey invokes the exemption for gifts and sales to members of the landowner's immediate family, the certificate must indicate the name of the proposed grantee, the relationship of the grantee to the landowner and the parcel to be conveyed to the grantee.
- iv. If a certificate of survey invokes the exemption for the relocation of common boundary lines:
 - A. The certificate of survey must bear the signatures of all landowners whose parcels will be altered by the proposed relocation. The certificate of survey must show that the exemption was used only to change the location of or eliminate a boundary line dividing two or more parcels, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation);
 - B. The certificate of survey must show the boundaries of the area that is being removed from one parcel and joined with another parcel. The certificate of survey may, but is not required to, establish the exterior boundaries of the resulting parcels. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation:
 - C. If a boundary line will be completely eliminated, the certificate must establish the boundary of the resulting parcel.
- v. A survey document that modifies lots in a platted and filed subdivision and invokes an exemption from subdivision review under 76-3-201 or 76-3-207(1)(d) or (e), MCA, must be entitled "amended plat of the (name of subdivision)," but for all other purposes is to be regarded as a certificate of survey. The document must contain a statement signed by the property owner that approval of the local government body is not required and citing the applicable exemption.
- vi. If the certificate of survey invokes an exemption from subdivision review under 76-3-207, MCA, the certificate of survey must bear, or be accompanied by, a certification by the county treasurer that all taxes and special assessments assessed and levied on the surveyed land have been paid.
- vii. For purposes of (1)(f), when the parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner", "landowner" and "owner" mean the seller of the parcel under the contract-for-deed.

g. Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Act. The divisions of land described in 76-3-201, 76-3-205 and 76-3-209, MCA, and divisions of federally owned land made by a United States government agency are not required to be surveyed, nor must a certificate of survey or subdivision plat showing these divisions be filed with the clerk and recorder. A certificate of survey of one of these divisions may, however, be filed with the clerk and recorder if the certificate of survey meets the requirements for form and content for certificates of survey contained in this rule and bears a certificate of the surveyor performing the survey citing the applicable exemption from the Act or, when applicable, that the land surveyed is owned by the federal government.

24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

- 1. A final subdivision plat may not be approved by the governing body or filed by the county clerk and recorder unless it complies with the following requirements:
 - a. Final subdivision plats must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches or 24 inches by 36 inches overall to include a 1 1/2-inch margin on the binding side.
 - b. One signed copy on cloth-backed material or on 3 mil or heavier matte stable-base polyester film or equivalent and one signed reproducible copy on a stable-base polyester film or equivalent must be submitted.
 - c. If more than one sheet must be used to adequately depict the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed or referred to on one sheet.
 - d. A survey that modifies a filed subdivision plat must be entitled "amended plat of (lot, block and name of subdivision being amended.," and unless it is exempt from subdivision review by 76- 3-201 or 76-3-207(1)(d) or (e), MCA, may not be filed with the county clerk and recorder unless it meets the filing requirements for final subdivision plats specified in this rule.
- 2. A final plat submitted for approval must show or contain, on its face or on separate sheets referred to on the plat, the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.
 - a. A title or title block indicating the quarter-section, section, township, range, principal meridian, county and, if applicable city or town, in which the subdivision is located. The title of the plat must contain the words "plat" and either "subdivision" or "addition".
 - b. The name of the person(s) who commissioned the survey and the name(s) of the owner of the land to be subdivided if other than the person(s) commissioning the survey, the names of any adjoining platted subdivisions, and the numbers of any adjoining certificates of survey previously filed.
 - c. A north arrow.
 - d. A scale bar. (The scale must be sufficient to legibly represent the required information and data on the plat.)

- e. The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 24.183.1101(1)(c).
 - i. If additional monuments are to be set after the plat is filed, the location of these monuments must be shown by a distinct symbol, and the plat must bear a certification by the surveyor as to the reason the monuments have not been set and the date by which they will be set.
 - ii. All monuments found during a retracement that influenced the position of any corner or boundary indicated on the plat must be clearly shown as required by ARM 24.183.1101(1)(c)
- f. The location of any section corners or corners of divisions of sections pertinent to the survey.
- g. Witness and reference monuments and basis of bearings. For purposes of this rule the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown on the plat. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the plat shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.
- h. The bearings, distances and curve data of all boundary lines. If the subdivision is bounded by an irregular shoreline or body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.
 - i. The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel with one or more riparian boundaries as the parcel existed at the time of survey.
 - ii. For purposes of these regulations a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.
- i. Data on all curves sufficient to enable the re-establishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For non-tangent curves, which must be so labeled, the plat must include the bearings of radial lines or chord length and bearing.
- j. Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.
- k. The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the subdivision.
- 1. All lots and blocks in the subdivision, designated by number, the dimensions of each lot and block, the area of each lot, and the total acreage of all lots. (Excepted parcels must be marked "Not included in this subdivision" or "Not included in this plat," as appropriate, and the bearings and lengths of these excepted boundaries must be shown.)
- m. All streets, alleys, avenues, roads and highways; their widths (if ascertainable) from public records, bearings and area; the width and purpose of all road rights-of-way and all

- other easements that will be created by the filing of the plat; and the names of all streets, roads and highways.
- n. The location, dimensions and areas of all parks, common areas and other grounds dedicated for public use.
- o. The total acreage of the subdivision.
- p. A narrative legal description of the subdivision as follows:
 - i. If the parcel being subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.
 - ii. If the plat depicts the division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the number of the parcel or lot affected by the survey.
 - iii. If the parcel surveyed does not fall within (2)(p)(i) or (ii), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision.
 - iv. If the plat establishes the boundaries of a subdivision containing one or more interior parcels, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.
- q. The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act.
- r. A memorandum of any oaths administered under 76-3-405, MCA.
- s. The dated, signed and acknowledged consent to the subdivision of the owner of the land being subdivided. For purposes of this rule when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "owner" and "owner of the land" refers to the seller under the contract-for-deed.
- t. Certification by the governing body that the final subdivision plat is approved.
- u. Space for the clerk and recorder's filing information.
- 3. The following documents must appear on the face of or accompany the approved final plat when it is presented to the county clerk and recorder for filing:
 - a. If applicable, the owner's certificate of dedication of streets, parks, playground easements or other public improvements.
 - b. If applicable, a certificate of the governing body expressly accepting any dedicated land, easements or improvements. An acceptance of a dedication is ineffective without this certification.

- c. A certificate of a title abstractor showing the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.
- d. Copies of any covenants or deed restrictions relating to the subdivision.
- e. If applicable, a certificate from the state department of environmental quality stating that it has approved the plans and specifications for water supply and sanitary facilities.
- f. A certificate from the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvement to be installed.
- g. Unless otherwise provided by local subdivision regulations, copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed or file them with a government official other than the county clerk and recorder, or both.
- h. If applicable, the certificate of the examining land surveyor.
- i. If a street created by the plat will intersect with a state highway, a copy of the state highway access or encroachment permit.
- j. The certification of the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

ADMINISTRATIVE MATERIALS "A"

SUBDIVISION PLAT APPLICATION

PART I GENERAL DESCRIPTION AND INFORMATION

1.	Nam	Name of the proposed subdivision				
2.	Loca Lega	ocation (City and/or County)egal description:1/41/4 of Section TownshipRange				
3.	Type	of water supply system:				
	a.	Individual surface water supply from spring				
	b.	Multiple-family water supply system (3-14 connections and fewer than 25 people)				
	c.	Service connection to multiple-family system				
	d.	Service connection to public system				
	e.	Extension of public main				
	f.	New public system				
	g.	Individual well				
4.	Туре	Type of wastewater treatment system:				
	a.	Individual or shared on-site septic system				
	b.	Multiple-family on-site system (3-14 connections and fewer than 25 people)				
	c.	Service connection to multiple-family system				
	d.	Service connection to public system				
	e.	Extension of public main				
	f.	New public system				
5.	Nam	Name of solid waste garbage disposal site and hauler:				
6.		Formation included which substantiates that there will be no degradation of state waters or degradation will be nonsignificant?				
8.	Desc	riptive Data:				
	a.	Number of lots or rental spaces				

	b.	Total acreage in lots being reviewed	
	c.	Total acreage in streets or roads	
	d.	Total acreage in parks, open space, and/or common facilities	
	e.	TOTAL gross acreage of subdivision	
	f.	Minimum size of lots or spaces	
	g.	Maximum size of lots or spaces	
€.		ate the proposed use(s) and number of lots or spaces in each:	
		Residential, single family	
		Residential, multiple family	
		Types of multiple family structures and numbers of each (e.g. duplex)	
		Planned Unit Development (Number of units)	
		Condominium (Number of units)	
		Mobile Home Subdivision (Number of spaces)	
		Recreational Vehicle Subdivision (Number of spaces)	
		Commercial or Industrial	
		Other (please describe)	
10.	Provi	de the following information regarding the development:	
	a.	Current land use	
	b.	Existing zoning or other regulations	
	c.	Depth to ground water at the time of year when water table is nearest to the natural ground surface within the drainfield area	
	d.	Depth to bedrock or other impervious material in the drainfield area	
	e.	If a tract of land is to be subdivided in phases, an overall development plan indicating intent for the development of the remainder of the tract.	
	f.	Drafts of any covenants and restrictions to be included in deeds or contracts for sale. Drafts of homeowners' association bylaws and articles of incorporation, if applicable. (Submitting a draft copy of a homeowners' association bylaws and articles of incorporation is adequate for DEQ to initiate and complete its review of sanitary facilities, but a copy of the fully executed documents must be submitted before DEQ can issue final approval.)	

g.	Indicate whether the mineral rights have Yes No	ive been severed from the property:		
h.	Indicate whether water rights have be Yes No	en severed from the property:		
11.	Is the applicant claiming an exer regulations from the requirement to p	nption under Section IV-A-1 of the subdiverpare an environmental assessment?	vision	
Yes	No			
Name, address	s, and telephone number of designated r	epresentative, if any (e.g., engineer, surveyor).		
Name		Phone		
Address (Stree	et or P.O. Box, City, State, Zip Code)			
Name, address	s, and telephone number of owner(s).			
Name		Signature of owner		
Address (Stree	et or P.O. Box, City, State, Zip Code)			
Date		Phone		
Name, address	s, and telephone number of subdivider is	f different than owner(s).		
Name		Signature of subdivider		
Address (Stree	et or P.O. Box, City, State, Zip Code)			
Date		Phone		

The application must be signed by the owner of the land proposed for subdivision or the responsible officer of the corporation offering the same for sale.

PART II PRELIMINARY PLAT FORM, CONTENTS AND SUPPLEMENTS

1. Preliminary Plat Subdivision Application Form:

The subdivider shall submit a completed subdivision application form that is signed by the landowner(s) of record.

2. Preliminary Plat Review Fee:

The subdivider shall submit the required review fee as identified in the pre-application meeting and in Section XI-A of the subdivision regulations.

3. Preliminary Plat Form, Contents, and Supplements:

The subdivider shall submit an 11" by 17" and an 18" by 24" (or 24" by 36") preliminary plat completed by a land surveyor.

The following information must be provided on the preliminary plat or in supplements to the preliminary plat:

- a. The subdivision or development name (the title must contain the words "plat" and/or "subdivision")
- b. The legal description, including Section, Township, and Range, and any underlying survey data;
- c. A north arrow;
- d. The scale used on the plat;
- e. The certification of a professional land surveyor;
- f. The certification of a professional engineer (if the preliminary plat application or data includes engineering plans or specifications);
- g. The names of all owners of record and the subdivider [if different from the owner(s)];
- h. The date the preliminary plat is completed;
- i. Proposed lot layout with approximate dimensions and sizes;
- j. Lots and blocks identified by number or letter;
- k. The use of each lot, if other than for single-family residential;
- 1. The exterior boundaries of the parcel proposed for subdivision with bearings, distances, and curve data indicated outside of the boundary lines. When the plat is bounded by an irregular shoreline or body of water, the bearings and distances of a closing meander traverse shall be given;
- m. All existing streets, roads, highways, avenues, alleys, and/or access easements within or adjacent to the subject property;
- n. All proposed streets, roads, alleys, avenues, and easements; the width of the easement or right-of-way, grades, curvature of each;
- o. Existing and proposed road and street names;
- p. Proposed location of intersections for any subdivision requiring access to state or local streets, roads, avenues, alleys, or highways;
- q. The names of adjoining platted subdivisions and recording information from adjoining subdivisions, certificates of survey, or unplatted lands;
- r. The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary;
- s. Approximate area, location, boundaries, and dimensions of all parks, common grounds, and other grounds dedicated for public use;
- t. The total gross area of the subdivision and the total net area, exclusive of public areas and rights-of-way;
- u. Existing and proposed infrastructure and proposed utilities including:
 - i. The approximate location, size, and depth of existing and proposed sanitary and storm sewers:

- ii. The approximate location, size, and depth of existing and proposed water mains, lines, wells, and facilities; and
- iii. The approximate locations of gas lines, fire hydrants or firefighting water storage facilities, electric and telephone lines, and street lights.
- 4. A vicinity sketch showing:
 - a. The approximate locations of all existing buildings, structures, and other improvements;
 - b. Ownership of lands immediately adjoining a subdivision, and existing buildings, structures and other improvements on those lands; and
 - c. Any existing or proposed zoning of the tract and adjacent lands, if applicable.
- 5. A topographic map:
 - a. For any land area which will be subdivided or disturbed, contour intervals of 2' where the average slope is less than 10%; intervals of five feet where the average slope is greater than 10% and less than 15%; and intervals of ten feet where the average slope is 15% or greater.
 - b. Slopes greater than 25% shall be shown as no-build zones.
- 6. A grading and drainage plan that includes:
 - a. Proposed grades of all streets and roads;
 - b. Proposed drainage facilities for all lots, blocks, and other areas displaying accurate dimensions, courses, and elevations;
 - c. Existing and proposed contours, using the contour requirements of a topography map;
 - d. Graded slopes;
 - e. Calculations for a ten year frequency one-hour storm and a method to mitigate adverse impacts for a 100-year frequency one-hour storm; and
 - f. Construction procedures, slope protection, or information describing the ultimate destinations of storm runoff used to minimize erosion; and
 - g. Slope Stability Report shall be completed if the proposed subdivision includes areas with the potential for landsliding or slope instability. The report must be completed by a qualified soil or geotechnical engineer and indicate the locations, character, and extent of all areas of all slope stability, and these areas shall be shown on the plat.
- 7. Engineering plans for all public and private improvements;
- 8. Overall development plan and if the improvements are to be completed in phases, the approximate area of each phase shall be shown on the plat.
- 9. Abstract of Title (or Title Report) dated not more than 90 days prior to the date of submittal;
- 10. Lienholders' Acknowledgement of Subdivision for each lienholder identified on the Abstract of Title or Title Report;
- 11. Documentation of legal and physical access;
- 12. Documentation of existing easements, including those for Agricultural Water User Facilities;
- 13. Existing covenants and deed restrictions;
- 14. Existing water rights;
- 15. Existing mineral rights;
- 16. Names and addresses of all adjoining property owners;
- 17. A proposed road plan and profile that includes:
 - a. Street names.
 - b. Right-of-way or easement widths;
 - c. Pavement widths;
 - d. Street grades;
 - e. Pavement and base thickness;
 - f. Typical cross sections for each type of road;
 - g. Road profiles and cross sections for all proposed streets and roads which have grades exceeding 5%, or cuts and fills exceeding 3'.
 - h. The type and location of sidewalks and curbs (where required);
 - i. The minimum site distances at corners:
 - j. The minimum curb radiuses at corners;

- k. For cul-de-sac streets:
 - i. widths of turn around radiuses:
 - ii. minimum right-of-way widths at the turnarounds;
 - iii. minimum pavement or road surface width at the turnarounds;
 - iv. total lengths of the streets.
- 1. The locations and characteristics of bridges and culverts;
- m. The locations and dimensions of adjoining lots and open spaces;
- n. The locations and widths of easements and dedicated land, which provide a buffer between the subdivision lots and streets;
- o. Typical grading and location of intersections with private driveways; and
- p. Description of how the roads will be maintained.
- 18. Approach/access/encroachment permits from Montana Department of Transportation or the local jurisdiction;
- 19. Proposed easements;
- 20. Proposed disposition of water rights, as required by Section VI-O of the subdivision regulations;
- 21. Proposed disposition of mineral rights;
- 22. Parkland dedication calculations, including a property valuation assessment or appraisal if cashin-lieu of parkland is proposed;
- 23. Environmental Assessment and/or Summary of Probable Impacts including:
 - a. proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of the local, state, and federal government identified during the pre-application meeting or subsequently identified as having an interest in the proposed subdivision; and
 - b. an explanation of how the subdivider has responded to the comments of the subdivision administrator at the pre-application meeting.
- 24. Transportation Impact Analysis or Transportation Plan;
- 25. Fire Risk Rating Analysis and Fire Prevention Plan as required in Section VI-R of the subdivision regulations;
- 26. Weed Management Plan and Re-vegetation Plan;
- 27. Property owners' Association Documents shall accompany the preliminary plat, and at a minimum shall provide the information, form, and contents included in Section II-B-3 of the subdivision regulations;
- 28. FIRM or FEMA panel map and/or letter identifying floodplain status and other hydrologic characteristics including surface water bodies, designated floodplain and areas of riparian resource, as required in Section VI-D of the subdivision regulations and paragraph 35 of this Part II.
- 29. Required water and sanitation information, including:
 - a. Provide the following attachments to the preliminary plat:
 - i. A vicinity map or plan that shows:
 - A. The location, within 100 feet outside of the exterior of the property line of the subdivision and on the proposed lots, of:
 - 1. floodplains;
 - 2. surface water features;
 - 3. springs;
 - 4. irrigation ditches;
 - 5. existing, previously approved, and for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
 - 6. for parcels less than 20 acres, mixing zones identified as provided in subsection (X); and
 - 7. the representative drainfield site used for the soil profile description as required under subsection (C)(4); and

- B. The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities.
- ii. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, as provided below, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rule published by the DEQ;
- iii. A drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by DEQ pursuant to 76-4-104;

b. Water Supply

- i. High Groundwater Report indicating there is not a problem with high groundwater present on the property proposed for subdivision. When evidence of high groundwater is present, the developer must submit plans that are prepared by a professional engineer to mitigate the problem;
- ii. A vicinity map or plan that shows:
 - A. the location, within 100' outside of the exterior property line of the subdivision and on the proposed lots of:
 - 1. floodplains;
 - 2. surface water features;
 - 3. springs;
 - 4. irrigation ditches;
 - 5. existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
 - 6. for parcels less than 20 acres, mixing zones identified as provided in subsection c.i.C.1 below.
 - B. the location, within 500' outside the exterior property line of the subdivision, of public water and sewer facilities;
- iii. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the Department of Environmental Quality in the Administrative Rules of Montana, or 76-4-101 et seq., MCA, including the following information:
 - A. If an **individual water supply system** is proposed for each parcel:
 - 1. Indicate the distance to the nearest public water system.
 - 2. Attach a copy of the lot layout showing the proposed location of each spring, well, or cistern and indicating the distance to existing or proposed wastewater treatment systems.
 - 3. Evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;

B. For a **multiple user water system**:

- 1. If an existing system is to be used:
 - a. identify the system and the person, firm, or agency responsible for its operation and maintenance;
 - b. indicate the system's capacity to handle additional load and its distance from the development;
 - c. provide evidence that permission to connect to the system has been granted;

- 2. provide the following attachments:
 - a. map or plat showing location, sizes, and depth of any existing water supply lines and facilities which may directly serve parcels within the proposed development;
 - b. provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.38.305 and Circular DEQ 3.
- 3. evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
- iv. Where a new system is proposed:
 - a. Provide evidence of adequate water availability, unless cisterns are proposed:
 - i. obtained from well logs or testing of onsite or nearby wells:
 - ii. obtained from information contained in published hydrogeological reports; or
 - iii. as otherwise specified by rules adopted by the DEQ pursuant to 76-4-104;
 - b. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
 - c. provide all information required in ARM 17.36.330-336 and Circular DEO-3.
 - d. Evidence of sufficient water quality in accordance with rule adopted by the DEQ pursuant to 76-4-104;

C. For a public water system:

- 1. If an existing system is to be used:
 - a. identify the system and the person, firm, or agency responsible for its operation and maintenance;
 - b. indicate the system's capacity to handle additional load and its distance from the development;
 - provide evidence that permission to connect has been granted;
 - d. provide the following as attachments:
 - i. a map or plat showing the location, sizes, and depth of any existing water lines and facilities which will directly serve parcels within the proposed development;
 - plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328-330 and Circular DEO-1 or Circular DEO-3.
 - iii. Evidence of sufficient water quality in accordance with rule adopted by the DEQ pursuant to 76-4-104;
- 2. If a new system is proposed:
 - a. Provide evidence of adequate water availability:
 - i. obtained from well logs or testing of onsite or nearby wells;
 - ii. obtained from information contained in published hydrogeological reports; or
 - iii. as otherwise specified by rules adopted by the DEQ pursuant to 76-4-104;
 - b. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;

- c. provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328-330 and Circular DEQ-1 or Circular DEQ-3.
- d. Evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;

c. Wastewater Treatment System

- i. For new onsite wastewater treatment systems, evidence of suitability that at a minimum includes:
 - A. a soil profile description from a representative drainfield site identified on the vicinity map, as provided in section C.1.(a)(i)(G), that complies with the standards published by DEQ;
 - B. demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and
 - C. in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in section (ii) above.
 - 1. For all new wastewater treatment systems a preliminary analysis of potential impacts to ground water quality using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.
- ii. If **individual wastewater treatment systems** are proposed for each parcel:
 - A. Indicate the distance to the nearest public wastewater treatment system.
 - B. Provide all information required in ARM 17.36.320-345 and in Circular DEQ-4 for conventional systems or Circular DEQ 5 for alternative systems.
 - C. evidence of suitability as provided in subsection (a) of this section
 - D. preliminary analysis of potential impact to ground water as provided in subsection (b) of this section.

iii. For a multiple-user wastewater treatment system:

- A. If an existing system is to be used:
 - 1. identify the system and the person, firm, or agency responsible for its operation and maintenance;
 - 2. indicate the system's capacity to handle additional load and its distance from the development;
 - 3. provide evidence that permission to connect to the system has been granted;
 - 4. provide the following attachments:
 - a. a map or plat showing the location, sizes, and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development; and

- b. plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.320-345 and Circular DEQ-4 or Circular DEQ-5.
- B. If a new system is proposed:
 - 1. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
 - 2. provide all information required in ARM 17.36.320-326 and Circular DEQ-4 or Circular DEQ-5.
 - 3. evidence of suitability as provided in subsection (a) of this section.
 - 4. preliminary analysis of potential impact to ground water as provided in subsection (b) of this section.

iv. For a public wastewater treatment system:

- A. If an existing system is to be used:
 - 1. identify the system and the person, firm, or agency responsible for its operation and maintenance;
 - 2. indicate the system's capacity to handle additional load and its distance from the development;
 - 3. provide evidence that permission to connect to the system has been granted;
 - 4. provide the following attachments:
 - a. a map or plat showing the location, sizes, and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development;
 - b. plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328 and Circular DEQ-2 or Circular DEQ-4.

d. Storm Water

- i. Describe measures for the collection and disposal of storm run-off from streets and roads within the subdivision.
- ii. Indicate the type of road surface proposed.
- iii. Describe facilities for stream or drainage crossing (e.g., culverts, bridges).
- iv. Describe how surface run-off will be drained or channeled from parcels.
- iv. Indicate whether storm run-off will enter state waters and describe any proposed treatment measures. (A storm-water discharge permit may be required)
- iv. Describe any existing or proposed streambank or shoreline alteration, and any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type, and purpose of alteration.
- iv. Provide the grading and storm water or drainage plan as required by section II-3 Preliminary Plat Supplements, subsection (e) of this appendix.

e. Solid Waste

- i. Describe the proposed method of solid waste collection and disposal.
- ii. If use of an existing collection system or disposal facility is proposed, indicate the name and location of the facility.
- iii. If on-site disposal of solid waste is proposed, provide the information required in ARM 17.36.309(2).
- 30. A form of Subdivision Improvements Agreement, if proposed;
- 31. Letter requesting a revocation of agricultural covenants;
- 32. Letter indicating locations of cultural or historic resources;
- 33. Variance request or approval;
- 34. Re-zoning application or approval;
- When required, a flood hazard evaluation which contains the following detailed information:[to be submitted to the Water Resources Division, Department of Natural Resources]:

- a. Certification by a registered professional engineer;
- b. An overall scaled plan view with identified scale for vertical and horizontal distance showing the following:
 - i. Watercourse
 - ii. floodplain boundaries
 - iii. location of property
 - iv. contours
 - v. cross-sections
 - vi. bridges or other contractions in the floodplains
 - vii. USGS gauging stations (if any);
- c. The location and elevation of a temporary benchmark(s) established within the subdivision and referenced to mean sea level with appropriate elevation adjustment.
- d. Cross-sectional information which contains the following information:
 - i. Elevations and stations that are determined at points representing significant breaks in ground slope and at changes in the hydraulic characteristics of the floodplain (i.e., points where ground cover, soil, or rock conditions change). Elevations must be reported in NAVD 88 or NGVD 29 datum.
 - ii. Each cross-section must cross the entire floodplain. The cross-section alignment should be perpendicular to the general flow of the watercourse (approximately perpendicular to contour lines). Occasionally, wide floodplains require a dog-leg alignment to be perpendicular to the anticipated flow lines. Shots should be taken at the water's edge and measurements taken (if elevation shots cannot be taken) to determine the channel bottom shape. Cross sections must be accurately located on a USGS 7 ½ minute quad sheet.
 - iii. The number of cross-sections needed, and the distance between cross-sections, will vary depending on the site, the slope of the watercourse, the slope of the channel, and the hydraulic characteristics of the reach. A minimum of four cross sections are required over the entire reach with at least two cross-sections at the property where the elevations are desired. Additional cross-sections must be taken at bridges, control structures, or natural constrictions in topography. [Photogrammetric methods may be used in lieu of cross sections whenever appropriate and when reviewed and approved by the county.]
- e. A description and sketch of all bridges within the reach, showing unobstructed waterway openings and elevations.
- f. Elevation of the water surface is to be determined by survey as part of each valley cross section.
- g. Supporting Documentation, such as engineering reports of computer computations, calculations, and assumptions that may include:
 - i. Hydrology (research of published hydrology or calculations showing how hydrology was derived)
 - ii. Input files (hardcopy and on diskette)
 - iii. Output files (diskette only)
- 36. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
- 37. Such additional relevant and reasonable information as identified by the Subdivision Administrator during the pre-application meeting that is pertinent to the required elements of this section.

PART III ENVIRONMENTAL ASSESSMENT

Information specified in this Part must be provided in addition to that required in parts I and II of this application form, unless the proposed subdivision qualifies for an exemption under Section IV-A-1.b of the subdivision regulations.

Describe the following environmental features, provide responses to <u>each of</u> the following questions and provide reference materials as required.

1. Surface Water

Locate on a plat overlay or sketch map:

- a. Any natural water systems such as streams, rivers, intermittent streams, lakes or marshes (also indicate the names and sizes of each).
- b. Any artificial water systems such as canals, ditches, aqueducts, reservoirs, and irrigation systems (also indicate the names, sizes and present uses of each).
- c. Time when water is present (seasonally or all year).
- d. Any areas subject to flood hazard, or in delineated 100 year floodplain.
- e. Describe any existing or proposed streambank alteration from any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type and purpose of alteration, and permits applied for.

2. Groundwater

Using available data, provide the following information:

- a. The minimum depth to water table and identify dates when depths were determined. What is the location and depth of all aquifers which may be affected by the proposed subdivision? Describe the location of known aquifer recharge areas which may be affected.
- b. Describe any steps necessary to avoid depletion or degradation of groundwater recharge areas.

3. Topography, Geology and Soils

- a. Provide a map of the topography of the area to be subdivided, and an evaluation of suitability for the proposed land uses. On the map identify any areas with highly erodible soils or slopes in excess of 15% grade. Identify the lots or areas affected. Address conditions such as:
 - i Shallow bedrock
 - ii Unstable slopes
 - iii Unstable or expansive soils
 - iv Excessive slope

- b. Locate on an overlay or sketch map:
 - i Any known hazards affecting the development which could result in property damage or personal injury due to:
 - A. Falls, slides or slumps -- soil, rock, mud, snow.
 - B. Rock outcroppings
 - C. Seismic activity.
 - D. High water table
- c. Describe measures proposed to prevent or reduce these dangers.
- d. Describe the location and amount of any cut or fill more than three feet in depth. Indicate these cuts or fills on a plat overlay or sketch map. Where cuts or fills are necessary, describe plans to prevent erosion and to promote vegetation such as replacement of topsoil and grading.

4. Vegetation

- a. On a plat overlay or sketch map:
 - (i) Indicate the distribution of the major vegetation types, such as marsh, grassland, shrub, coniferous forest, deciduous forest, mixed forest.
 - (ii) Identify the location of critical plant communities such as:
 - A. Stream bank or shoreline vegetation
 - B. Vegetation on steep, unstable slopes
 - C. Vegetation on soils highly susceptible to wind or water erosion
 - D. Type and extent of noxious weeds
- b. Describe measures to:
 - (i) Preserve trees and other natural vegetation (e.g. locating roads and lot boundaries, planning construction to avoid damaging tree cover).
 - (ii) Protect critical plant communities (e.g. keeping structural development away from these areas), setting areas aside for open space.
 - (iii) Prevent and control grass, brush or forest fires (e.g. green strips, water supply, access.)
 - (iv) Control and prevent growth of noxious weeds

5. Wildlife

- a. Identify species of fish and wildlife use the area affected by the proposed subdivision.
- b. On a copy of the preliminary plat or overlay, identify known critical wildlife areas, such as big game winter range, calving areas and migration routes; riparian habitat and waterfowl nesting areas; habitat for rare or endangered species and wetlands.
- c. Describe proposed measures to protect or enhance wildlife habitat or to minimize degradation (e.g. keeping buildings and roads back from shorelines; setting aside wetlands as undeveloped open space).

Part IV SUMMARY OF PROBABLE IMPACTS

Summarize the effects of the proposed subdivision on each topic below. Provide responses to the following questions and provide reference materials as required:

1. Effects on Agriculture

- a. Is the proposed subdivision or associated improvements located on or near prime farmland or farmland of statewide importance as defined by the Natural Resource Conservation Service? If so, identify each area on a copy of the preliminary plat.
- b. Describe whether the subdivision would remove from production any agricultural or timber land.
- c. Describe possible conflicts with nearby agricultural operations (e.g., residential development creating problems for moving livestock, operating farm machinery, maintaining water supplies, controlling weeds or applying pesticides; agricultural operations suffering from vandalism, uncontrolled pets or damaged fences).
- d. Describe possible nuisance problems which may arise from locating a subdivision near agricultural or timber lands.
- e. Describe effects the subdivision would have on the value of nearby agricultural lands.

2. Effects on Agricultural Water User Facilities

- a. Describe conflicts the subdivision would create with agricultural water user facilities (e.g. residential development creating problems for operating and maintaining irrigation systems) and whether agricultural water user facilities would be more subject to vandalism or damage because of the subdivision.
- b. Describe possible nuisance problems which the subdivision would generate with regard to agricultural water user facilities (e.g. safety hazards to residents or water problems from irrigation ditches, head gates, siphons, sprinkler systems, or other agricultural water user facilities).

3. Effects on Local Services

a.

b.

Indicate th	e proposed use and number of lots or spaces in each:
	Residential, single family
	Residential, multiple family
	Types of multiple family structures and number of each (e.g. duplex, 4-plex)
· ·	Planned unit development (No. of units)
	Condominium (No. of units)
	Mobile Home Park
	Recreational Vehicle Park
	Commercial or Industrial
	Other (Please describe)
Describe	the additional or expanded public services and facilities that would be

demanded of local government or special districts to serve the subdivision.

- i. Describe additional costs which would result for services such as roads, bridges, law enforcement, parks and recreation, fire protection, water, sewer and solid waste systems, schools or busing, (including additional personnel, construction, and maintenance costs).
- ii. Who would bear these costs (e.g. all taxpayers within the jurisdiction, people within special taxing districts, or users of a service)?
- iii. Can the service providers meet the additional costs given legal or other constraints (e.g. statutory ceilings on mill levies or bonded indebtedness)?
- iv. Describe off-site costs or costs to other jurisdictions may be incurred (e.g. development of water sources or construction of a sewage treatment plant; costs borne by a nearby municipality).
- c. Describe how the subdivision allows existing services, through expanded use, to operate more efficiently, or makes the installation or improvement of services feasible (e.g. allow installation of a central water system, or upgrading a country road).
- d. What are the present tax revenues received from the unsubdivided land?

i.	By the County \$
ii.	By the municipality if applicable
iii.	By the school(s) \$

- e. Provide the approximate revenues received by each above taxing authority if the lots are reclassified, and when the lots are all improved and built upon. Describe any other taxes that would be paid by the subdivision and into what funds (e.g. personal property taxes on mobile/manufactured homes are paid into the County general fund).
- f. Would new taxes generated from the subdivision cover additional public costs?
- g. How many special improvement districts would be created which would obligate local government fiscally or administratively? Are any boding plans proposed which would affect the local government's bonded indebtedness?

4. Effects on the Historic or Natural Environment

- a. Describe and locate on a plat overlay or sketch map known or possible historic, paleontological, archaeological or cultural sites, structures, or objects which may be affected by the proposed subdivision.
- b. How would the subdivision affect surface and groundwater, soils, slopes, vegetation, historical or archaeological features within the subdivision or on adjacent land? Describe plans to protect these sites.
 - i Would any streambanks or lake shorelines be altered, streams rechanneled or any surface water contaminated from sewage treatment systems, run-off carrying sedimentation, or concentration of pesticides or fertilizers?
 - ii Would groundwater supplies likely be contaminated or depleted as a result of the subdivision?

- iii Would construction of roads or building sites require cuts and fills on steep slopes or cause erosion on unstable, erodible soils? Would soils be contaminated by sewage treatment systems?
- iv Describe the impacts that removal of vegetation would have on soil erosion, bank, or shoreline instability.
- v Would the value of significant historical, visual, or open space features be reduced or eliminated?
- vi Describe possible natural hazards the subdivision be could be subject to (e.g., natural hazards such as flooding, rock, snow or land slides, high winds, severe wildfires, or difficulties such as shallow bedrock, high water table, unstable or expansive soils, or excessive slopes).
- c. How would the subdivision affect visual features within the subdivision or on adjacent land? Describe efforts to visually blend the proposed development with the existing environment (e.g. use of appropriate building materials, colors, road design, underground utilities, and revegetation of earthworks).

5. Effects on Wildlife and Wildlife Habitat

- a. Describe what impacts the subdivision or associated improvements would have on wildlife areas such as big game wintering range, migration routes, nesting areas, wetlands, or important habitat for rare or endangered species.
- b. Describe the effect that pets or human activity would have on wildlife.

6. Effects on the Public Health and Safety

- a. Describe any health or safety hazards on or near the subdivision, such as: natural hazards, lack of water, drainage problems, heavy traffic, dilapidated structures, high pressure gas lines, high voltage power lines, or irrigation ditches. These conditions, proposed or existing should be accurately described with their origin and location identified on a copy of the preliminary plat.
- b. Describe how the subdivision would be subject to hazardous conditions due to high voltage lines, airports, highways, railroads, dilapidated structures, high pressure gas lines, irrigation ditches, and adjacent industrial or mining uses.
- c. Describe land uses adjacent to the subdivision and how the subdivision will affect the adjacent land uses. Identify existing uses such as feed lots, processing plants, airports or industrial firms which could be subject to lawsuits or complaints from residents of the subdivision.
- d. Describe public health or safety hazards, such as dangerous traffic, fire conditions, or contamination of water supplies which which would be created by the subdivision.

PART V COMMUNITY IMPACT REPORT

Provide a community impact report containing a statement of estimated number of people coming into the area as a result of the subdivision, anticipated needs of the proposed subdivision for public facilities and services, the increased capital and operating cost to each affected unit of local government. Provide responses to each of the following questions and provide reference materials as required.

1. Education and Busing

- a. Describe the available educational facilities which would serve this subdivision.
- b. Estimate the number of school children that will be added by the proposed subdivision. Provide a statement from the administrator of the affected school system indicating whether the increased enrollment can be accommodated by the present personnel and facilities and by the existing school bus system. If not, estimate the increased expenditures that would be necessary to do so.

2. Roads and Maintenance

- a. Estimate how much daily traffic the subdivision, when fully occupied, will generate on existing streets and arterials.
- b. Describe the capability of existing and proposed roads to safely accommodate this increased traffic.
- c. Describe increased maintenance problems and increased cost due to this increase in volume.
- d. Describe proposed new public or private access roads including:
 - i. Measures for disposing of storm run-off from streets and roads.
 - ii. Type of road surface and provisions to be made for dust.
 - iii. Facilities for streams or drainage crossing (e.g. culverts, bridges).
 - iv. Seeding of disturbed areas.
- e. Describe the closing or modification of any existing roads.
- f. Explain why road access was not provided within the subdivision, if access to any individual lot is directly from arterial streets or roads.
- g. Is year-round access by conventional automobile over legal rights-of-way available to the subdivision and to all lots and common facilities within the subdivision? Identify the owners of any private property over which access to the subdivision will be provided.
- h. Estimate the cost and completion date of the system, and indicate who will pay the cost of installation, maintenance and snow removal.

3. Water, Sewage, and Solid Waste Facilities

a. Briefly describe the water supply and sewage treatment systems to be used in serving the proposed subdivision (e.g. methods, capacities, locations).

- b. Provide information on estimated cost of the system, who will bear the costs, and how the system will be financed.
- c. Where hook-up to an existing system is proposed, describe estimated impacts on the existing system, and show evidence that permission has been granted to hook up to the existing system.
- d. All water supply and sewage treatment plans and specifications will be reviewed and approved by the Department of Environmental Quality (DEQ) and should be submitted using the appropriate DEQ application form.
- e. Describe the proposed method of collecting and disposing of solid waste from the development.
- f. If use of an existing collection system or disposal facility is proposed indicate the name and location of the facility.

4. Fire and Police Protection

- a. Describe the fire and police protection services available to the residents of the proposed subdivision including number of personnel and number of vehicles or type of facilities for:
 - i Fire protection -- is the proposed subdivision in an existing fire district? If not, will one be formed or extended? Describe what fire protection procedures are planned?
 - ii Law --Enforcement protection Which of --is the proposed subdivision within the jurisdiction of a County Sheriff or municipal policy department
- b. Can the fire and police protection service needs of the proposed subdivision be met by present personnel and facilities? If not, describe the additional expenses that would be necessary to make these services adequate, and who would pay the costs?

5. Payment for extension of Capital Facilities

Indicate how the subdivider will pay for the cost of extending capital facilities resulting from expected impacts directly attributable to the subdivision.

ADMINISTRATIVE MATERIALS "B" FINAL PLAT APPROVAL FORM

	Date
]	Name of Subdivision
]	Location: 1/4 Section Township Range For Amended Plats: Lot(s) Block(s) Subdivision
]	Name, address and telephone number of subdivider:
	Name, address and telephone number of persons of firms providing services and information (e.g.: surveyor, engineer, designer, planning consultant, attorney):
-	Descriptive Data:
1	n. Gross area in acres
]	Date Preliminary Plat Approved:
1	Any Conditions? (If Yes, attach list of conditions.)
1	Any Deed Restrictions or covenants? (If Yes, attach a copy.)
	All improvements installed? (If No, attach a subdivision improvements agreement or guarantees.)
]	List of materials submitted with this application:
	i D
)
	i
1	·

Subd	livider		
 FOR	OFFICIAL USE ONLY		
1.	Application Number		
2.	Date Application Submitted		
3.	Date by which Final Plat must be app	proved or rejected	1

I do hereby certify that all the statements and information and the statements and information contained in all exhibits transmitted herewith are true. I hereby apply to the ($\underline{\text{governing body}}$) of ($\underline{\text{city or county}}$) for approval of the final plat of ($\underline{\text{Name of Subdivision}}$).

ADMINISTRATIVE MATERIALS "C" SAMPLE CERTIFICATES

Certificate of Completion of Public Improvements

Certificate of Surveyor – Final Plat

Certificate of Dedication – Final Plat

Certificate of Consent to Dedication by Encumbrances

Certificate of Waiver of Park Land Dedication and Acceptance of Cash in Lieu Thereof

Certificate of Examining Land Surveyor Where Required – Final Plat

Certificate of County Treasurer

Certificate of Final Plat Approval – County

Certificate of Final Plat Approval – City

Certificate of Filing by Clerk and Recorder

Certificate of Completion of Public Improvements Agreement
(To be submitted with application for approval of final subdivision plat)

CERTIFICATE OF COMPLETION

I, (<u>Name of Subdivider</u>), and I, (<u>Name of</u> engineer licensed to practice in the Sta improvements, required as a condition of conformance with the attached engineering installed.)	ate of Montana, hereby certify approval of (Name of Subdivision	that the following public on), have been installed in
Signature of Subdivider	Date	
Signature of Professional Engineer Registration No	Date	
Address	(Engineers Seal)	

Certificate of Surveyor – Final Plat

STATE OF MO	NTANA)	
County of) ss.)	
shown on the att	tached plat of (Name of	and Surveyor, do hereby certify that I have performed the survey <u>Subdivision</u>); that such survey was made on (<u>Date of Survey</u>); shown and that the monuments found and set are of the character
Dated this	day of	, 20
	(Seal)	(Signature of Surveyor) Registration No
		(Address)
Certificate of Do	edication – Final Plat	
subdivided and following describ	platted into lots, blocks bed land in (City and Co	er(s), do hereby certify that (I) (We) have caused to be surveyed, s, streets and alleys, as shown by the plat hereto annexed, the unty if in Unincorporated Area), to-wit: f area contained in plat and total acreage)
included in all st		e known and designated as (<u>Name of Subdivision</u>), and the lands and parks or public squares shown on said plat are hereby granted yer.
Dated this	day of	, 20
(Acknowledged	and notarized signatures	of all record owners of platted property)
Consent to Dedi	cation by Encumbranc	es, If Any
(my) (our) respe		(s), do hereby join in and consent to the annexed plat and release incumbrances as to any portion of said lands shown on such plat or forever.
Dated this	day of	, 20
(Acknowledged	and notarized signatures	of all encumbrancers of record)

Certificate of Waiver of Park Land Dedication and Acceptance of Cash in Lieu Thereof

I, (Name of City or Town Clerk), (County Clerk and Recorder) of (Name of City or County), Montana, do certify that the following order was made by the (Governing Body) of (Name of City or County) at a meeting thereof held on the day of, 20, and entered into the proceedings of said Body to-wit: "Inasmuch as the dedication of park land within the platted area of (Name of Subdivision) is undesirable for the reasons set forth in the minutes of this meeting, it is hereby ordered by the (Name of Governing Body) that land dedication for park purposes be waived and that cash in lieu of park with the provisions of Title 76, Chapter 3, MCA." In witness whereof, I have hereunto affixed the seal of (Name of City or County), Montana this		
day of, 20	<u></u>	
(Seal)	(Signature of Clerk)	
Certificate of Examining Land Surveyor W	here Required – Final Plat	
I, (<u>Name of Examining Land Surveyor</u>), acting as an Examining Land Surveyor for (<u>City or County</u>), Montana, do hereby certify that I have examined the final plat of (<u>Name of Subdivision</u>) and find that the survey data shown thereon meet the conditions set forth by or pursuant to Title 76, Chapter 3, Part 4, MCA.		
Dated this, 20		
	(<u>Signature</u>) (<u>Name of Surveyor</u>) Registration No (<u>City or County</u>)	
Certificate of County Treasurer		
I hereby certify, pursuant to Section 76-3-611(1)(b), MCA, that all real property taxes assessed and levied on the land described below and encompassed by the proposed (Name of Subdivision) have been paid:		
(legal	description of land)	
Dated this day of	, 20	
(seal)	(Signature of County Treasurer) Treasurer,	

Certificate of Final Plat Approval – County		
examined this subdivision plat and having found	County, Montana does hereby certify that it has the same to conform to law, approves it, and hereby ands shown on this plat as being dedicated to such use,	
(Signatures of Commissioners)	ATTEST:	
(Seal of County)	(Signature of Clerk and Recorder), Montana	
that it has examined this subdivision plat and, havi	F (Name of City or Town), Montana does hereby certifying found the same to conform to law, approves it, and and all lands shown on this plat as being dedicated to .20	
by (Signature of City or Town Clerk) Clerk	(<u>Signature of Mayor</u>) Mayor	
Certificate of Filing by Clerk and Recorder		
STATE OF MONTANA)) ss. County of)		
County of)		
Filed for record this day of	, 20, at o'clock.	
(Signature of Clerk and Recorder)		
County Clerk and Recorder,	County, Montana	

ADMINISTRATIVE MATERIALS "D" SUBDIVISION IMPROVEMENTS AGREEMENT; GUARANTY

MODEL SUBDIVISION IMPROVEMENT AGREEMENT

	e parties to this Subdivision Improvements Agreement ("this agreement") are ("the odivider") and ("the City" or "the County").
W] and	HEREAS, the subdivider desires to defer construction of improvements described in Attachment ();
beı	HEREAS, the purpose of this Agreement is to protect the City (or County) and is not intended for the nefit of contractors, suppliers, laborers or others providing work, services, or materials to the bdivision, or for the benefit of lot or home buyers in the Subdivision; and
	HEREAS, the mutual promises, covenants and obligations contained in this Agreement are authorized state law and the City (or County) subdivision regulations.
NC	OW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:
1.	Effective Date: The effective date of this Agreement is the date that final subdivision plat approval is granted by the City (or County).
2.	Attachments: The Attachments cited herein are hereby made a part of this Agreement.
	Subdivider's Obligations
3.	<u>Improvements</u> : The Subdivider shall construct and install, at his own expense, those subdivision improvements listed in Attachment () of this Agreement. The Subdivider's obligation to complete the improvements arises upon approval of the final subdivision plat, is not conditioned on the commencement of construction in the development or sale of any lots or improvements within the subdivision, and is independent of any obligations of the City (or County) contained in this Agreement.
4.	Security: To secure the performance of his obligations under this Agreement, the Subdivider shall deposit with the City (or County) on or before the effective date, an Irrevocable Letter of Credit (or other financial security acceptable to the local officials) in the amount of \$ The letter of credit shall be issued by(lending institution), be payable at sight to the City (or County) at any time upon presentation of (1) a sight draft drawn on the issuing lending institution in the amount up to \$, (2) a signed statement or affidavit executed by an authorized City (or County) official stating that the Subdivider is in default under this Agreement; and (3) the original copy of the letter of credit.
5.	<u>Standards</u> : The Subdivider shall construct the required improvements according to the standards and specifications required by the City (or County) as specified in Attachment () of this Agreement.

- 6. <u>Warranty</u>: The Subdivider warrants that each and every improvement shall be free from defects for a period of 1 year from the date that the City (or County) accepts the dedication of the last improvement completed by the Subdivider.
- 7. <u>Commencement and Completion Periods</u>: The Subdivider shall complete all of the required improvements within (2) years from the effective date of this Agreement.
- 8. <u>Compliance with Law</u>: The Subdivider shall comply with all relevant laws, ordinances, regulations and requirements in effect at the time of subdivision plat approval when meeting his obligations under this Agreement.

City's (or County's) Obligations

9. <u>Inspection and Certification</u>:

- a. The City (or County) shall provide for inspection of the improvements as they are completed and, where found acceptable, shall certify those improvements as complying with the standards and specifications set forth in Attachment (__) of this Agreement. The inspection and certification, shall occur within 14 days of notice by the Subdivider that the improvements are complete and that he desires City (or County) inspection and certification. Before requesting City (or County) certification of any improvement the Subdivider shall present to the City (or County) valid lien waivers from all persons providing materials or performing work on the improvement.
- b. Certification by the City (or County) does not constitute a waiver by the City (or County) of the right to draw funds under the letter of credit in the event defects in or failure of any improvement are found following the certification.
- 10. Notice of Defect: The City (or County) shall provide timely notice to the Subdivider whenever inspection reveals that an improvement does not conform to the standards and specifications set forth in Attachment (__), or is otherwise defective. The Subdivider shall have 30 days from the date the notice is issued to remedy the defect. The City (or County) may not declare a default under this Agreement during the 30 day remedy period unless the Subdivider clearly indicates he does not intend to correct the defect. The Subdivider shall have no right to correct the defect in, or failure of, any improvement found after the City (or County) accepts dedication of the improvements
- 11. Reduction of Security: After the acceptance of any improvement, the amount that the City (or County) is entitled to draw on the letter of credit shall be reduced by an amount equal to 90 percent of the estimated cost of the improvement as shown in Attachment (__). At the request of the Subdivider, the City (or County) shall execute a certificate verifying the acceptance of the improvement and waiving its right to draw on the letter of credit to the extent of the amount. Upon the certification of all of the improvements the balance that may be drawn under the credit shall be available to the City (or County) for the one year warranty period plus an additional 90 days.
- 12. <u>Use of Proceeds</u>: The City (or County) shall use funds drawn under the letter of credit only for the purposes of completing the improvements or correcting defects in or failure of the improvements.

Other Provisions

13. Events of Default: The following conditions, occurrences or actions constitute a default by the Subdivider during the completion period:

- a. failure to complete construction of the improvements within two years of final subdivision plat approval;
- b. failure to remedy the defective construction of any improvement within the remedy period;
- c. insolvency of the Subdivider or the filing of a petition for bankruptcy;
- d. foreclosure of the property or assignment or conveyance of the property in lieu of foreclosure.
- 14. Measure of Damages: The measure of damages for breach of this Agreement is the reasonable cost of completing the improvements. For purposes of this Agreement the estimated cost of the improvements as specified in Attachment (__) is prima facie evidence of the minimum cost of completion. However, neither that amount nor the amount of the letter of credit establishes the maximum amount of the Subdivider's liability. The City (or County) may complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever was commenced.

15. Local Government Rights Upon Default:

- a. Upon the occurrence of any event of default, the City (or County) may draw on the letter of credit to the extent of the face amount of the credit less the estimated cost [as shown in Attachment (__)] of all improvements previously certified by the City (or County). The City (or County) may complete improvements itself or contract with a third party for completion, or the City (or County) may assign the proceeds of the letter of credit to a subsequent subdivider who has acquired the Subdivision and who has the same rights of completion as the City (or County) if and only if the subsequent subdivider agrees in writing to complete the unfinished improvements.
- b. In addition, the City (or County) may suspend final plat approval. During this suspension the Subdivider may not sell, transfer or otherwise convey lots or homes within the Subdivision without the express approval of the City (or County) until the improvements are completed and certified by the City (or County).
- 16. <u>Indemnification</u>: The Subdivider agrees to indemnify and hold the City (or County) harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement. The Subdivider is not an employee or agent of the City (or County).
- 17. <u>Amendment or Modification</u>: The Parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City (or County) and by the Subdivider.
- 18. Attorney's Fees: Should either party be required to resort to litigation, arbitration or mediation to enforce the terms of this Agreement, the prevailing party, whether plaintiff or defendant, is entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator or mediator awards relief to both parties, each shall bear its own costs in their entirety.
- 19. Third Party Rights: No person or entity who is not party to this Agreement has any right of action under this Agreement, except that if the City (or County) does not exercise its rights within 60 days following an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the City (or County) to exercise its rights.

- 20. <u>Scope</u>: The Agreement constitutes the entire agreement between the parties and no statement, promise or inducement that is not contained in this Agreement is binding on the parties.
- 21. <u>Time</u>: For the purpose of computing the commencement and completion periods, and time periods for City (or County) action, times in which war, civil disasters, acts of God or extreme weather conditions occur will not be included if the events prevent the Subdivider or the City (or County) from performing the obligations under this Agreement.
- 22. <u>Assigns</u>: The benefits of this Agreement to the Subdivider may not be assigned without the express written approval of the City (or County). Such approval may not be withheld unreasonably, but any unapproved assignment is void. There is no prohibition on the right of the City (or County) to assign its rights under this Agreement.

The City (or County) shall release the original Subdivider's letter of credit if it accepts a new security from any subdivider or lender who obtains the property. However, no action by the City (or County) constitutes a release of the original subdivider from his liability under this Agreement.

23. <u>Severability</u>: If any part, term or provision of this Agreement is held by the courts to be illegal the illegality shall not affect the validity of any other part, term or provision, and the rights of the parties shall be construed as if the part, term or provision were never part of the Agreement.

Dated this day of	, 20
City (or County) Official	
Subdivider	

ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

Comment:

The following are acceptable means of guaranteeing subdivision improvements agreements, although others may also be acceptable. The irrevocable letter of credit is often the preferable guaranty because it is usually feasible for a subdivider to secure, and the local government can readily obtain funds to complete the required improvements should the subdivider fail to install the required the improvements. A suggested irrevocable letter of credit and commentary are included as part of this Appendix. The other common guaranties are also explained below.

The subdivider shall provide one or more of the following financial security guarantees in the amount of 125 percent of the estimated total cost of installing all required improvements.

1. Letter of Credit

Subject to governing body approval, the subdivider shall provide the governing body a letter of credit from a bank or other reputable institution or individual certifying the following:

- a. That the creditor guarantees funds in an amount equal to 125% of the cost, as approved by the governing body, of completing all required improvements.
- b. That if the subdivider fails to complete the specified improvements within the required period, the creditor shall immediately pay to the governing body upon presentation of a sight draft without further action, an amount of cash necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.
- c. That this letter of credit may not be withdrawn, or reduced in amount, until released by the governing body.

2. Escrow Account

The subdivider shall deposit cash, or collateral readily convertible to cash at face value, either with the governing body or in escrow with a bank. The use of collateral other than cash, and the selection of the bank where funds are to be deposited must be approved by the governing body.

Where an escrow account is to be used, the subdivider shall give the governing body an agreement with the bank guaranteeing the following:

- a. That the funds in the escrow account are to be held in trust until released by the governing body and may not be used or pledged by the subdivider as security for any obligation during that period.
- b. That, should the subdivider fail to complete the required improvements, the bank shall immediately make the funds in escrow available to the governing body for completing these improvements.

3. Property Escrow

The subdivider may offer as a guarantee land or other property, including corporate stocks or bonds. The value of any real property to be used, accounting for the possibility of a decline in its value

during the guarantee period, must be established by a licensed real estate appraiser or securities broker, as applicable, at the subdivider's expense. The governing body may reject the use of property as collateral when the property value is unstable, when the property may be difficult to sell, or when other factors exist which will inhibit the exchange of the property for an amount of money sufficient to complete required improvements.

When property is offered as an improvement guarantee, the subdivider shall:

- a. Enter an agreement with the escrow agent instructing the agent to release the property to the governing body in the case of default. The agreement must be placed on file with the county clerk and recorder.
- b. File with the governing body an affidavit affirming that the property to be used as a guarantee is free and clear of any encumbrances or liens at the time it is to be put in escrow.
- c. Execute and file with the governing body an agreement stating that the property to be placed in escrow as an improvement guarantee will not be used for any other purpose, or pledged as a security for any other matter until it is released by the governing body.

4. <u>Sequential Development</u>

Where a subdivision is to be developed in phased portions, the governing body may, at its discretion, waive the use of a guarantee on the initial portion, provided that the portion contains no more than 25 lots, or 50 percent of the total number of lots in the proposed subdivision, whichever is less. The governing body may grant final plat approval to only one portion at a time. The plat approval for each succeeding portion will be contingent upon completion of all improvements in each preceding portion and acceptance of those improvements by the governing body. Completion of improvements in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this section.

5. Surety Performance Bond

The bond must be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the governing body and countersigned by a Montana agent. The bond must be payable to the County (City) of ______. The bond must be in effect until the completed improvements are accepted by the governing body.

6. Special Improvements District

The governing body may enter into an agreement with the subdivider, and the owners of the property proposed for subdivision if other than the subdivider, that the installation of required improvements will be financed through a special or rural improvement district created pursuant to Title 7, Chapter 12, MCA. This agreement must provide that no lots within the subdivision shall be sold, rented, or leased, and no contract for the sale of lots executed, before the improvement district has been created.

If the proposed subdivision lies in an unincorporated area, the subdivider, or other owners of the property involved must also petition the board of county commissioners to create a rural improvement district pursuant to Section 7-12-2102, MCA.

An agreement to finance improvements through the creation of a special improvement district, or a petition to create a rural improvement district, constitutes a waiver by the subdivider or the other

owners of the property of the right to protest, or petition against, the creation of the district under either Section 7-12-2109 or Section 7-12-4110, MCA. This waiver must be filed with the county clerk and recorder and shall be deemed to run with the land.

Comment:

Local officials should be cautious in accepting special improvement districts or rural improvement districts as forms of improvements guaranties. In a number of cases in Montana, the subdivider has been unable to pay the assessments, and the city or county has had to bear the cost of completing the required improvements. These problems occur most frequently where improvement districts are formed as a means to provide improvements on raw land, and local officials may want to avoid creating improvement districts for undeveloped property.

Local officials should consult a bond underwriter before accepting an improvement district as a form of improvements guaranty.

Letters of credit may be revocable, so it is important to express that the letter of credit is irrevocable. Because the letter of credit does not incorporate the subdivision improvement agreement, the issuer of the credit cannot raise objections to the demand for payment. If the letter of credit specifies that the local government need only present a signed statement or affidavit that the subdivider is in default, the local government need not present proof of default or signed statements from any other party.

Under the letter of credit the local government is committed to use the funds for completion of the improvement.

It is important that the expiration date of the letter of credit allows the local government a reasonable amount of time after the improvements completion deadline to inspect the improvements and, if defects are found, prepare proper drafts and present a notice of default to the lending institution.

Lending institutions may be reluctant to issue letters of credit to be in force for long periods of time. Typically, improvements can be completed in 18-24 months, and an additional 1 year warranty period is appropriate to allow the local government to monitor for defects or failures. Following the warranty period an additional 90 days is reasonable to give local officials time to submit any drafts and documentation to draw funds, if necessary.

A "sight draft" commits the payor to make payment at the time the draft is presented, or on sight. Other types of drafts allow a waiting period or approval before the payor must make the payment.

MODEL

IRREVOCABLE LETTER OF CREDIT

Letter of Credit No
Name of Local Government Date Address
Gentlemen:
We hereby establish in your favor our Irrevocable Letter of Credit # for the account of(Subdivider), available by your drafts at sight up to an aggregate amount of \$ Should(Subdivider default or fail to complete the improvements under the terms specified in the attached subdivision improvements agreement for(name of subdivision) we shall pay on demand your sight draft or drafts for such funds, to the limit of credit set forth herein, as are required to complete said improvements.
All drafts must be presented prior to <u>expiration date</u> and this Letter of Credit must accompany the final draft for payment. Drafts drawn hereunder must be by sight draft marked:
"Drawn under <u>(lending institution)</u> , Letter of Credit # dated <u>(date of Letter of Credit)</u> ," and the amount drawn endorsed on the reverse hereof by the lending institution.
Unless otherwise stated, this Letter of Credit is subject to the Uniform Customs and Practices for Commercial Documentary Credits (1983 Revision) International Chamber of Commerce. We hereby agree with the drawers, endorsers and bona fide holders of the drafts drawn under and in compliance with the terms of this Credit that these drafts shall be duly honored upon presentation to the drawee.
This letter of credit may not be withdrawn or reduced in any amount prior to its expiration date except by your draft or written release.
(Lending Institution)
(Signature and Title of Official)

ADMINISTRATIVE MATERIALS "E"

GRANT OF ACCESS EASEMENT

tered into this day of, 20, by and
, Montana, hereinafter referred to as the "Grantor", and ontana, hereinafter referred to as the "Grantee."
ontana, hereinafter referred to as the "Grantee."
and convey unto the Grantee, its successor and assigns, the reconstruct, maintain, operate, repair, improve, and to travel ares and appurtenances through, over, and across a corridor, 60 of survey, extending across the following described tract(s) of
or's property over which easement is granted)
run with the said property and be binding on the Grantor, its parties having right, title, or interest in the said property.
hereunto set his hand this day of, 20
Grantor
, before me, the undersigned, a Notary Public for the State, known to me to be the vithin instrument and acknowledged to me that they executed
to set my hand and affixed my Notarial Seal this day of
town Dublic for the State of Montons
estary Public for the State of Montana stiding at, Montana
y commission expires

ALTERNATIVE PROVISIONS AND PROCESSES:

SUPPLEMENT 1

Alternate provisions based on the number of public hearings

Option 1. For those jurisdictions with no planning board or whose planning board has no authority to review subdivision applications, that wish to have one public hearing by the governing body:

Replace IV-A-3, pg. 32 with the following:

IV-A-3. Public Hearing – Notice and Procedures

a. Hearing

The governing body shall hold a public hearing on the subdivision application when a hearing is required by these regulations.

b. Notice

- i. The governing body shall give notice of the time, date and location of the hearing by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.
- ii. At least 15 days prior to the dates of the hearings, the governing body shall give notice of the hearing by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
- iii. The governing body shall require the notice be posted at a conspicuous place on the site of the proposed subdivision.

Replace IV-A-4, pg. 33 with the following:

IV-A-4. Governing Body Hearing

- a. After the subdivision application has been deemed to have all the required elements and to contain sufficient information for review, and the subdivision administrator has prepared a staff report, the governing body shall schedule and hold a public hearing on the subdivision application.
- b. The governing body shall determine whether public comments or documents presented for consideration at the governing body's public hearing constitute either:
 - i. information or analysis of information that was part of the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
 - ii. new information or analysis of information that has never been submitted as evidence, in which case the governing body shall proceed as set forth in subsection (c) below.

- c. If the governing body determines that public comments or documents presented at the hearing constitute new information or an analysis of information regarding the subdivision application that has never been submitted as evidence, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to this subsection and subsection (d) below.
 - i. If the governing body determines the information or analysis of information is either not relevant or not credible, then the governing body shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or
 - ii. If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall schedule a subsequent public hearing.
 - iii. At the subsequent hearing the governing body shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- d. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- e. New information or analysis of information is considered to be credible if it is based on one or more of the following:
 - i. physical facts or evidence;
 - ii. corroborated personal observations;
 - iii. evidence provided by a person with professional competency in the subject matter; or
 - iv. scientific data.

Delete IV-A-5, pg. 34.

Replace IV-A-6, pg. 35 with the following:

IV-A-5. Subsequent Public Hearing

- a. If a subsequent public hearing is held pursuant to section IV-A-4.b.ii above, it must be held within 45 days of the governing body's determination to schedule a subsequent hearing. Only the new information or analysis of information shall be considered at the subsequent public hearing.
 - i. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.
 - ii. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider and each adjoining landowner to the land included in the preliminary plat.

- iii. The governing body shall require the notice be posted at a conspicuous place on the site of the proposed subdivision.
- b. If a subsequent public hearing is held, the 60-working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 60-working day review period resumes on the date of the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

Delete IV-A-7, pg. 36, Subsequent Public Hearings, and modify and renumber IV-A-8 as follows:

IV-A-6. Governing Body Decision and Documentation

- a. <u>Prerequisites to Approval</u> [Same as VI-A-8 main text]
- b. <u>Consideration Standards</u> [Same as VI-A-8 main text]
- c. Consideration Evidence

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the governing body may consider the following, as applicable:

- i. the subdivision application and preliminary plat;
- ii. the environmental assessment;
- iii. the statement of probable impacts and mitigation;
- iv. an officially adopted growth policy;⁵⁶
- v. comments, evidence and discussions at the public hearing;
- vi. subdivision administrator's staff report and recommendation;
- vii. the expressed preference of the subdivider concerning required mitigation; and
- viii. any additional information authorized by law.

Notwithstanding the foregoing, the governing body may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

- d. Water and Sanitation-Special Rules [Same as IV-A-8 main text]
- e. Documentation of Governing Body Decision [Same as IV-A-8 main text]
- f. <u>Subdivision Application and Preliminary Plat Approval Period</u> [Same as IV-A-8 main text]

Renumber subsequent sectionIV-A-9 Amended Applications, pg. 40 as IV-A-7

.

⁵⁶ **Note:** The governing body may not base its decision solely on the subdivision application's compliance with an officially adopted growth policy. However, it may consider the growth policy as one factor.

Option 2. For jurisdictions with both a planning board and a governing body who wish to have only one public hearing by the planning board:

Replace IV-A-3, pg. 32 with the following:

IV-A-3. Public Hearing – Notice and Procedures

a. Hearing

The planning board shall hold a public hearing on the subdivision application when a hearing is required by these regulations.

b. Notice

- i. The planning board shall give notice of the time, date and location of the hearing by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.
- ii. At least 15 days prior to the date of the hearing, the planning board shall give notice of the hearing by certified mail to the subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
- iii. The planning board shall require that notice be posted at a conspicuous place on the site of the proposed subdivision.

Replace IV-A-4, with the following:

IV-A-4. Planning Board Hearing, Consideration and Recommendation

a. Hearing

After the subdivision application is deemed to have all the required elements and to contain detailed, supporting information that is sufficient to allow for review, and the subdivision administrator has prepared a staff report, the planning board shall schedule and hold a public hearing on the subdivision application.

b. Recommendation

- i. <u>Consideration-Standards</u> [Same as IV-A-4 main text]
- ii. Consideration-Evidence [Same as IV-A-4 main text]

iii. Written Recommendation

Within 10 working days after the public hearing, the planning board shall submit the following in writing to the subdivider and the governing body:

A. recommended findings of fact based on the evidence in subsection (b)(ii) above that discuss and consider the subdivision's compliance with and impact on subsection (b)(i) above of these regulations; and

- B. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat;
- C. a recommendation for approval or denial of any requested variances.(see Section XI-B); and
- D. a finding as to whether any public comments or documents presented for consideration at the planning board's public hearing constitute information or analysis of information that the public has not had a reasonable opportunity to examine and on which the public has not had a reasonable opportunity to comment.

c. Water and Sanitation Information

The planning board or planning staff shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations. The planning board shall forward all comments regarding water and sanitation to the governing body.

IV-A-5, Subdivider's Preference for Mitigation, remains.

Replace IV-A-6, pg. 35 with the following:

IV-A-6. Subsequent Public Hearing

- a. The governing body shall determine whether public comments or documents presented for consideration at the public hearing constitute either:
 - i. information or analysis of information that was presented at the planning board hearing on the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
 - ii. new information or analysis of information that has never been submitted as evidence or considered by the planning board, in which case the governing body shall proceed as set forth in subsection (b) below.
- b. If the governing body determines that public comments or documents presented at the public hearing constitute new information or an analysis of information regarding the subdivision application that the public has not had a reasonable opportunity to examine and on which the public has not had a reasonable opportunity to comment, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to subsections (c) and (d) below.
 - i. If the governing body determines the information or analysis of information is either not relevant or not credible, then the governing body shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or

- ii. If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall direct the planning board to schedule a subsequent public hearing.
- iii. The planning board shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- c. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- d. New information or analysis of information is considered to be credible if it is based on one or more of the following:
 - i. physical facts or evidence;
 - ii. corroborated personal observations;
 - iii. evidence provided by a person with professional competency in the subject matter; or
 - iv. scientific data.
- e. If a subsequent public hearing is held pursuant to subsection (b)(ii) above, it must be held within 45 days of the governing body's determination request a subsequent hearing. Only the new information or analysis of information shall be considered at the subsequent public hearing.
 - i. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.
 - ii. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider and each adjoining landowner to the land included in the preliminary plat.
 - iii. The governing body shall require the notice be posted at a conspicuous place on the site of the proposed subdivision.
- f. If a subsequent public hearing is held, the 60-working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 60-working day review period resumes on the date of the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

Renumber IV-A-8, pg. 36 as IV-A-7 and renumber any subsequent sections.

SUPPLEMENT 2

Alternatives for Subsequent Minor Review

MCA 76-3-609(4) permits each jurisdiction to adopt regulations for subsequent minor subdivisions that are at least as stringent as those for first minor subdivisions. This supplement contains a list of possible alternative procedures for subsequent minors that are at least as stringent as first minors but not as stringent as those for major subdivisions. This is only a list of possibilities – each jurisdiction should determine whether or not to review subsequent minor subdivisions differently than both first minor subdivisions and major subdivisions, and then draft substantive provisions to reflect one of the listed alternatives.

Alternatives for jurisdictions with both planning board and governing body public hearings under major subdivision review:

- a. Same requirements for first minors but with public hearings. Environmental assessment and park dedication not required. 45 or 60 day review period. 57
- b. Same requirements for first minors but with only one public hearing. Environmental assessment and park dedication not required. 45 or 60 day review period.
- c. Same requirements for first minors but with an environmental assessment, no public hearings, and no park dedication. 45 or 60 day review period.
- d. Same requirements for first minors but with an environmental assessment and only one public hearing. No park dedication required. 45 or 60 day review period.

Alternatives for jurisdictions with either only a planning board hearing or only a governing body hearing under major subdivision review:

- a. Same requirements for first minors but with a public hearing. Environmental assessment and park dedication not required. 45 or 60 day review period.
- b. Same requirements for first minors but with an EA. No public hearing or park dedication. 45 or 60 day review period.

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⁵⁷ **Note:** The choice of days is entirely up to the jurisdiction, depending on how much time the jurisdiction thinks it will need to complete review of an environmental assessment or to hold a public hearing.

SUPPLEMENT 3

Alternatives for Expedited Review of a First Minor Subdivision⁵⁸

OPTION 1:⁵⁹

Expedited Review of a First Minor Subdivision (New Section)

a. Criteria

A first minor subdivision application qualifies for expedited review if the proposed subdivision meets the following criteria:

- i. no more than two⁶⁰ additional lots are created;
- ii. no land is dedicated to the public for parkland, playgrounds, or other public uses and no additional streets will be dedicated to public use;
- iii. all lots have suitable access pursuant to County standards;
- iv. the proposed subdivision does not pose significant issues concerning public health, safety or welfare: ⁶¹
- v. each lot can be or is already served by public sewer and/or water services, or approval from the DEQ has already been obtained and is submitted as part of the application; and
- vi. the proposed subdivision complies with these regulations and all applicable zoning laws. 62

⁵⁸ **Note:** Section 76-3-609(2)(e) allows counties and municipalities to adopt procedures for expedited review of first minor subdivisions, if they so choose. The following options are only examples of what a county or municipality could decide to adopt. They are by no means exhaustive or the only ways a county or municipality can provide for expedited review.

Note: This section is drafted for jurisdictions with both a planning board and a governing body and is only one option for those jurisdictions who want to waive the review process, as is done in Flathead County.

⁶⁰ **Note:** Could be changed to "one."

⁶¹ **Note:** This is only one option. Another option is to require the proposal to have been approved by the DEQ. A third option is the following language: "no significant impacts on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habit, and public health and safety are anticipated."

⁶² **Note:** These six criteria are the most popular criteria appearing in current subdivision regulations. A jurisdiction is free to add or delete any criteria it feels necessary or unnecessary.

b. Procedures

- i. The applicant shall request, in writing, consideration for expedited review at the time a pre-application meeting is requested.
- ii. The subdivision administrator shall determine whether the application qualifies for expedited review at the pre-application meeting.
- iii. The subdivision administrator shall provide a letter to DEQ advising it that the application qualifies for expedited review, so no public hearing is required and no public comments are available.
- iv. The applicant shall submit all required application materials identified in Section II-A-5 of these regulations and the DEQ approval, for element review in accordance with the application deadline in these regulations as required.
- v. The application will be reviewed for the required elements and sufficient information, as identified in Section II-A-6, subsection (a) and (b) (i through ii).
- vi Once the subdivision administrator determines that the subdivision application is sufficient for review, the review period begins. The subdivision administrator shall review the application and make a recommendation for approval, conditional approval, or denial. The recommendation shall be forwarded to the applicant and the governing body no more than 15 working days after the application is deemed sufficient.
- vii. If the subdivision administrator determines that the subdivision application does not meet the expedited review criteria, the subdivision administrator shall notify the subdivider of the decision within 5 working days of making that determination.

e. <u>Approval</u>

After receiving the recommendation from the subdivision administrator, the governing body shall adopt findings of fact for approval, conditional approval, or denial at its next scheduled meeting, but no later than 35 working days after the application is deemed sufficient. The governing body decision shall be documented pursuant to Section III-A-6.e. A dated and signed statement of approval shall be provided to the subdivider pursuant to Section III-A-6.f.

f. Final Plat Filing

Once application has been approved by the governing body, or all conditions have been met if conditional approval was granted, the final plat can be prepared and filed in accordance with Section II-B and Section III-A-6.f.

SUPPLEMENT 4

Model Subdivision Impact Regulations

These model subdivision impact regulations will help local governments and cities address the impact of subdivisions on infrastructure and on the primary subdivision review criteria required under MCA 76-3-608(3)(a) - agriculture, agricultural water user facilities, local services, natural environment, wildlife and wildlife habitat, and public health and safety.

Subdivider's are required by law to address a proposed subdivision's potential impact on the primary review criteria in their subdivision applications. Legally, subdividers also have the burden of proof to show that they will not adversely impact those criteria. However, in practice, most local governments have moved that burden of proof onto themselves, their staff, and the public because the lacks clear standards for what the local government will consider to be adverse impacts and standards for what they will accept to mitigate those impacts.

Here is the way subdivision review of the primary review criteria currently takes place in most local governments:

Local governments allow the subdivider to define what he/she thinks the impacts of her/his subdivision will be on the primary review criteria;

If the subdivider admits to any impacts then he/she often create her/his own mitigation measures -sometimes with little if any guidance from the local government; and,

If a local government chooses to impose conditions on the subdivision then the local government has the burden of proving that their conditions are appropriate and legally defensible.

These model Subdivision Impact Regulations are designed to shift the burden of proof from the local government and public and to the place the burden of proof back where it legally and rightfully belongs on the subdivider.

These model regulations move the burden of proof back to the subdivider in three ways:

- 1. On pages S-12 to S-16, you will find model subdivision impact standards that local governments can use to help them define what they will consider an adverse impact on the primary review criteria. These standards will clearly let the subdivider, local government, and the public know what types of impacts need to be mitigated or avoided by a proposed subdivision in order for the subdivision to receive preliminary plat approval. If these impacts are not mitigated or avoided by a proposed subdivision then these standards provide the local government a clear legal basis to impose conditions to mitigate those impacts or to deny the subdivision if adverse impacts cannot be mitigated;
- On pages S-17 to S-20, you will find model subdivision mitigation/design standards that subdividers and the local government shall use in order to ensure that the proposed subdivision mitigates the adverse impacts identified on pages 1-5. Currently, most local governments do not have clear standards for mitigation. This lack of standards forces local governments to create mitigation measures as conditions of approval that they may or may not be able to defend in court. In some cases, this has meant that local governments have been overly cautious or inconsistent when it comes to placing conditions on subdivisions which has resulted in local governments, at times, allowing developments to adversely impact the public, neighboring property, and the environment.

By adopting these or similar standards local governments will be creating a much more legally defensible process. The standards in this model are all based on standards that other local governments have adopted and that have been successful; and,

3. If a subdivider does not believe he can meet a particular subdivision mitigation/design standard then he must ask for a variance. Through the variance process, the subdivider has the burden of proving that he needs and deserves the variance. Again, this moves the burden of proof to the party who is seeking to make money from the development - the subdivider - where it belongs. These standards will also, for the first time, give neighbors and other nearby landowners a good idea of what types of impacts and mitigation they can expect from new subdivisions.

This model benefits everyone.

The benefit of following this model is that it creates a much more predictable development process for everyone involved. The benefit to the local government is that the burden of proof has been moved back to the subdivider. The benefit to neighbors and the public is that they know what to expect when a development is proposed. And the benefit to the development community is that subdividers know what the rules for approval are up-front. They also know that the local government will be less likely to create additional conditions out of thin air because the local government has adopted clear impact and mitigation standards.

Finally, this model makes it clear that a local government may impose additional conditions in order to prevent adverse public health and safety impacts that the local government did not anticipated when they adopted their subdivision regulations.

Model Subdivision Impact Regulations

Add to or Revise Chapters on Minor and Major Subdivision Review and Approval Procedures

IV-A-8. Governing Body Decision and Documentation

- a. Consideration Evidence [Same as IV-A-8 in main text]
- b. Consideration Standards

In approving, conditionally approving, or denying a [first minor or major] subdivision application, the governing body shall consider subsection (a) above and whether the subdivision complies with:

- i. these regulations, including but not limited to, the design standards set forth in Section VI;
- ii. applicable zoning regulations;
- iii. other applicable regulations
- iv. the MSPA, including whether the proposed subdivision has been designed so that it does not adversely impact the criteria defined below, pursuant to 76-3-608(3), MCA, or that such adverse impacts have been avoided or mitigated to the maximum extent possible:

A. Impact on agriculture

- 1. Agriculture is defined as all aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including, forestry or lumbering operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market. Prime agricultural lands are defined under 82-4-203 (40), MCA.
- 2. All subdivisions must be designed so they do not adversely impact agriculture, pursuant to the MSPA and as identified below, or that such adverse impacts have been avoided or mitigated to the maximum extent possible.
 - a. Proposed subdivisions that are within a designated urban growth area are considered to have a minimal effect on agriculture.
 - b. Proposed subdivisions or associated improvements that are located on or adjacent to prime farmland or farmland of statewide importance as defined by the Natural

Resource Conservation Service are considered to have an adverse impact on agriculture.

c. Proposed subdivisions or associated improvements that predominately border land defined as agricultural or timberland by the Montana Department of Revenue or state trust lands are considered to have an adverse impact on agriculture.

B. <u>Impact on agricultural water user facilities</u>

- 1. Agricultural water user facilities are defined as those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.
- 2. All subdivisions must be designed so that they do not adversely impact agricultural water user facilities, pursuant the MSPA and as identified below, or that such adverse impacts have been avoided or mitigated to the maximum extent possible.
 - a. Proposed subdivisions located on land with agricultural water user facilities or adjoining an agricultural water use facility are considered to have an adverse impact on agricultural water user facilities.
 - b. Proposed subdivisions that involve the abandonment or transfer of water rights from the property being subdivided, or that involve the abandonment or removal of agricultural water user facilities are considered to have an adverse impact on agricultural water user facilities.
 - c. Proposed subdivisions or associated improvements that will alter access for maintenance of agricultural water user facilities are considered to have an adverse impact on agricultural water user facilities.
 - d. Proposed subdivisions or associated improvements that will alter the movement or availability of water are considered to have an adverse impact on agricultural water user facilities.

C. Impact on local services

1. Local services are defined as any and all services that local governments, public or private utilities are authorized to provide for the benefit of their citizens including but not limited to police, sheriff, fire, emergency, and public health services, as well as schools, busing, and roads.

- 2. All subdivisions must be designed so that they do not adversely impact local services, pursuant to the MSPA, and as identified below, or that such adverse impacts have been avoided or mitigated to the maximum extent possible.
 - a. Proposed subdivisions that are contiguous to unincorporated town sites or within a designated urban growth area, will use existing utilities, will have safe and adequate access to existing road networks pursuant to *Model Subdivision Design Standards* under VI-A-20(c)(v), 63 and will meet applicable city zoning and building standards are considered to have a minimal impact on local services except as otherwise provided in subsection (F)(2)(f).
 - b. Proposed subdivisions that will require the extension of city or public sewer or water more than ____ ft. are considered to have an adverse impact on local services.
 - c. Proposed subdivisions that are not contiguous to unincorporated town sites or within a designated urban growth area will be considered to have an adverse impact on services including but not limited to police, fire, and emergency services, school busing, and roads.

D. <u>Impact on natural environment</u>

- 1. The natural environment is defined as the physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light and objects of historic and aesthetic significance.
- 2. All subdivisions must be designed so that they do not adversely impact the natural environment pursuant to the MSPA and as identified below, or that such adverse impacts have been avoided or mitigated to the maximum extent possible.
 - a. Proposed subdivisions that are within a designated urban growth area and will use existing utilities are considered to have a minimal impact on the natural environment except as otherwise provided in subsections (b) and (e) below.
 - b. Proposed subdivisions or associated improvements that are proposed in locations with riparian areas, rivers streams, lakes, wetlands, or other natural surface waters are considered to have an adverse impact on the natural

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⁶³ **Note:** This reference is to the Model Subdivision Design Standards found on pages S-17 to S-20 of this Supplement.

environment which may be mitigated by meeting or exceeding standards pursuant to *Model Subdivision Design Standards* VI-A-20(d)⁶⁴.

- c. Proposed subdivisions or associated improvements that are proposed on land with a high water table (less than 4 feet from the surface) or designated groundwater recharge areas are considered to have an adverse impact on the natural environment.
- d. Proposed subdivisions or associated improvements that are proposed in locations with evidence of soils with building or site development limitations as defined by the soil survey, or are proposed on slopes greater than 25 percent, are considered to have an adverse impact on the natural environment.
- e. Proposed subdivisions or associated improvements that are proposed on land with historical, cultural, archeological, or paleontogical features are considered to have an adverse impact on the natural environment.

E. <u>Impacts on wildlife and habitat</u>

- 1. Wildlife are defined as those animals that are not domesticated or tame. Wildlife habitat are defined as the place or area where wildlife naturally lives or travels through.
- 2. All subdivisions must be designed so that they do not adversely impact wildlife and wildlife habitat pursuant to the MSPA, and as identified below, or that such adverse impacts have been avoided or mitigated to the maximum extent possible.
 - a. Proposed subdivisions that are within a designated urban growth area are considered to have a minimal impact on wildlife and wildlife habitat except as otherwise provided in subsections (c) and (e) below.
 - b. Proposed subdivisions or associated improvements that are proposed in locations with riparian areas, wetlands, rivers, streams, lakes, or other natural surface waters are considered to have an adverse impact on wildlife and wildlife habitat.
 - c. Proposed subdivisions or associated improvements that are proposed in an area with rare, threatened, or endangered species, as identified by state or federal

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⁶⁴ **Note:** This reference is to the Model Subdivision Design Standards found on pages S-17 to S-20 of this Supplement.

agencies, are considered to have an adverse impact on wildlife.

- d. Proposed subdivisions or associated improvements that are proposed on or adjacent to land identified by state or federal agencies as critical habitat are considered to have an adverse impact on wildlife and wildlife habitat.
- e. Proposed subdivisions or associated improvements that are proposed in locations that would interfere with known important or critical wildlife corridors are considered to have an adverse impact on wildlife and wildlife habitat.

F Impacts on public health and safety

- 1. Public health and safety is defined as the prevailing healthful, sanitary condition of well being for the community at large. Conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards.
- 2. All subdivisions must be designed so that they do not adversely impact public health and safety pursuant to the MSPA, and as identified but not limited to the adverse impacts identified below, or that such adverse impacts have been avoided or mitigated to the maximum extent possible.
 - a. Proposed subdivisions that are within a designated urban growth area where existing police, fire, and emergency services can respond within 5 minutes for 90% of all emergencies and that meet or exceed the standards pursuant to *Model Subdivision Design Standard Chapter* VI-A-20(f)⁶⁵ are likely to have a minimal impact on public health and safety.
 - b. Proposed subdivisions or associated improvements that are located in an area identified as a medium to severe fire hazard area by a fire district are considered to have an adverse impact on public health and safety. If the level of fire hazard has not been determined for the site then the developer shall receive a determination from either the appropriate local volunteer fire department or from the DNRC before submitting a subdivision application.

⁶⁵ **Note:** This reference is to the Model Subdivision Design Standards found on pages S-17 to S-20 of this Supplement.

- c. Proposed subdivisions or associated improvements that are proposed on land with high pressure gas lines or high voltage lines are considered to have an adverse impact on public health and safety.
- d. Proposed subdivisions or associated improvements that are proposed on land or adjacent to Superfund or hazardous waste sites are considered to have an adverse impact on public heath and safety.
- e. Proposed subdivisions or associated improvements that are proposed on or adjacent to abandoned landfills, mines, wells, waste sites, or sewage treatment plants are considered to have an adverse impact on public health and safety.
- f. Proposed major or subsequent minor subdivisions located outside of areas where police, fire, and emergency services can respond within 5 minutes for 90% of all emergencies are considered to have an adverse impact on public health and safety.
- g. Proposed subdivisions or associated improvements that are located in an area identified as a high seismic hazard areas are considered to have an adverse impact on public health and safety.
- h. Any other adverse impacts on health or safety that may result from the proposed subdivisions or associated improvements.

Add to Sections on Minor or Major Subdivisions for General Design Standards

VI-A-20. Impacts of the Proposed Subdivision

a. <u>Impacts on Agriculture</u>

Proposed subdivisions shall mitigate adverse impacts on agriculture by meeting or exceeding the following design standards:

- i. Prime agricultural lands on adjacent properties will be protected from adverse impacts by requiring that a 200 ft open space buffer be established between any structures and adjacent prime agricultural lands.
- ii. Prime agricultural lands located on the site will be protected from adverse impacts by requiring that at least 30% of the property be maintained as open space.
- iii. Open space shall consist primarily of lands designated as prime agricultural lands.

- iv. Open space will be protected in perpetuity through a conservation easement;
- v. Open space may contain dedicated parkland, wildlife, river, and stream buffers, and up to 1/3 of open space areas may be used for community water and community wastewater systems. 100-year Floodplains and hillsides with slopes greater than 25% must be subtracted from the total amount of required open space.
- vi. Protected lands will be clustered so that they abut neighboring open lands;
- vii. The development will include a weed plan adopted by the County for the management of weeds within buffer, open space, and yards.

b. <u>Impact on agricultural water user facilities</u>

Proposed subdivisions shall mitigate adverse impacts on agriculture water user facilities by meeting or exceeding the following design standard: the development shall be consistent with the provisions of 76-3-504, MCA;

c. <u>Impact on local services</u>

Proposed subdivisions shall mitigate adverse impacts on local services by meeting or exceeding the following design standards:

- i. Whenever feasible, all streets and alleys shall connect to other streets within the neighborhood/development and connect to existing or projected through streets, as part of an interconnected street network, outside of the development;
- ii. All streets will be aligned in accordance with the local government's transportation plan and the developer will either develop planned arterials and collectors in accordance with transportation plans or donate right of way for arterials and collectors in accordance with transportation plans;
- iii. The development shall meet the road standards established in the subdivision regulations;
- iv. All developments shall waive their right to protest the creation of an special improvement districts or road improvement district; and
- v. All Developments shall have safe and adequate access on county roads or state or federal highways within the traffic impact area of the development. Safe and adequate access exists when traffic volumes do not exceed the capacity of the road; when operating conditions on the road and at intersections do not fall below the specified or existing level of service (LOS); and when paved and unpaved sections and structures can accommodate projected traffic. If a LOS is not specified for any road section within the traffic impact area then the applicant shall work with the County to identify the existing LOS. Traffic impact area at a minimum must include:

A. Internal roads;

- B. Adjacent roads;
- C. Off-site roads to the nearest county collector or arterial road or state or federal highway;
- D. Off-site roads where traffic from the development will account for at least ten percent of the average daily traffic on those roads; and
- E. Intersections where traffic from the proposed development will account for at least five percent of the traffic volume on any approach leg of the intersection.

If safe and adequate access cannot be provided or maintained within the traffic impact area, as a result of the proposed development's projected traffic, then in order to mitigate those impacts the developer shall either construct the necessary improvements to ensure safe and adequate access or provide payment in lieu to the applicable department to cover the costs of the constructing the improvements necessary to ensure safe and adequate access.

d. Impact on natural environment

Proposed subdivisions shall mitigate adverse impacts on the natural environment by meeting or exceeding the following design standards:

- i. All structures and roads shall meet the applicable setback standard (i.e., distance from the ordinary high water mark of the water body and any structures) and vegetated buffer standard, in which existing native species may not be removed. Setback distances shall be measured from the ordinary high water mark of the water body and no structure shall be allowed within the setback area:
 - A. Type I watercourses as defined under MCA 23-2-301 250 ft setback, 100 ft buffer:
 - B. Type II watercourses, generally defined as all main tributaries of type I water courses 200 ft setback, 75 ft buffer;
 - C. Type III watercourses, generally defined as all tributaries of type II watercourses; all intermittent streams; and reservoirs 100 ft setback, 50 ft buffer;
 - D. Type IV watercourses, which for these purposes are considered drainage channels capable of carrying or collecting stormwater and snowmelt runoff, and irrigation district canals 50 ft setback, 30 ft buffer;
 - E. Within a designated urban growth area 75 ft setback, 30 ft buffer.
- ii. The following minimum buffer areas must be establish from the boundary of a wetland identified by the County, the Army Corps of Engineers, U.S. Fish and Wildlife Service, DNRC, or FWP. If the subdivision application reveals a potential wetland on the site then the applicant is responsible for delineating the

wetland's boundaries on maps, plats, and site plans submitted as part of the subdivision application. Buffers from wetland boundaries within which structures and improvements may not be built, except for those for educational or scientific purposes, include:

- A. Wetlands of one acre or less 50 ft;
- B. Wetlands of more than one acre 100 feet

e. <u>Impacts on wildlife and habitat</u>

Proposed subdivisions shall mitigate adverse impacts on wildlife and wildlife habitat by meeting or exceeding the following design standards:

- i. Critical wildlife habitat and corridors will be protected from adverse impacts by requiring that a 200 ft open space buffer be established between any structures and any critical wildlife habitat and corridors;
- ii. Open space will be protected in perpetuity;
- iii. Protected lands will be clustered so that they abut neighboring open lands; and
- iv. The development will include a weed plan adopted by the County for the management of weeds on the buffer, open space, and yards.

f. Impacts on public health and safety

Proposed subdivisions shall mitigate adverse impacts on public health and safety by meeting or exceeding the following design standards:

- i. No structure shall be located within the 100-year floodplain;
- ii. No mixing zone from a septic or other wastewater treatment system shall be permitted to cross the development's property line;
- iii. Subsequent minor and major subdivisions shall provide substantial and credible evidence that the cumulative impact of all of the water supply systems that will be used to supply the development will not harm any existing senior water rights.
 - A. For developments that will be served by community water supply systems, the governing body may require that the subdivider receive a water right prior to final plat approval;
 - B. For developments that will be served by single family wells that produce less than 35 gallons per minute, the subdivider must provide substantial and credible evidence that the cumulative impact of all the wells together as a connected system will not harm any existing senior water rights; or
 - C. Developments that will be served by public water supply systems do not need to show any additional evidence other than DEQ approval before final plat approval.

- iv. Structures shall not be permitted in high fire hazard areas, or on 25% slopes, or at the apex of "fire chimneys;"
- v. Developments that will have impacts pursuant to the *Model Subdivision Impact Regulations* $(F)(2)(f)^{66}$ shall meet the standards for wildland fire protection developed by DNRC and included in County Subdivision regulations. (i.e. internal sprinklers and higher GPM standards shall be required for these developments but not for developments that are within 5 minutes for 90% of all emergencies fire fees should be eliminated from the subdivision regulations in exchange for the development of impact fees).
- vi. Subsequent minor and major subdivisions that will have an adverse impact pursuant to the Model Subdivision Impact Regulations (F)(2)(f) may be denied approval by the governing body or the governing body shall require the subdivider and subsequent owners to disclose to potential buyers that "police, fire, and emergency services cannot respond within 5 minutes for 90% of all emergencies that might take place within this development" until such time as the subdivider or subsequent owners can demonstrate to the county commission that police, fire, and emergency services can respond within 5 minutes for 90% of all emergencies that might take place at the development.
- vii. The governing body may impose additional conditions to mitigate adverse impacts on public health or safety that may result from the proposed subdivision or associated improvements.

Add to Cluster Development Procedures

X-A. Cluster Development - Standards

- a. If a proposed subdivision meets the following cluster development standards then there is a rebuttable presumption that the development will not have an adverse impact on the 76-3-608(3)(a) criteria and therefore the subdivision application does not need to complete an environmental assessment. Cluster development standards:
 - i. The proposed subdivision clusters structures together and away from open space;
 - ii. Open space abuts neighboring open space and protects the most important and critical agricultural lands and wildlife habitat and corridors on the property;
 - iii. Open space constitutes at least 50% of the development's property including all past and proposed future phases of the development;
 - iv. Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a cluster development;
 - v. There is no minimum lot size other than those authorized under administrative rules adopted by the DEQ under Title 76, Chapter 4, MCA;

⁶⁶ **Note:** This reference is to the Model Subdivision Design Standards found on pages S-17 to S-20 of this Supplement.

- vi. The maximum size of parcels, not designated as open space, allowed within a cluster development is five acres;
- v. The development complies with all applicable zoning, subdivision, and building code regulations and state laws; and
- vi. Open space may contain dedicated parkland, wildlife, river, and stream buffers, and up to 1/3 of open space areas may be used for community water and community wastewater systems. 100-year floodplains and hillsides with slopes greater than 25% must be subtracted from the total amount of required open space.
- b. A cluster development receives the following incentives:
 - i. Density bonuses allowing the developer to build:
 - A. 50% more units/lots than allowed under zoning if 50% to 75% of the development is placed in a perpetual conservation easement;
 - B. 100% more units/lots than allowed under zoning if 75% or more of the development is placed in a perpetual conservation easement;
 - ii. If a proposed subdivision meets the cluster development standards under (a) then there is a rebuttable presumption that the development will not have an adverse impact on the 76-3-608(3)(a) criteria and therefore the subdivision application does not need to complete an EA.
 - iii. Park dedication requirements for clustered subdivision created under this section are waived.
- **X-B. Cluster Development, Option I** [Same as main text]
- **X-C.** Cluster Development, Option II [Same as main text]

Montana Code Annotated 2011

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76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

- (a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);
- (b) except as provided in <u>76-3-509</u>, <u>76-3-609</u>, or <u>76-3-616</u>, require the subdivider to submit to the governing body an environmental assessment as prescribed in <u>76-3-603</u>;
- (c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;
 - (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;
- (e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.
- (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;
 - (g) prescribe standards for:
 - (i) the design and arrangement of lots, streets, and roads;
 - (ii) grading and drainage;
- (iii) subject to the provisions of $\overline{16-3-511}$, water supply and sewage and solid waste disposal that meet the:
- (A) regulations adopted by the department of environmental quality under $\frac{76-4-104}{2}$ for subdivisions that will create one or more parcels containing less than 20 acres; and
- (B) standards provided in <u>76-3-604</u> and <u>76-3-622</u> for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and
 - (iv) the location and installation of public utilities;
- (h) provide procedures for the administration of the park and open-space requirements of this chapter;
- (i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.
- (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:
- (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land:
 - (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed

to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

- (iii) reserve and sever all surface water rights from the land;
- (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:
- (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
- (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
- (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
 - (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:
- (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or
- (B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.
- (l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;
- (m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.
- (n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;
- (o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to $\frac{76-3-605}{2}$ and $\frac{76-3-615}{2}$;
- (p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in <u>76-3-201</u> or <u>76-3-207</u> is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.
 - (q) establish a preapplication process that:
- (i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;
- (ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process:
 - (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of

local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

- (iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and
- (v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604;
- (r) requires that the written decision required by <u>76-3-620</u> must be provided to the applicant within 30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision.
- (2) In order to accomplish the purposes described in <u>76-3-501</u>, the subdivision regulations adopted under <u>76-3-509</u> and this section may include provisions that are consistent with this section that promote cluster development.
 - (3) The governing body may establish deadlines for submittal of subdivision applications.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981; amd. Sec. 238, Ch. 418, L. 1995; amd. Sec. 18, Ch. 471, L. 1995; amd. Sec. 1, Ch. 201, L. 1999; amd. Sec. 21, Ch. 582, L. 1999; amd. Sec. 5, Ch. 348, L. 2001; amd. Sec. 3, Ch. 527, L. 2001; amd. Sec. 1, Ch. 564, L. 2001; amd. Sec. 11, Ch. 599, L. 2003; amd. Sec. 3, Ch. 298, L. 2005; amd. Sec. 1, Ch. 302, L. 2005; amd. Sec. 1, Ch. 317, L. 2007; amd. Sec. 3, Ch. 443, L. 2007; amd. Sec. 13, Ch. 446, L. 2009.

Provided by Montana Legislative Services

Appendix G

Relevant Federal Laws and Programs





Background Information:

RAdio Detection And Ranging (RADAR) devices, commonly known as radars, are the best proven means for detecting precipitation and thunderstorms in the US. Since the 1940's radar enhancements have enabled the National Weather Service (NWS) to forecast and examine storms with precision and protect public safety.

NEXRAD is the nationwide network of weather radars located overseen by a group of federal agencies such as the US Department of Commerce, Transportation and Defense, Federal Aviation Administration and the National Weather Service. In 1988, the NEXRAD Agencies established the WSR-88D (Weather Surveillance Radar - 1988 Doppler) Radar Operations Center (ROC) in Norman, Oklahoma. The ROC provides centralized meteorological, software, maintenance, and engineering support for all 159 WSR-88D systems. One such radar is located in Great Falls, MT.

NEXRAD Radars generate data is used to issue tornado/sever weather/flashflood warnings, weather forecasts and hydrological forecasts. The NEXRAD network provides critical information about severe weather and flash flood warnings, air traffic safety, flow control for air traffic, resource protection at military bases, and management of water, agriculture, forest, and snow removal. The data generated by these radars is used by government meteorologists, emergency managers, television broadcaster, private industry, researchers and the public.

The WSR-88D is a Doppler radar, which can detect motions toward or away from the radar and the location of precipitation areas. The radar's advanced ability to detect motion has allows meteorologists to see inside thunderstorms and determine the severity of the weather pattern to enable timely and living saving forecasts, warnings and facilitates safe air transport. What the radar detects depends on the radar line of sight. A radar can view over a horizon because the beam propagates approximately 4/3rd the earth's radius under standard atmospheric conditions. This means no matter above ground level elevation of the radar. The maximum range of the NEXRAD radar is 250 nautical miles.

Issues:

Interference

One of the primary emerging impacts to weather radars is the interference generated by wind turbines. Wind farms can interfere with NEXRAD radars through the creation of spurious echoes which are difficult to mitigate, reduce radar algorithm performance and confuse radar use.

Potential Impacts to NEXRAD Data

- Spinning turbine blades inhibit radar's ability to filter turbine echoes and turbine clutter
- Turbines can look like storms of severe weather on radar
- Turbines can cause partial beam blockage shadow effects and false echoes downrange

Effects on NEXRAD Products near Wind Farms

- False and anomalously large precipitation estimates
- Incorrect wind speeds
- Missed/delayed tornado and thunderstorm detections or false alarms
- False and anomalously large reflexivity estimates
- False storm identification and incorrect storm track forecasts

Potential Impacts on Weather Forecasts and Warning for

- Tornadoes
- Flash Floods
- Winter Storms
- Air Traffic Control and Routing

Examples of Wind Farm Impacts on Weather Radars and Users

- Lincoln, IL Excessive precipitation accumulation from this wind farm could result in a false flashflood warning.
- Des Moines, IA Emergency manager confusion on location of wind farms and developing storms.
- Dodge City, KS False tornado alerts
- Great Falls, MT False Echoes downrange from 6 turbines.
- Ft. Drum, NY False echoes on low resolution reflectivity product used by air traffic controllers can cause unnecessary aircraft rerouting.

In order to mitigate these impacts each WSR-88D has a 20 nautical mile radius no obstruction buffer. Within this buffer wind energy development is not permissible. This area is identified as a "red dot" on NEXRAD maps. Numerous wind energy development projects proposed for Cascade County have been denied because of this buffer zone.

NOAA's Radar Operations Center (ROC) learns of wind farm developments through both formal and informal methods. The formal channel is through the Department of Commerce's National Telecommunications and Information Administration (NTIA) - the clearinghouse for developers who voluntarily submit wind farm proposals for review by several federal agencies, including NOAA. The American Wind Energy Association's (AWEA) Wind Siting Handbook (AWEA 2008) establishes this approach as the formal process.

Otherwise the ROC learns about wind energy development projects informally through local forecast offices, news articles or web links. To prevent siting issues the ROC will contact developers, especially if the project may impact a nearby WSR-88D.

Based on the wind farm proposal the ROC receives, the ROC provides a case-by-case analysis of potential wind farm impacts on WSR-88D data and forecast/warning operations. In the last 2 years, the ROC has provided over 375 individual analyzes. The ROC uses a geographic information system GIS database that utilizes data from the Space Shuttle Radar Topography Mission to create a RLOS map with

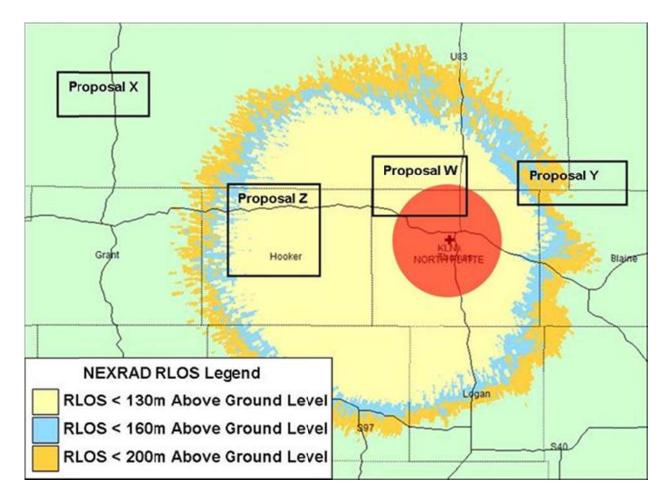
delineated areas corresponding to turbine heights of 130 m, 160 m, and 200 m AGL. Multiple radar elevation angles are considered for projects close to the radar.

The ROC then performs a meteorological and engineering analysis using: distance from radar to turbines; maximum height of turbine blade tips; the number of wind turbines; elevation of the nearby WSR-88D antenna; an average 1.0 degree beam width spread; and terrain (GIS database). From this data the ROC determines if the main radar beam will intersect any tower or turbine blade based on the Standard Atmosphere's refractive index profile.

Finally, the ROC estimates operational impacts based on amount of turbine blade intrusion into RLOS, number of radar elevation tilts impacted by turbines, location and size of the wind farm, number of turbines, orientation of the wind farm with respect to the radar (radial vs azimuthal alignment), severe weather climatology, and operational experience. The ROC also compares the wind farm to other operational wind farms to estimate impacts.

The ROC has adopted the RLOS as a benchmark for seeking further discussions with developers to determine if alternative siting strategies (e.g., relocation, terrain masking, and/or a more optimum deployment pattern) could reduce the potential impact of wind turbines on radar performance. About 21% of analyzed wind farm proposals have been projected to be in the RLOS of a WSR-88D. As a result of these analyzes the ROC has met or had conference calls with over 20 developers to discuss possible mitigation strategies for wind farms. Some developers have stated they will re-site planned turbines to more favorable locations with respect to the WSR-88D.

The figure depicts an example of the primary categories of wind farm analysis requests/replies.



An example radar line of sight (RLOS) map generated by the NEXRAD ROC for a wind farm analysis. Four hypothetical proposals: W, X, Y, and Z as described in the text are shown.

Proposal X: clearly out of the RLOS, would have minimal to no impact on the radar Proposal Y: minimal to moderate impacts on the radar if turbines were built in the western portion of the proposal area. The NEXRAD Program would seek to consult with the developer to determine if most/all wind turbines could be located in the eastern portion of the proposed area. Proposal Z: potentially large impacts on the radar. The NEXRAD Program would seek to consult with the developer to determine if there is flexibility to consider impact mitigation techniques and to ensure the developers are aware of potential impact on forecast/warning operations.

Proposal W: potentially serious impacts on the turbines and the NEXRADs for the portion of the proposal in the red area. The NEXRAD Program would seek to consult with the developer to ensure they are aware of the likely impact on forecast/warning operations, the NEXRAD system, and the wind turbines/personnel.

(Source: www.roc.noaa.gov/windfarm/windfarm_index.asp and http://arrc.ou.edu/turbine)
Alternative Technologies:

There are other technologies available for monitoring weather patterns such as the Air Surveillance Radar (ASR) but the NEXRAD Radars have certain features that render it the best means for collecting this data.

The differences between the two technologies include:

- Targets of interest are significantly different: Distributed vs. Point Targets
- Weather (distributed): rain, snow, hail, particulates (diffuse, weak0; many different Doppler velocities (e.g. turbulence, wind shear)
- Aircraft (point): hard, very reflective; more distinct Doppler velocity
- NEXRAD was design with a greater sensitivity (Lower noise floor) than ASR systems; signals are
 processed differently resulting in different clutter solutions.

Possible Solutions:

- Keep Wind turbines out of the line of site of weather radars.
- Ensure Developers work with the appropriate Federal Agencies on the siting of turbines as early in the process as possible.
- Have developers coordinate with the National Telecommunications Information Administration early in the siting process.
- Research Advanced signal processing methods using NEXRAD and phased array radars.
- Conduct laboratory experiments on turbine-feedback based filtering.
- Senators Dianne Feinstein, Ron Wyden, Barbara Boxer, Tom Harkin, Jeff Merkley, Charles
 Grassley, Jon Tester, Richard Durbin and Max Baucus signed a letter to Secretary Gates with
 suggestions about how minimize the conflicts between the wind energy and military radar uses
 airspace requirements. An abbreviated description of these suggestions is listed below.
 - Consolidate Decision-Making formally consolidate decision making regarding wind energy to a single office.
 - o Participate in FAA Review the DoD should identify proposed wind farm impacts on airborne operations during the FAA Review period.
 - Site-specific evaluations The DoD should carry out red, yellow, green mapping of appropriate wind energy sites like those that have been done in California, Arizona and Nevada.
 - Airspace Height Restrictions height restrictions vary across the country, loosening some of these restrictions throughout the country could open space for wind energy development.
 - Radar Upgrades Prioritize the upgrading of weather radars through the National Airspace Modernization Program.











Siting and Military Capabilities: DoD's Energy Siting Clearinghouse



Bill Van Houten Energy Siting Clearinghouse Office of the Secretary of Defense



America's Military Missions

We train...



test...



operate...



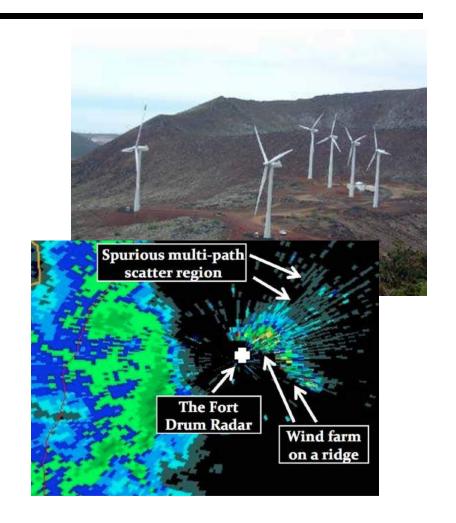
And defend.





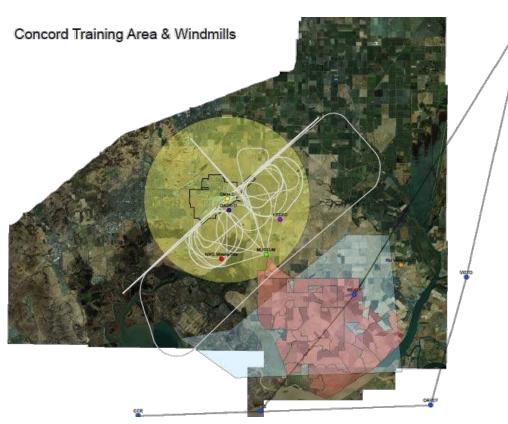
The Renewable Conundrum

- Unintended Consequences
 - Rapid development of renewable technologies
 - Rapidly changing military technology research & development
- Existing Policy and Processes
 - Not up to date with changing technologies
 - Land use decision-making authorities fragmented across all levels of government





There Are Successes

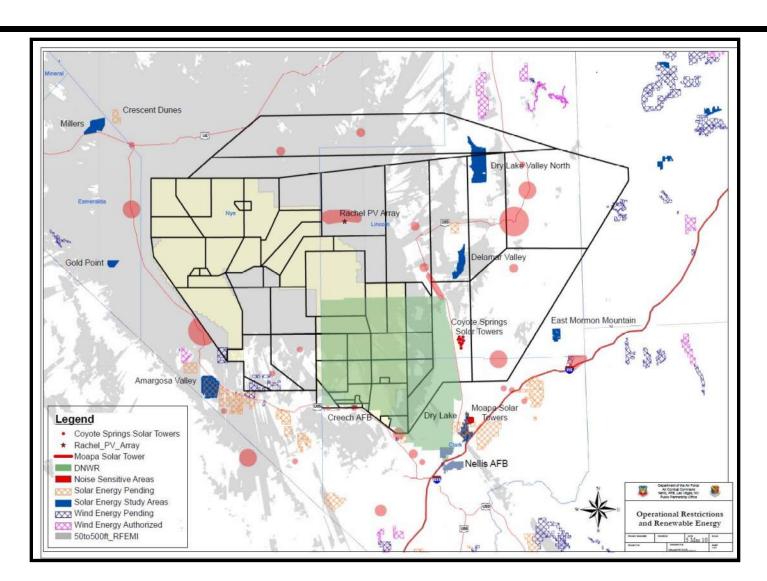


Travis AFB CRADA

- Cooperative Research and Development Agreement (CRADA)
- Multiple Partners including Air Force, utility provider, wind developer, and consultants, plus multiple supporting organizations
- Jointly funded studies of impacts and explored mitigations
- Resulted in "re-tuning" of radar and interlinking with other radars to mitigate coverage impacts

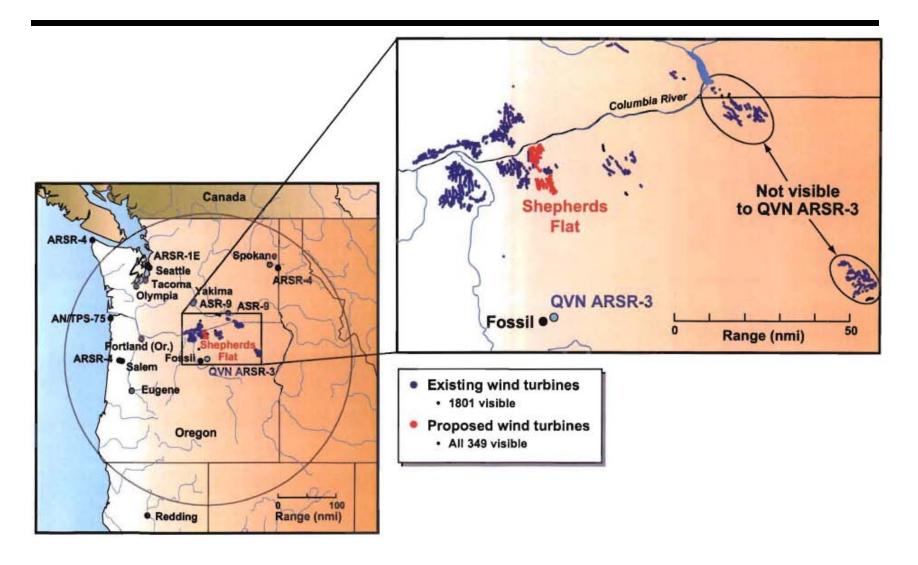


Crescent Dunes to Coyote Springs: Congressional Push for Action





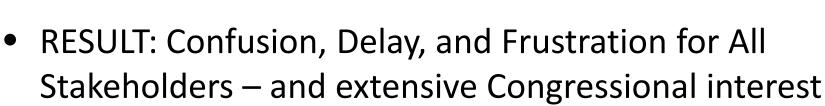
Shepherd's Flat – We Were Unprepared





The Renewable Conundrum

- DoD's Response Inadequate
 - Case-by-case basis, steep learning curve, slow responses to requests for review
 - Uneven coordination among installations /Services
 - No single voice







The 2011 NDAA

- National Defense Authorization Act (NDAA)
- Section 358 "Study Of Effects Of New Construction Of Obstructions On Military Installations And Operations"
- Designation Of Senior Official And Lead Organization
- Focuses on Obstructions per the OE/AAA Process





Key Elements of Section 358



- 180-day Preliminary Actions
- 270-day Comprehensive Strategy
- Hazard Assessment
 - Determination of unacceptable risk may only be delegated to:
 - The Deputy Secretary of Defense
 - The Under Secretary of Defense for Acquisition, Technology, & Logistics
 - The Principal Deputy Under Secretary of Defense for Acquisition, Technology, & Logistics
- REPORT TO CONGRESS

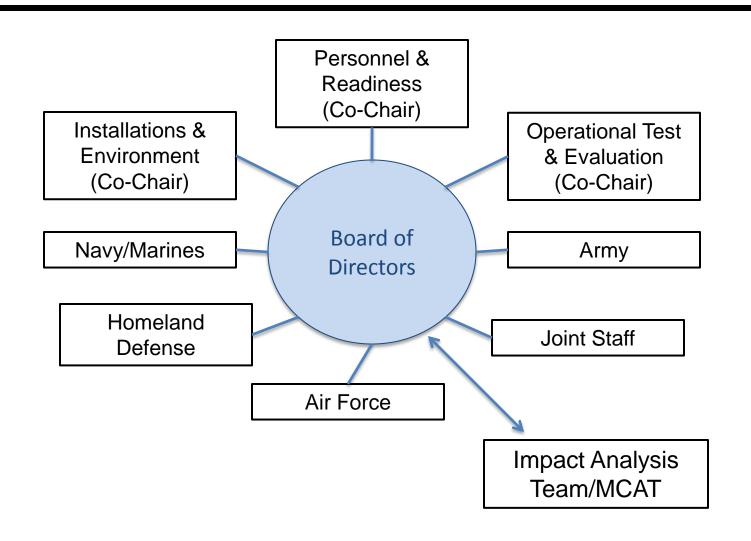


Key Elements of Section 358



- Authority to Accept Contributions of Funds
 - voluntary contribution of funds from an applicant for a project
 - for the purpose of offsetting the cost to mitigate adverse impacts on military operations and readiness







- Organization and Tools
 - Mission Compatibility Awareness Tool (MCAT)

Navigation

Search

Identify Locate

Extent

Chart

Zoom In

Zoom Out

Full Extent

Re-center Map

Operational Impact Assessment Tools

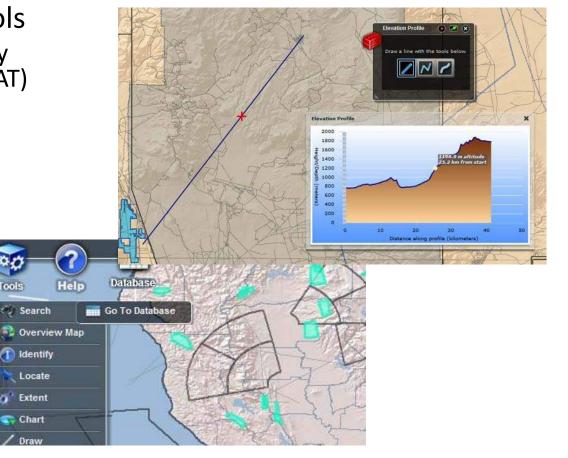
Street Map

Satellite Map Topographic

Shaded Relief

Bookmarks

World Navigation Charts





- External Communications
 - Outreach and Early Consultation
 - What the Clearinghouse Needs to Know
- Processes
 - Matrix of Data and Communications
 - Parallel Multi-Service Review
 - NOT a replacement for OE/AAA,
 NTIA, or NEPA
 - Applies to ALL renewables, not just wind
 - Applies on AND off our bases





A Single DoD Voice

- Timely, repeatable, and predictable process that promotes compatibility between energy independence and military capabilities: two key facets of national security
- Most projects will be reviewed and cleared by Services in 30 – 45 days
- Only projects with significant impacts or that need multi-Service coordination will receive full Clearinghouse attention



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Appendix H

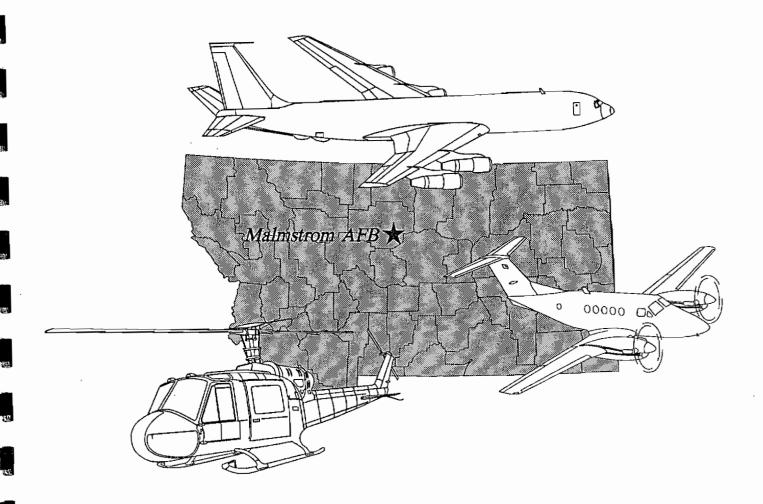
Relevant Military Laws and Programs





AICUZ STUDY

Volume I



UNITED STATES AIR FORCE MALMSTROM AFB, MONTANA 1994





31 Mar 94

MEMORANDUM FOR GREAT FALLS AREA GOVERNMENTS

FROM: 43 ARW/CC

21 77th Street North, Suite 254

Malmstrom AFB, Montana 59402-7538

SUBJECT: Malmstrom Air Force Base Air Installation Compatible Use Zone (AICUZ) Study

- INFORMATION MEMORANDUM

- 1. This Air Installation Compatible Use Zone (AICUZ) Study for Malmstrom Air Force Base is an update of the original AICUZ study dated May 1978. The update was initiated because of changes in air operations and improvements in noise mapping software. It is a reevaluation of aircraft noise and accident potential related to Air Force flying operations and is designed to aid in the development of local planning mechanisms which will protect public safety and health, as well as preserve the operational capabilities of Malmstrom Air Force Base.
- 2. The report outlines the location of the runway clear zones, aircraft accident potential zones, and noise contours and recommends compatible land uses for areas in the vicinity of the base. We provide this information for your consideration as you develop your community plans, zoning ordinances, subdivision regulations, building codes, and other related documents.
- 3. The basic objective of the AICUZ program is to achieve compatible uses of public and private lands in the vicinity of military airfields by controlling incompatible development through local actions. This update provides noise contours based upon Day-Night Average A-Weighted Sound Level (DNL) metric used by the Air Force, and it provides the information necessary to maximize beneficial use of the land surrounding Malmstrom Air Force Base while minimizing the potential for degradation of the health and safety of the affected public.
- 4. We greatly value the positive relationship Malmstrom Air Force Base has experienced with its neighbors over the years. As a partner in the process, we have attempted to minimize noise disturbances through such actions as confining most flight operations and ground engine run-ups to the hours between 7:00 a.m. and 10:00 p.m. and avoiding flights over noise-sensitive locations.
- 5. We believe it would be mutually beneficial to all concerned to follow the recommended actions and guidelines presented in the AICUZ study.

GARY A VOELLGER

Brigadier General, USAF

Commander

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SECTION 1 PURPOSE AND NEED

1.1 Introduction

This study is an update of the 1978 Malmstrom AFB Air Installation Compatible Use Zone (AICUZ) Study. The update presents and documents the changes to the AICUZ for the period of 1978 to 1993. It reaffirms Air Force policy of promoting public health, safety, and general welfare in areas surrounding Malmstrom AFB. The report presents changes in flight operations since the last study and provides current noise contours and compatible use guidelines for land areas surrounding the base. It is hoped this information will assist local communities and serve as a tool for future planning and zoning activities.

The changes in the AICUZ are attributed to:

- Changes in the types of based aircraft.
- Changes in the number of flying operations.
- Technical improvements to the NOISEMAP program.

1.2 Purpose and Need

As stated in the previous Malmstrom AFB AICUZ Study, the purpose of the AICUZ program is to promote compatible land development in areas subject to aircraft noise and accident potential. Community cooperation regarding recommendations made in the earlier AICUZ Study has been outstanding. As Cascade County and the city of Great Falls prepare and modify their land use development plans and zoning maps, recommendations from this updated AICUZ Study should be included in their planning process to prevent incompatibility that may compromise Malmstrom AFB's ability to fulfill its mission requirements. Accident potential and aircraft noise should be major considerations in their planning processes.

Air Force AICUZ land use guidelines reflect land use recommendations for clear zones, accident potential zones I and II, and four noise zones. These guidelines have been established on the basis of studies prepared and sponsored by several federal agencies, including the Department of Honsing and Urban Development, Environmental Protection Agency, Air Force, and state and local agencies. The guidelines recommend land uses which are compatible with airfield operations while allowing maximum beneficial use of adjacent properties. The Air Force has no desire to recommend land use regulations which render property economically useless. It does, however, have an obligation to the inhabitants of the Malmstrom AFB environs and to the citizens of the United States to point out ways to protect the people in adjacent areas as well as the public investment in the installation itself.

The AlCOVA program uses the latest technology to define noise levels in areas near Air Force installations. An analysis of flying operations was performed, including types of aircraft, flight

patterns utilized, variations in altitude and power settings, number of operations, and hours of operations. This information was used to develop the noise contours contained in this study. The DoD NOISEMAP methodology and the Day-Night Average A-Weighted Sound Level (DNL) metric were used to define the noise zones for Malmstrom AFB.

1.3 Process and Procedure

Preparation and presentation of this update to Malmstrom AFB's AICUZ Study is part of the continuing Air Force participation in the local planning process. It is recognized that, as local communities prepare land use plans and zoning ordinances, the Air Force has the responsibility to provide inputs on its activities relating to the community. This study is presented in the spirit of mutual cooperation and assistance by Malmstrom AFB to aid in the local land use planning process. This study updates information on base flying activities since 1978. The noise contours depicted on the AICUZ maps are based on current missions.

Data collection was conducted 10-13 August, 1993. Aircraft operational and maintenance data was obtained to derive average daily operations by runway and type of aircraft. This data is supplemented by flight track information (where they fly), flight profile information (how they fly), and ground runup information. After verification for accuracy, data was input into the NOISEMAP program and converted to Day-Night Average A-Weighted Sound Level (DNL) noise contours. Noise contours were plotted on an area map and overlaid with clear zones and accident potential zones. Volume II, Appendix A contains detailed information on the development of the AICUZ program.

SECTION 2 INSTALLATION DESCRIPTION

2.1 Mission

Malmstrom AFB, an Air Mobility Command installation, is home to two operational command wing missions, that of the 43rd Air Refueling Wing (ARW) and the 341st Missile Wing (MW), as well as several associate units. The 43 ARW, reporting to the 15th Air Force at Travis AFB, California, provides combat ready KC-135R aircraft and aircrews to support the nation's Single Integrated Operational Plan (SIOP) and world-wide contingencies that require aerial refueling. As host wing, the 43 ARW provides total base support. The 341 MW, an Air Force Space Command unit reporting to the 20th Air Force at F.E. Warren AFB, Wyoming, provides combat-ready crews and 200 Minuteman II and III intercontinental ballistic missiles (ICBMs) in accordance with emergency war orders in support of SIOP. The missile wing provides national nuclear threat deterrence through quick retaliatory ability. The flying organizations at Malmstrom AFB fly the KC-135R refueling aircraft, the C-12 training aircraft, and the UH-1N "Huey" helicopter.

2.1.1 91st and 97th Air Refueling Squadrons (AREFS)

In support of the 43 ARW, the 91 and 97 AREFS provide global aerial refueling support for bombers, airlift, fighters and air defense and special mission aircraft as directed by the Department of Defense. In addition, these squadrons conduct training missions throughout the continental United States to maintain operational effectiveness and to provide the capability of projecting its force worldwide in a minimum amount of time.

2.1.2 Companion Training Program (CTP)

The Companion Training Program is a cost effective method to provide Air Force copilots increased flying and decision-making opportunities before becoming aircraft commanders. Copilots assigned to the 43 ARW at Malmstrom AFB participate in this program using the C-12 aircraft. While participating in this program, copilots fly a variety of missions to develop their judgement, maturity, and decision-making skills.

2.1.3 Detachment 5, 341st Operations Group (OG)

The primary mission of Dct. 5, 341 OG is aerial security for the 341 MW's 23,000 square mile ICBM complex, with overall surveillance of missile convoy movements throughout Montana. Dct. 5, 341 OG provides airlift support for missile maintenance, security, and operation. Additionally, the detachment provides a search and rescue function for the local area. In its nineteen years of continuous service, the detachment has performed more than 270 rescues in adverse conditions and mountainous terrain.

2.2 Economic Impact

Malmstrom AFB occupies over 3,570 acres within the political boundaries of Cascade County, Montana, approximately two miles east of the city of Great Falls. The base's economic impact region (EIR) is the geographic area subject to significant base-generated economic impacts. It is assumed to cover a radius of fifty miles around the base and includes all or parts of Cascade, Judith Basin, Lewis and Clark, Teton, Pondera, and Chouteau Counties.

The available modes of transport for people, goods, and raw materials has aided development and commerce in Great Falls. Early development was directly affected by the navigational potential of the Missouri River. Today, however, the upper Missouri River is used more for other purposes such as power generation and recreation. The Great Falls area is serviced by several commercial airlines with daily arrivals and departures via the Great Falls International Airport. Road transportation to and from Great Falls is provided by Interstate 15, and U.S. Highways 87, 89, and 91. In addition, rail freight transport through the Great Falls area is provided by rail lines from the Burlington Northern, Inc.

In a predominantly rural area dominated by agricultural interests, Malmstrom AFB employs nearly seven percent of the county's population and is the largest single employer in the region. During 1992, the base employed a total of 4,251 active duty personnel, 1,962 of which rent or own housing off-base. In addition, 488 appropriated fund and 577 non-appropriated fund civilian personnel were employed by Malmstrom AFB during 1992. In sum, Malmstrom AFB personnel received over \$144 inillion in payroll, providing an indirect economic benefit, from the respending of payroll dollars in the local area, of approximately \$87 million. To maintain and ensure operational effectiveness during 1992 and beyond, Malmstrom AFB spent over \$19 million on construction and services and nearly \$27 million on materials, equipment and supplies. These expenditures resulted in a contribution to the local economy of approximately \$114 million. These figures are tabulated in Tables 2.1 and 2.2 on the following pages.

In an area which has experienced a loss in its population base and whose economy is largely dependent upon the fluctuations of an agricultural market, the presence of Malmstrom AFB provides economic stability to the city and the region. Implementation of appropriate land use controls in the areas affected by Malmstrom AFB's flying operations will help assure the viability of the installation in years to come.

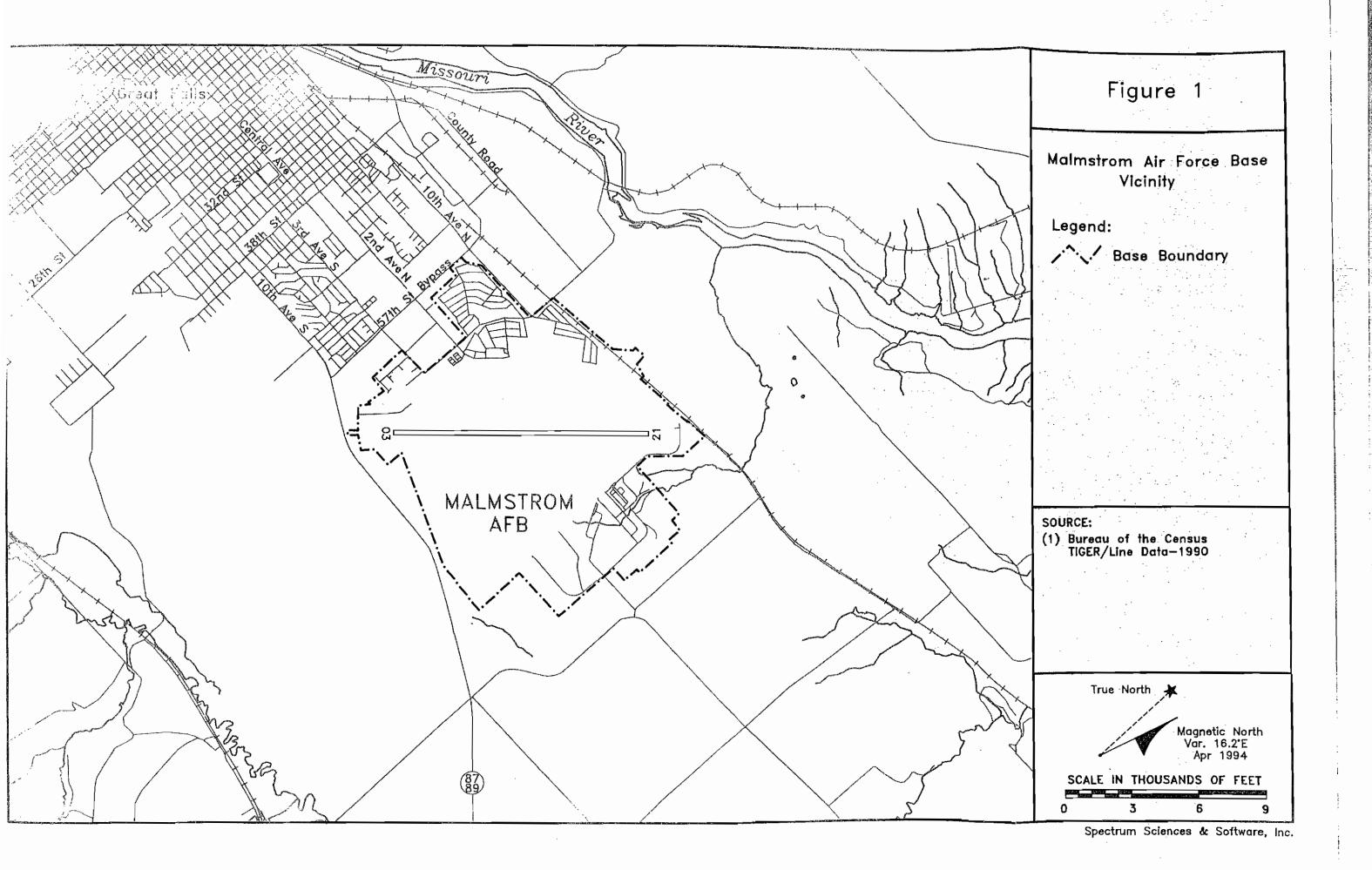
Table 2.1 FISCAL YEAR 1992 PERSONNEL BY CLASSIFICATION AND HOUSING

CLASSIFICATION	LIVING ON- BASE	LIVING OFF- BASE	TOTAL
ACTIVE DUTY MILITARY	2,289	1,962	4,251
APPROPRIATED FUND CIVIL	488		
NONAPPROPRIATED FUND (CIVILIAN		
CIVILIAN NAF	165	165	
CIVILIAN AAFES		105	105
CONTRACT		275	275
PRIVATE BUSINESS AND	OTHER	32	32
TOTAL CIVILIAN	1,065		
TOTAL PERSONNEL			5,316

Table 2.2 FISCAL YEAR 1992 EXPENDITURES

CLASSIFICATION	AMOUNT
PAYROLL EXPENDITURES	
ACTIVE DUTY MILITARY	\$124,646,136
APPROPRIATED FUND CIVILIAN	\$15,946,128
NONAPPROPRIATED FUND CIVILIAN	\$3,461,093
CONSTRUCTION AND SERVICE EXPENDITURES	
CONSTRUCTION	\$6,406,385
SERVICES	\$12,867,134
COMMISSARY/AAFES	\$274,690
HEALTH, EDUCATION & TDY	\$6,722,907
MATERIALS, EQUIPMENT, AND SUPPLIES EXPENDITURES	\$26,999,103
TOTAL EXPENDITURES	\$197,323,576
TOTAL LOCAL ECONOMIC IMPACT*	\$114,737,668

^{*}Based on multipliers provided by the 43 ARW/PA. SOURCE: 43 ARW/PA. 1993.



2.3 Flying Activity

To describe the relationship between aircraft operations and land use, it is necessary to fully evaluate the exact nature of flying activities. An inventory has been made of such things as the types of aircraft based at Malmstrom AFB, where those aircraft fly, how high they fly, how many times they fly over a given area, and at what time of day they operate.

The principal aircraft operating from Malmstrom AFB and the average number of daily operations for each aircraft are shown below. An operation is defined as one departure, one approach, or half a closed pattern. A closed pattern consists of both a departure portion and an approach portionic, two operations.

TYPE OF AIRCRAFT	AVERAGE DAILY OPERATIONS
KC-135R	50
C-12	20
UH-1N	56

In addition to these assigned aircraft, numerous transient aircraft from other military installations land and take-off from Malmstrom AFB. Noise impacts from these transient aircraft have been included in this study.

Malmstrom AFB aircraft use the following basic flight patterns:

- Straight out/in departure/approach.
- Overhead landing pattern.
- Instrument flight rules (IFR) or radar closed pattern.
- Visual flight rules (VFR) or closed pattern.
- Re-entry VFR pattern.

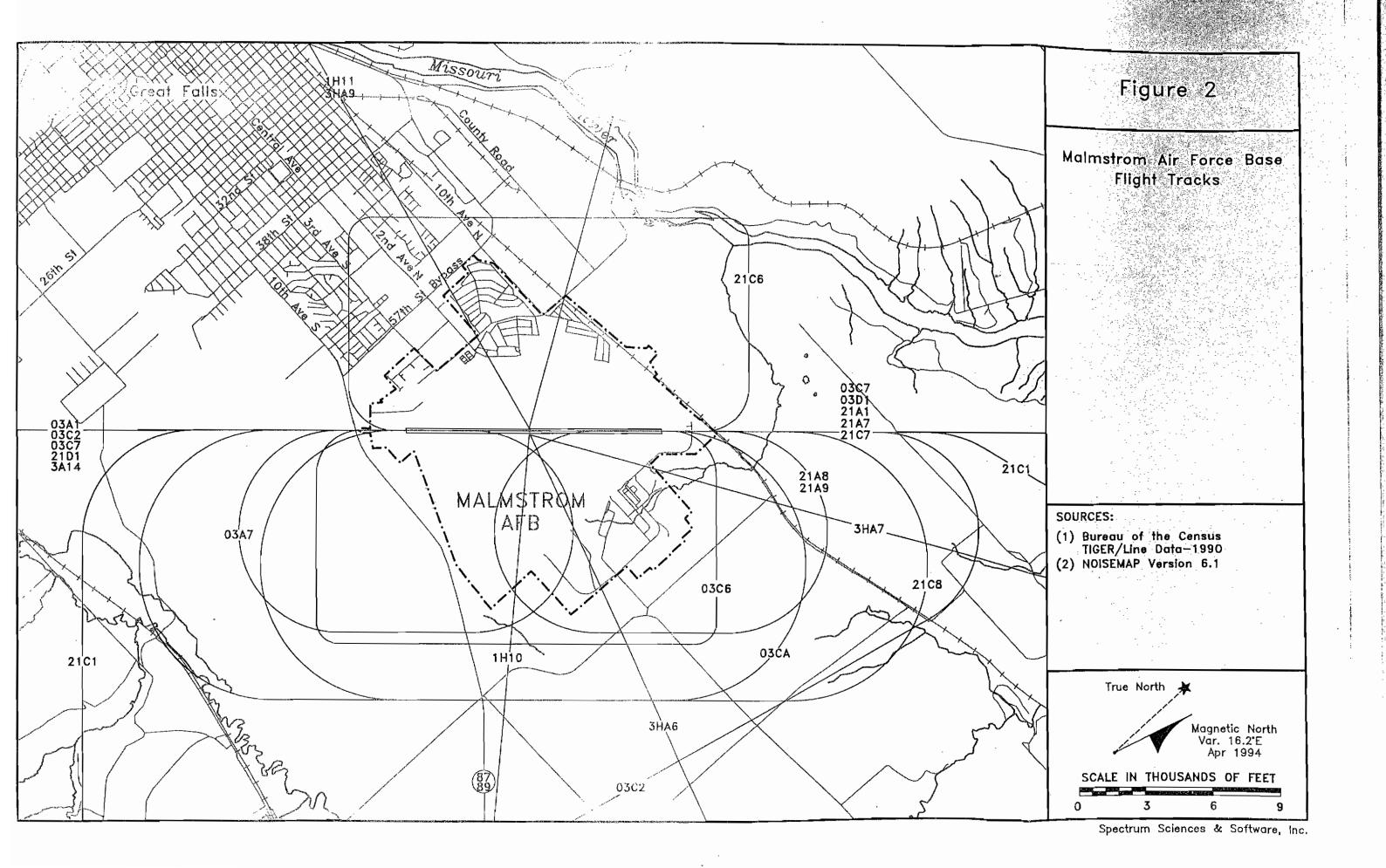
Malmstrom AFB flight patterns (Figure 2) result from several considerations, including:

- Takeoff patterns routed to avoid heavily populated areas as much as possible.
- Air Force criteria governing the speed, rate of climb, and turning radius for each type of aircraft.
- Efforts to control and schedule missions to keep noise levels low, especially at night.
- Coordination with the Federal Aviation Administration (FAA) to minimize conflicts with civilian aircraft operations, especially those related to Great Falls International Airport.

To the maximum extent possible, engine runup locations have been established in areas that minimize noise for people on-base, as well as for those in the surrounding areas. Normal base

operations do not include late night engine runups, but heavy work loads or nnforeseen contingencies sometimes require a limited number of nighttime engine runups.

Airfield environs planning is concerned with three primary aircraft operational/land use determinants: (1) accident potential to land users, (2) aircraft noise, and (3) hazards to operations from land uses (height obstructions, etc.). Each of these concerns is addressed in conjunction with mission requirements and safe aircraft operation to determine the optimum flight track for each aircraft type. The flight tracks depicted in Figure 2 are the result of such planning.



SECTION 3 LAND USE COMPATIBILITY GUIDELINES

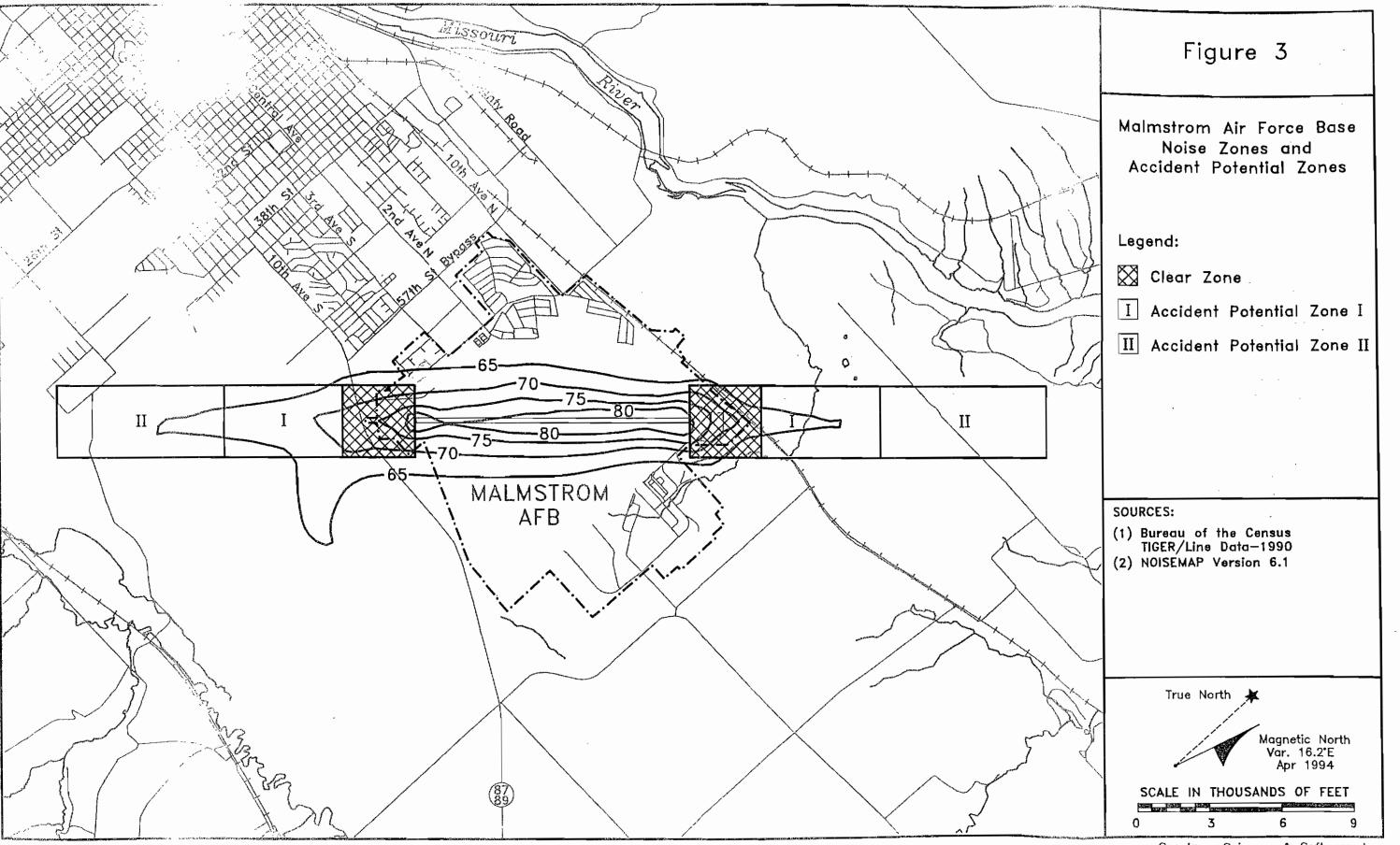
3.1 Introduction

The Department of Defense (DoD) developed the Air Installation Compatible Use Zone (AICUZ) program for military airfields. Using this program, DoD works to protect aircraft operational capabilities at its installations and to assist local government officials in protecting and promoting the public health, safety, and quality of life. The goal is to promote compatible land use development around military airfields by providing information on aircraft noise exposure and accident potential.

AICUZ reports describe three basic types of constraints that affect, or result from, flight operations. The first constraint involves areas which the Federal Aviation Administration (FAA) and DoD have identified for height limitations (see Height and Obstruction Criteria in Volume II, Appendix D). Air Force obstruction criteria are based upon those contained in Federal Aviation Regulation Part 77 under Subpart C.

The second constraint involves noise zones produced by the computerized Day-Night Average A-Weighted Sound Level (DNL) metric and the DoD NOISEMAP methodology. Using the NOISEMAP noise modeling program, which is similar to FAA's Integrated Noise Model, DoD produces noise contours showing the noise levels generated by current aircraft operations. The AICUZ report contains noise contours plotted in increments of 5 dB, ranging from DNL 65 dB to DNL ≥80 dB (Figure 3). Additional information on noise methodology is contained in Volume II, Appendix C of this report.

The third constraint involves accident potential zones based on statistical analysis of past DoD aircraft accidents. DoD analysis has determined that the areas immediately beyond the ends of runways and along the approach and departure flight paths have significant potential for aircraft accidents. Based on this analysis, DoD developed three zones that have high relative potential for accidents. The clear zone, the area closest to the runway end, is the most hazardous. The overall risk is so high that DoD generally acquires the land through purchase or easement to prevent development. Accident potential zone I (APZ I) is an area beyond the clear zone that possesses a significant potential for accidents. Accident potential zone II (APZ II) is an area beyond APZ I having measurable potential for accidents. While aircraft accident potential in APZs I and II does not warrant acquisition by the Air Force, land use planning and controls are strongly encouraged in these areas for the protection of the public. A sample population density standard for use in APZs is provided in Volume II, Appendix F. The clear zones at Malinstrom AFB are 3,000 feet wide by 3,000 feet long. APZ I is 3,000 feet wide by 5,000 feet long, and APZ II is 3,000 feet wide by 7,000 feet long (Figure 3). Additional information on accident potential is contained in Volume II, Appendix B of this report.



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3.2 Land Use Compatibility

Each AICUZ report contains land use guidelines. Figure 4 lists land uses versus all possible combinations of noise exposure and accident potential at Malmstrom AFB, showing land uses that are compatible or incompatible. Noise guidelines are essentially the same as those published by the Federal Interagency Committee on Urban Noise in the June 1980 publication, Guidelines for Considering Noise in Land Use Planning and Control. The U.S. Department of Transportation publication, Standard Land Use Coding Manual (SLUCM), has been used for identifying and coding land use activities.

3.3 Participation In The Planning Process

As local communities prepare their land use plans, the Air Force must be ready to provide additional inputs. The Base Civil Engineer is the official liaison with the local community on all planning matters. This office is prepared to participate in the continuing discussion of zoning and other land use matters as they may affect, or may be affected by, Malmstrom AFB.

Figure 4

LAND USE COMPATIBILITY

LAND USE		ACCIDENT POTENTIAL ZONES		ENTIAL	NOISE ZONES				
SLUCM NO.	NAME	CLEAR ZONE	APZ I	APZ II	65-70	70-75	75-80	80-	
10	Residential								
11	Household units								
11.11	Single units; detached	N	N	\mathbf{Y}^{1}	A ¹¹	B^{11}	N	Ν	
11.12	Single units; semidetached	N	N	И	An	B^{11}	N	N	
11.13	Single units; attached row	N	N	N	A^{11}	B^{11}	N	N	
11.21	Two units; side-by-side	N	N	N	A^{11}	\mathbf{B}^{11}	N	N	
11.22	Two units; one above the other	N	N	N	A ¹¹	B^{11}	И	N	
11.3 1	Apartments; walk up	N	Ν	Ν	A ¹¹	\mathbf{B}^{11}	N	N	
11.32	Apartments; elevator	N	N	N	A^{11}	\mathbf{B}^{11}	N	N	
12	Group quarters	. И	N	N	A^{11}	$\mathbf{B^{11}}$	N	. N	
13	Residential hotels	N	N	N	A ¹¹	\mathbf{B}^{11}	N	N	
14 .	Mobile home parks or courts	N	N	Ν	N	N	N	N	
15	Transient lodgings	N	N	N	A^{11}	B^{11}	C_{11}	N	
16	Other residential	N	N	N^1	A ¹¹	B_{11}	N	N	
20	Manufacturing					·			
2 1	Food & kindred products; manufacturing	N	N ²	Y	Y	Y ¹²	Y^{13}	\mathbf{Y}^{1}	
22	Textile mill products; manufacturing	N	N ²	Y	Ĭ.	Y^{12}	Y^{13}	Y	
23	Apparel and other finished products made from fabrics, leather, and similar materials; manufacturing	N	N	N ²	7.	Y ¹²	Y ¹³	Y	
24	Lumber and wood products (except [urniture]; manufacturing	ĸ	Y ²	7.		Y ¹²	Y^{13}	Y	

LAND USE		ACCIDENT POTENTIAL ZONES			NOISE ZONES				
SLUCM NO.	NAME	CLEAR ZONE	APZ I	APZ II	65-70	70-75	75-80	80+	
25	Furniture and fixtures; manufacturing	N	Y ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴	
26	Paper & allied products; manufacturing	N	Y^2	Y	Y	Y ¹²	Y ¹³	Y ¹⁴	
27	Printing, publishing, and allied industries	Ν	Y^2	Y	Y	Y ¹²	Y ¹³	Y ¹⁴	
28	Chemicals and allied products; manufacturing	Ν	N	N^2	Y	Y ¹²	Y ¹³	Y ¹⁴	
29	Petroleum refining and related industries	N	N	Y	Y	Y^{12}	Y ¹³	Y ¹⁴	
30	Manufacturing								
31	Rubber and misc. plastic products, manufacturing	N	N^2	N^2	Y	Y ¹²	Y ¹³	Y ¹⁴	
32	Stone, clay and glass products manufacturing	N	N^2	Y	Y	Y ¹²	Y^{13}	Y1-	
33	Primary metal industries	N	N^2	Y	Y	Y^{12}	Y^{13}	Y14	
34	Fabricated metal products; manufacturing	N	N ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴	
35	Professional, scientific, and controlling instruments; photographic and optical goods; watches and elocks manufacturing	И	N	N^2	Y	Α	В	N	
39	Miscellaneous manufacturing	N	Y ²	Y ²	Y	Y ¹²	Y ¹³	Y ¹⁻	
40	Transportation, communications and utilities								
41	Railroad, rapid rail transit and street railroad transportation	N_3	Y ⁴	Y	Y	Y ¹²	Y ¹³	Y^1	
42	Motor vehicle transportation	N_3	Y	Y	Y	Y ¹²	Y ¹³	Y¹	
43	Aircraft transportation	N^3	Y ⁴	Y	Y	Y ¹²	Y^{13}	Y^1	
44	Marine craft transportation	1/3	\' ⁴	Υ	Y	Y ¹²	Y^{13}	Y^1	

LAND USE		ACCIDENT POTENTIAL ZONES			NOISE ZONES				
SLUCM NO.	NAME	CLEAR ZONE	APZ I	APZ II	65-70	70-75	75-80	80+	
45	Highway & street right- of-way	N ³	Y	Y	Y	Y ¹²	Y ¹³	Y ¹⁴	
46	Automobile parking	N^3	\mathbf{Y}^4	Y	Y	Y ¹²	Y^{13}	Y ¹⁴	
47	Communications	N^3	Y^4	Y	Y	A ¹⁵	B^{15}	N	
48	Utilities	N^3	Y ⁴	Y	Y.	Y	Y ¹²	Y^{13}	
4 9	Other transportation communications and utilities	N^3	Y ⁴	Y	Y	A ¹⁵	B ₁₂	N	
50	Trade								
51	Wholesale trade	N	Y^2	Y	Y	Y^{12}	Y^{13}	Y ¹⁴	
52	Retail trade-building materials, hardware and farm equipment	N	Y ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴	
53	Retail trade-general merchandise	N	N ²	Y ²	Y	Α	В	N	
54	Retail trade-food	N	N^2	Y^2	Y	Α	В	N	
55 .	Retail trade-automotive, marine craft, aircraft and accessories	N	Y ²	Y ²	Y	A	В	N	
56	Retail trade-apparel and accessories	N	N ²	Y ²	Y	A	В	N	
57	Retail trade-furniture, home furnishings and equipment	N	N ²	Y ²	Y	Α	В	N	
58	Retail trade-eating and drinking establishments	N	N	N ²	Y	Α	В	И	
59	Other retail trade	N	N ²	Y ²	Y	A	В	N	
60	Services								
61	Finance, insurance and real estate services	Ν	Ν	Y^6	Y	Α	В	N	
62	Personal services	N	N	Y^6	Y	Α	В	N	
62.4	Cemeterics	N	Y ⁷	\mathbf{Y}^{7}	Y	Y ¹²	Y ¹³	Y ¹⁴ ,	
63	Business services	N	Y^8	Y^8	Y	Λ	В	N	
	Repair services	N	Y ²	Y	Y	\mathbf{Y}^{12}	Y^{13}	Y^1	
	Professional services	N	N	Y^6	Y	Α	В	N	

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LAND USE		ACCIDENT POTENTIAL ZONES			NOISE ZONES			
SLUCM NO.	NAME	CLEAR ZONE	APZ I	APZ II	65-70	70-75	75-80	80+
65.1	Hospitals, nursing homes	N	N	N	A*	B*	N	N
65.1	Other medical facilities	N	N	N	Y	Α	В	N
66	Contract construction services	N	Y^6	Y	Y	Α	В	N
67	Governmental services	N	N	Y^6	Y*	A*	B*	N
68	Educational services	N	N	N	A*	B*	N	N
69	Miscellaneous services	N	N ²	Y ²	Y	Α_	В	N
70	Cultural, entertainment and recreational							
71	Cultural activities (including churches)	N	N	N ²	A*	B*	N	N
71.2	Nature exhibits	N	Y^2	Y	Y*	N	N	N
72	Public assembly	N	N	N	Y	N	N	N
72.1	Auditoriums, concert halls	N	N	И	Α	В	И	. N
72.11	Outdoor music shell, amphitheaters	N	N	И	N	И	N	N
72.2	Outdoor sports arenas, spectator sports	N	N	N	Y ¹⁷	Y ¹⁷	N	N
73	Amusements	N	И	Y^8	Y	Y	N	N
74	Recreational activities (including golf courses, riding stables, water recreation)	N	Y ^{8,9,10}	Y	Y*	A*	B*	N
75	Resorts and group camps	N	N	N	Y*	Y*	И	N
76	Parks	N	Y^8	Y ⁸	Y*	Y*	N	N
79	Other cultural, entertainment and recreation	N	Y ⁹	Y ⁹	Y*	Y*	N	N
80	Resources production and extraction							
81	Agriculture (except livestock)	Y ¹⁶	Y	Y	Y^{18}	Y^{19}	Y ²⁰	Y ²⁰
81.5 to 81.7	Livestock farming and animal breeding	N	Y	Y	Y ¹⁸	Y^{10}	Y^{20}	Y ^{2,}

LAND USE		ACCIDENT POTENTIAL ZONES			NOISE ZONES			,
SLUCM NO.	NAME	CLEAR ZONE	APZ I	APZ II	65-70	70-75	75-80	80+
82	Agricultural related activities	N	Y ^S	Y	Y ¹⁸	Y ¹⁹	N	N
83	Forestry activities and related services	N ⁵	Y	Y	Y^{18}	Y ¹⁹	Y ²⁰	Y ^{20,21}
84	Fishing activities and related services	N ⁵	Y ⁵	Y	Y	Y	Y	Y
85	Mining activities and related services	N	Y ⁵	Y	Y	Y	Y	Y
89	Other resources production and extraction	N	Y^5	Y	Y	Y	<u>,</u> Y	Y

LEGEND

- SLUCM Standard Land Use Coding Manual, U.S. Department of Transportation.
- Y (Yes) Land use and related structures are compatible without restriction.
- N (No) Land use and related structures are not compatible and should be prohibited.
- Y'x (yes with restrictions) Land use and related structures generally compatible; see notes 1-21.
- N^x (no with exceptions) See notes 1-21.
- NLR (Noise Level Reduction) NLR (outdoor to indoor) to be achieved through incorporation of noise attenuation measures into the design and construction of the structures. See Appendix E, Vol II.
- A, B, or C Land use and related structures generally compatible; measures to achieve NLR for A (DNL 66-70), B (DNL 71-75), or C (DNL 76-80) need to be incorporated into the design and construction of structures. See Appendix E, Vol II.
- A*, B*, and C* Land use generally compatible with NLR. However, measures to achieve an overall noise level reduction do not necessarily solve noise difficulties and additional evaluation is warranted. See appropriate footnotes.
- * The designation of these uses as "compatible" in this zone reflects individual federal agency and program consideration of general cost and feasibility factors, as well as past community experiences and program objectives. It calities, when evaluating the application of these guidelines to specific situations, may have objective to concerns or goals to consider.

NOTES

- 1. Suggested maximum density of 1-2 dwelling units per acre, possibly increased under a Planned Unit Development (PUD) where maximum lot coverage is less than 20 percent.
- 2. Within each land use category, uses exist where further definition may be needed due to the variation of densities in people and structures (See Vol 2, Appendix F).
- 3. The placing of structures, buildings, or above-ground utility lines in the clear zone is subject to severe restrictions. In a majority of the clear zones, these items are prohibited. See AFR 19-9 and AFR 86-14 for specific guidance.
- 4. No passenger terminals and no major above-ground transmission lines in APZ I.
- 5. Factors to be considered: labor intensity, structural coverage, explosive characteristics, and air pollution.
- 6. Low-intensity office uses only. Meeting places, auditoriums, etc., are not recommended.
- 7. Excludes chapels.
- 8. Facilities must be low intensity.
- 9. Clubhouse not recommended.
- 10. Areas for gatherings of people are not recommended.
- 11. a. Although local conditions may require residential use, it is discouraged in DNL 66-70 dB and strongly discouraged in DNL 71-75 dB. An evaluation should be conducted prior to approvals, indicating that a demonstrated community need for residential use would not be met if development were prohibited in these zones, and that there are no viable alternative locations.
 - b. Where the community determines the residential uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) for DNL 66-70 dB and DNL 71-75 dB should be incorporated into building codes and considered in individual approvals. See Appendix E for a reference to updated NLR procedures,
 - c. NLR criteria will not eliminate outdoor noise problems. However, building location and site planning, and design and use of berms and barriers can help mitigate outdoor exposure, particularly from near ground level sources. Measures that reduce outdoor noise should be used whenever practical in preference to measures which only protect interior spaces.
- 12. Measures to achieve the same NLR as required for facilities in the DNL 66-70 dB range must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
- 13. Measures to achieve the same NLR as required for facilities in the DNL 71-75 dB range must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
- 14. Measures to achieve the same NLR as required for facilities in the DNL 76-80 dB range must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
- 15. If noise sensitive, use indicated NLR; if not, the use is compatible.
- 16. No buildings.
- 17. Land use is compatible provided special sound reinforcement systems are installed.
- 18. Residential buildings require the same NLR required for facilities in the DNL 66-70 dB range.
- 19. Residential buildings require the same NLR required for facilities in the DNL 71-75 dB range.
- 20. Residential buildings are not permitted.
- 21. Land use is not recommended. If the community decides the use is necessary, hearing protection devices should be worn by personnel.

SECTION 4 LAND USE ANALYSIS

4.1 Introduction

Land use planning and control is a dynamic process. The specific characteristics of land use determinants will always reflect, to some degree, the changing conditions of the economic, social, and physical environment of a community, as well as changing public concerns. The planning process accommodates this fluidity in that decisions are normally not based on boundary lines, but rather on more generalized area designations.

Malmstrom AFB was built in a relatively undeveloped area to the east of Great Falls. Currently, the base is bordered on three sides by agricultural land uses, with mixed commercial, residential, and open land uses to the west. Commercial development along 10th Avenue South has increased, and new residential development is occurring southwest of the base. While incompatible land uses have not impacted the base's flying mission, should incompatible development occur within the accident potential and noise zones, the base's flying mission could be affected.

Computer technology has enabled Malmstrom AFB to more precisely display its flight tracks and noise contours for land use planning purposes. This same technology has revealed that the base's region of influence extends generally northeast and southwest of the base, along and beyond the runway centerline.

For the purposes of this study, land use and zoning classifications are as follows:

- Residential. Includes all types of residential activity, such as single and multifamily residences, and mobile homes, at unit densities of one per acre and greater.
- Commercial. Offices, retail establishments, restaurants, etc..
- Industrial. Manufacturing, warehouses, power production, and other similar uses.
- Public/Quasi-Public. Publicly owned lands and lands open to public access; including military reservations, public buildings, schools, churches, cemeteries, and hospitals.
- Recreational. Land designated for recreational activity, including parks, golf courses, and state and national parks.
- Open/Agricultural/Low Density. Undeveloped lands, agricultural areas, grazing lands, and low density residential activity of less than one dwelling unit per acre.

AICU2 NOLUME I

4.2 Existing Land Use

The city of Great Falls is located west of Malmstrom AFB along the shores of the Missouri River, near its confluence with the Sun River. Great Falls, platted in 1883 and incorporated in 1888, has played an important role in the settlement of the region, serving as the county seat and as the civic and commerce center of the area. It contains a grid-like road system, with north/south streets and east/west avenues. Great Falls is one of the largest cities in Montana, containing approximately 55,000 of Cascade County's 77,000 residents. As such, the city and adjacent unincorporated lands contain significant amounts of residential, commercial, industrial, and recreational development that provide housing, employment, services, and recreational opportunities. Development density within the city is quite eoncentrated, diminishing to the east as it approaches Malmstrom AFB. The bulk of development near Malmstrom AFB occurs on the western side, within and adjacent to Great Falls, with the remainder being mostly open farm and range lands.

The 10th Avenue South corridor, on the south side of Great Falls, is one of the most significant areas of commercial development in Great Falls and supports a diverse array of commercial uses. Commercial development is primarily restricted to the immediate road front, with extensive amounts of residential development dominating to the north, and residential development followed by open land to the south. Less than a quarter of a mile south of 10th Avenue South, at the 50th Street block, a Kampgrounds of America (KOA) campground is sited overlooking Gibson Flats. This campground is west of the Malmstrom AFB DNL 65 dB noise zone and west of the southern APZ I.

Directly west and northwest of the base, land is used for mixed purposes including industrial, commercial, residential, agricultural, and public use. Between 10th Avenues North and South, and east of 15th Street, the primary land use is single-family residential, although there are also several apartment complexes, schools, neighborhood parks, and, toward the east, vacant land parcels. Mixed land uses are present along 2nd Avenue North, the primary access route to Malmstrom AFB. These uses include large and small retail outlets, small restaurants, single-family residences, and open areas, all being low intensity uses. The intersection of 57th Street Bypass and 2nd Avenue North contains commercial uses on three corners, with the southwest corner remaining vacant. Loy School, a public land use, is on the east side of 57th Street Bypass and adjacent to Malmstrom AFB housing. North of 10th Avenue North, and northwest of Malmstrom AFB, land areas are primarily open with a few industrial uses. Further north, along the Missouri River, recreational uses are associated with Great Springs Heritage Park and Fish Hatchery. These areas are not impacted by Malmstrom AFB noise and accident potential zones.

Areas north, east, and south of Malmstrom AFB are currently being used for growing grain, predominantly wheat. Due to the lack of development demand and economic benefits of maintaining the land in agricultural production, this use is expected to continue.

Malmstrom AFB AICUZ noise zones do not extend over the Great Falls corporate boundaries and impact no developed land areas. AICUZ noise zones from Malmstrom AFB's flying operations impact approximately 800 acres of private agricultural land used for grain production.

The only development within Malmstrom AFB accident potential zones exists within the southeast corner of the southern APZ II. Large lots of the Eaton Addition, in Gibson Flats, contain uninhabited structures impacted by aircraft overflight. The majority of these lots are undeveloped and used for grazing and farming purposes, with one area being used for light industrial uses. Intensive development of this area is unlikely due to natural development constraints. The Eaton Addition is within a floodplain that restricts utility service and its development potential. Current land uses are portrayed in Figure 5.

4.3 Current Zoning

The city of Great Falls has adopted conventional zoning ordinances designating land uses within the city limits and beyond for a distance of four and a half miles. The Great Falls City-County Planning Board retains zoning jurisdiction within this area. Much of the Mahnstrom AFB region of influence extends over undeveloped, agricultural land areas of unzoned Cascade County.

Zoning within the Great Falls area follows the same pattern as the existing land uses. Areas designated for commercial uses occur along 10th Avenue South, 2nd Avenue North, and 57th Street Bypass. North and east of Malinstrom AFB, between the railroad tracks and the riverfront recreational area, land is zoned for industrial purposes. Remaining land areas within Great Falls are predominantly designated for residential purposes. Land along the river to the north of the base, and in an area west and south of the base containing the Mount Olivet Cometary, are zoned for suburban uses, allowing low intensity, open air uses.

Two small areas beyond the southeast corner of Great Falls' corporate limits, and either adjacent to the west of Malmstrom AFB or within the southern APZ I, are impacted by the DNL 65 dB noise zone. Although these areas are currently undeveloped, zoning allows commercial uses north of 10th Avenue South and residential uses south of 10th Avenue South.

Land areas beyond the jurisdiction of the Great Falls City-County Planning Board, where the majority of the Malmstrom AFB impact exists, are unzoned. Great Falls zoning ordinances do not address height restrictions within runway approach and departure zones and no building codes exist which address noise level reduction in building construction. However, insulation from the winters in this part of Montana significantly reduce interior noise levels from outdoor sources. Zoning in the Malmstrom AFB/Great Falls vicinity are depicted in Figure 6.

4.4 Future Land Use

Most of the land area within Great Falls has been built up, with no change in land use expected. However, 57th Street Bypass and the eastern end of 2nd Avenue North contain significant and at the of vacant land. Vacant land north and south of 2nd Avenue North, and fronting 57th Street rate as

to the east, is expected to be developed for commercial uses, with a small area to remain in agricultural use. Vacant properties south of 10th Avenue North are expected to remain in agricultural use, while industrial uses to the north are expected to expand.

Croplands north, east, and south of Malmstrom AFB are expected to remain in agricultural production for the foreseeable future. Great Falls has experienced a population decline in the past few years, as has the state of Montana, and it is unlikely that development demands will warrant the conversion of prime cropland to other uses. However, should conditions change, land use controls in these areas would ensure development compatible with Malmstrom AFB operations. A generalized future land use map, as depicted in the Year 2000 Great Falls Land Use Plan of 1981, is provided by Figure 7.

4.5 Incompatible Land Uses

Incompatible land uses within AICUZ environs are generally characterized in two ways: land uses within accident potential zones which exceed development or population density guidelines, and/or; land uses which expose large numbers of people to high levels of sound.

4.5.1 Clear Zones and Accident Potential Zones

Malmstrom AFB clear zones and accident potential zones extend over open lands used for agricultural purposes. Control of clear zone areas which extend off-base has been accomplished by Malmstrom AFB through perpetual easements that restrict incompatible land uses. Beyond the clear zones, Malmstrom AFB accident potential zones contain agricultural land. This use, provided it does not attract large amounts of birds or release vision obscuring dust hazardous to air operations, is compatible with Malmstrom AFB operations. The southern APZ II contains un-inhabited farming and ranching structures compatible with Malmstrom AFB flying operations.

4.5.2 Noise Zones

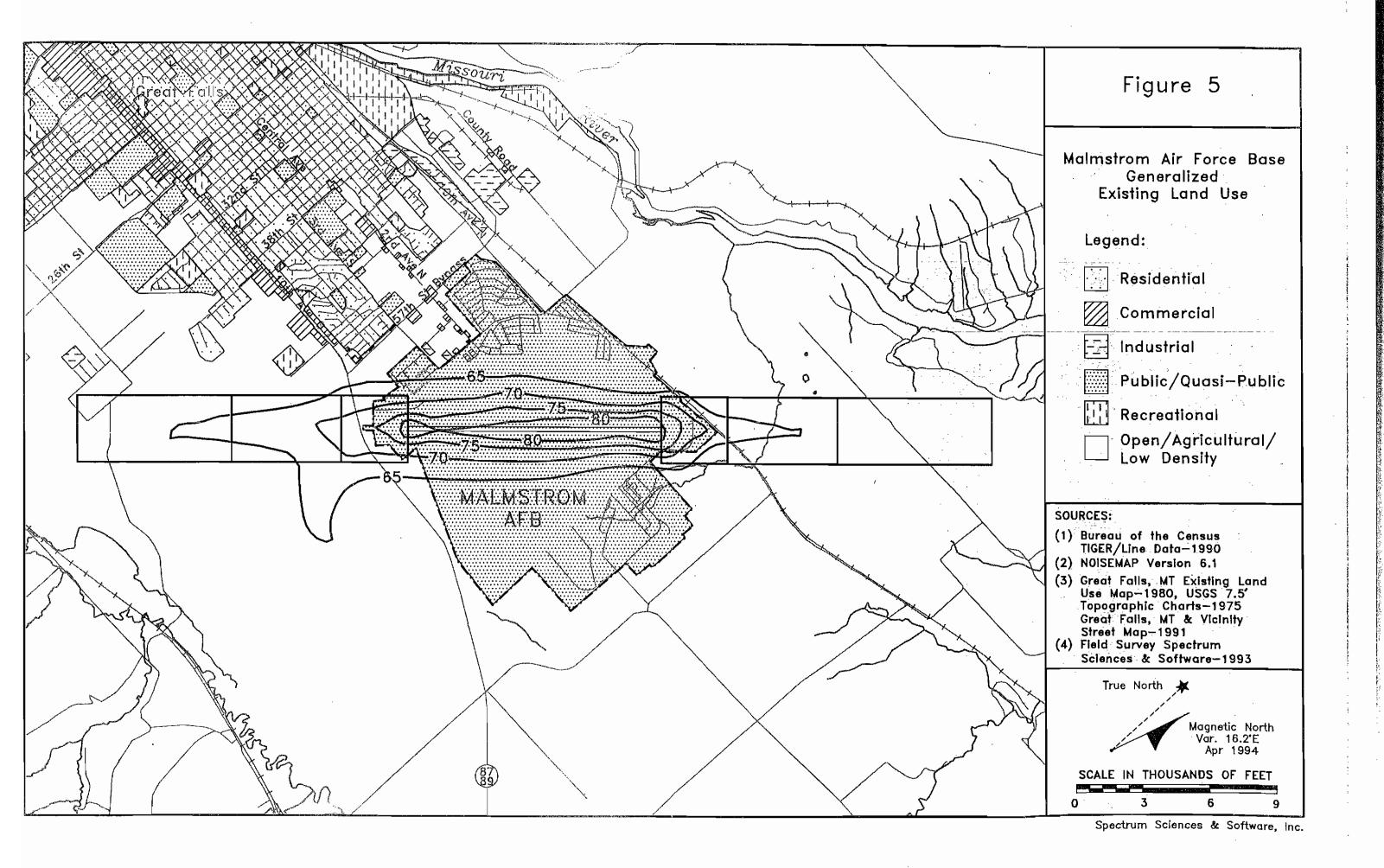
No developed off-base areas in the Malmstrom AFB environs are impacted by noise greater than DNL 65 dB. As such, there are currently no areas containing incompatible land uses.

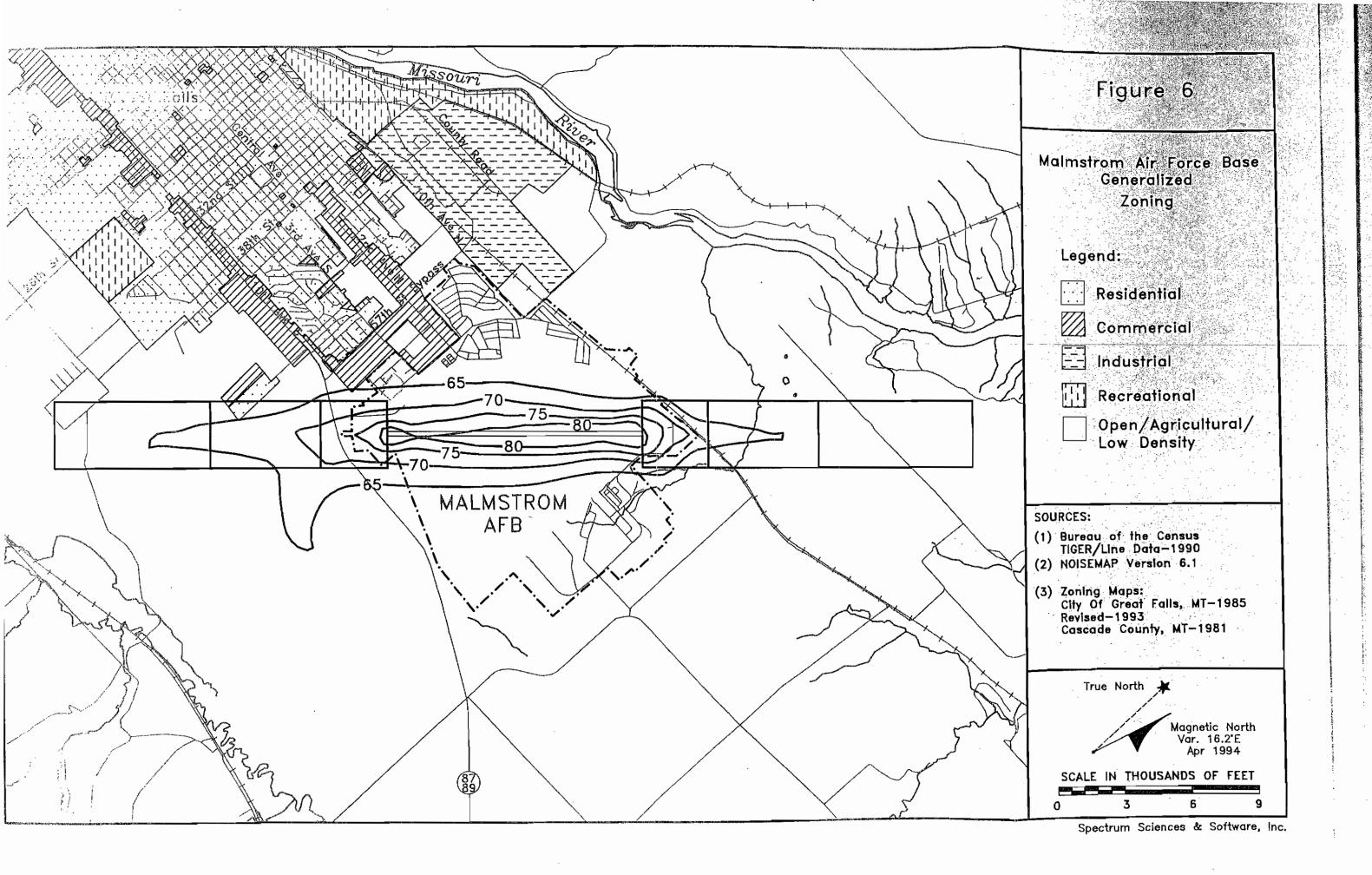
4.6 Planning Considerations

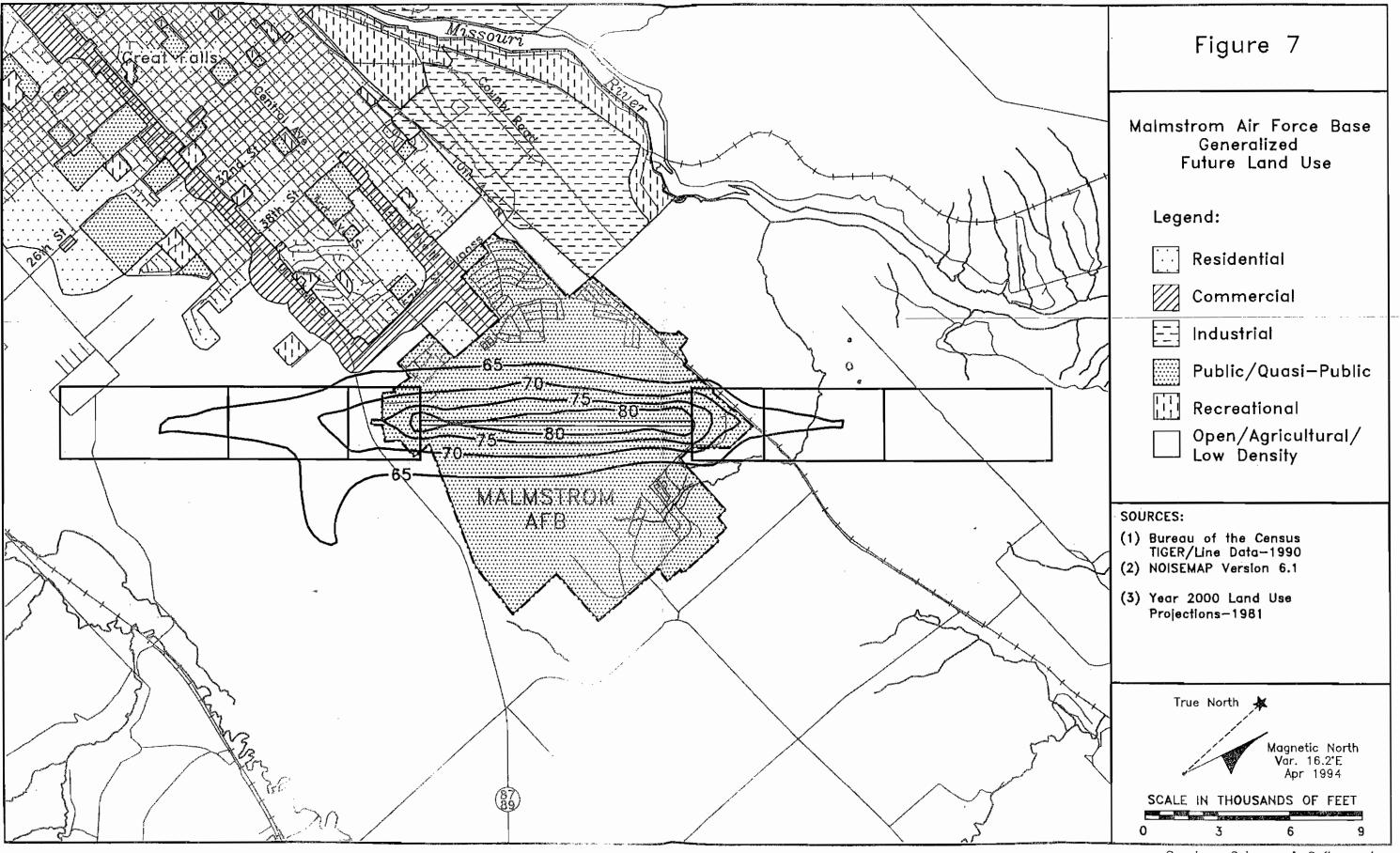
AICUZ noise contours describe the noise characteristics of a specific operational environment and, as such, will change if a significant operational change is made. If the local communities that make up the Malmstrom AFB environs attempt to use AICUZ noise contours as boundary lines for zoning districts, it is conceivable that problems would result. Should a new mission be established at Malmstrom AFB, adding a larger number of airplanes or additional model types, the AICUZ could be amended.

Additionally, the Air Force recommends that AICUZ—at a be utilized with all other planning data. Therefore, specific land use control decisions should—at he based solely on AICUZ boundaries.

With these thoughts in mind, Malmstrom AFB has revised the 1978 AICUZ Study and has provided flight track, accident potential zone, and noise contour information in this report that reflect the most current and accurate representation of aircraft activities.







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SECTION 5 IMPLEMENTATION

Implementation of the AICUZ Study must be a joint effort between the Air Force and adjacent communities. The Air Force's role is to minimize the impact on the civilian community by Malmstrom AFB operations. The role of the civilian community is to ensure that development in its environs is compatible with accepted planning and development principles and practices.

5.1 Air Force Responsibilities

In general, the Air Force perceives its AICUZ responsibilities as encompassing the areas of flying safety, noise abatement, and participation in the land use planning process.

Well maintained aircraft and well trained aircrews do much to assure that aircraft accidents are avoided. Despite the best training of aircrews and maintenance of aircraft, however, history makes it clear that accidents do occur. It is imperative that flights be routed over sparsely populated areas as much as possible to reduce the exposure of lives and property to a potential accident.

By Air Force regulation, commanders are required to periodically review existing traffic patterns, instrument approaches, weather minima, and operating practices, and evaluate these factors in relationship to populated areas and other local situations. This requirement is a direct result and expression of Air Force policy that all AICUZ plans must include an analysis of flying and flying related activities designed to reduce and control the effects of such operations on surrounding land areas. Noise is generated from aircraft both in the air and on the ground. At Malmstrom AFB, noise mitigation practices implemented include routing flight tracks to avoid heavily populated areas, adjusting power settings and climb rates to minimize noise, and restricting night ground engine maintenance and flight operations to a minimum.

The preparation and presentation of the 1994 Malmstrom AFB AICUZ update is one phase of the continuing Air Force participation in the local planning process. It is recognized that as the local community updates its land use plans, the Air Force must be ready to provide additional inputs.

It is also recognized that the AICUZ program will be an ongoing activity even after compatible development plans are adopted and implemented. Base personnel are prepared to participate in the continuing discussion of zoning and other land use matters as they may affect, or may be affected by, Malmstrom AFB. Base personnel will also be available to provide information, criteria, and guidelines to state, regional, and local planning bodies, civic associations, and similar groups.

5.2 Local Community Support

The residents of Cascade County and the personnel of Malmstrom AFB have a long history of working together for mutual benefit. Installation leaders at Malmstrom AFB feel that adoption of the following recommendations will strengthen this relationship, increase the health and safety of the public, and help protect the integrity of the base's flying mission:

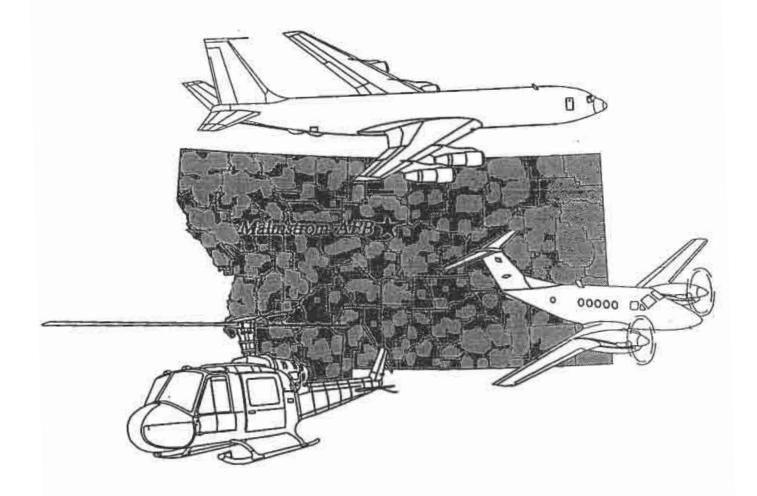
- Incorporate AICUZ policies and guidelines into comprehensive plans in the city of Great Falls and Cascade County. Use overlay maps of the AICUZ noise contours and Air Force Land Use Compatibility Guidelines to evaluate existing and future land use proposals.
- Ensure zoning ordinances and subdivision regulations support the compatible land use guidelines outlined in this study.
- Implement height and obstruction ordinances which reflect current Air Force and Federal Aviation Regulation (FAR) Part 77 requirements.
- Ensure that building codes are compatible with the AICUZ study and that recommended noise level reductions are incorporated into the design and construction of facilities.
- Apply to the DoD Office of Economic Adjustment (OEA) for matching funds to develop a Joint Land Use Study (JLUS). The JLUS is a cooperative effort between the installation and local governments to develop an enforceable airport-compatible land use plan. The development of such a plan will facilitate compatible future development near the base and minimize encroachment.
- Continue to inform Malmstrom AFB of planning and zoning actions that have the
 potential of affecting base operations. Develop a working group representing city
 planners, county planners, and base planners to meet at least quarterly to discuss
 AICUZ concerns and major development proposals that could affect airfield operations.

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AICUZ STUDY

Volume II APPENDICES



UNITED STATES AIR FORCE MALMSTROM AFB, MONTANA 1994

MALMSTROM AFB AICUZ STUDY

VOLUME II: APPENDICES

This is the companion document to Volume I of the follow-on Air Installation Compatible Use Zone (AICUZ) Study prepared for Malmstrom AFB, Montana in 1994. It contains supplemental AICUZ information.

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APPENDIX A

THE AICUZ CONCEPT, PROGRAM, METHODOLOGY, AND POLICIES

A.1 Concept

Federal legislation, national sentiment, and other external forces which directly affect the United States Air Force mission have served to greatly increase the Air Force's role in environmental and planning issues. Problems of airfield encroachment from incompatible land uses surrounding installations, as well as air and water pollution and socio-economic impact, require continued and intensified USAF involvement. The nature of these problems dictates direct USAF participation in comprehensive community and land use planning. Effective, coordinated planning that bridges the gap between the federal government and the community requires the establishment of good working relationships with local citizens, local planning officials, and state and federal officials. This depends upon creating an atmosphere of mutual trust and helpfulness. The Air Installation Compatible Use Zone (AICUZ) concept has been developed in an effort to:

- Protect local citizens from the noise exposure and accident potential associated with flying activities.
- Prevent degradation of the Air Force's capability to achieve its mission by promoting compatible land use planning.

The land use guidelines developed herein are a composite of a number of other land use compatibility studies that have been refined to fit the Malmstrom AFB aviation environment.

A.2 Program

Installation commanders establish and maintain active programs to achieve the maximum feasible land use compatibility between air installations and neighboring communities. The program requires that all appropriate government bodies and citizens be fully informed whenever AICUZ or other planning matters affecting the installation are under consideration. This includes positive and continuous programs designed to:

- Provide information, criteria, and guidelines to federal, state, regional, and local planning bodies, civic associations, and similar groups.
- Inform such groups of the requirements of the flying activity, noise exposure, aircraft accident potential, and AICUZ plans.
- Describe the noise reduction measures that are being used.

Ensure that all reasonable, economical, and practical measures are taken to reduce or control the impact of noise-producing activities. These measures include such considerations as proper location of engine test facilities, provision of sound suppressors where necessary, and adjustment of flight patterns and/or techniques to minimize the noise impact on populated areas. This must be done without jeopardizing safety or operational effectiveness.

A.3 Methodology

The AICUZ consists of land areas upon which certain land uses may obstruct the airspace or otherwise be hazardous to aircraft operations and land areas which are exposed to the health, safety, or welfare hazards of aircraft operations. The AICUZ includes:

- Accident potential zones (APZ) and clear zones (CZ) based on past Air Force aircraft accidents and installation operational data (Appendix B).
- Noise zones (NZ) produced by the computerized Day-Night Average A-Weighted Sound Level (DNL) metric (Appendix C).
- The area designated by the Federal Aviation Administration and the Air Force for purposes of beight limitations in the approach and departure zones of the base (Appendix D).

The APZ, CZ, and NZ are the basic building blocks for land use planning with AICUZ data. Compatible land uses are specified for these zones, and recommendations on building materials and standards to reduce interior noise levels inside structures are provided in Appendix E.

As part of the Air Installation Compatible Use Zone program, the only real property acquisition for which the Air Force has requested and received congressional authorization and the base and major commands request appropriation are the areas designated as the clear zone. Land use control through restrictive easements has been acquired by Malmstrom AFB for all developable property within the clear zones, giving the base control over the use of the property. Compatible land use controls for the remaining airfield environs should be accomplished through the community land use planning processes.

A.4 AICUZ Land Use Development Policies

The basis for any effective land use control system is the development of, and subsequent adherence to, policies which serve as the standard by which all land use planning and control actions are evaluated. Malmstrom AFB recommends the following policies be considered for incorporation into the comprehensive plans of agencies in the vicinity of the base environs:

- A.4.1 Policy 1. In order to promote the public health, safety, peace, comfort, convenience, and general welfare of the inhabitants of airfield environs, it is necessary to:
 - Guide, control, and regulate future growth and development.
 - Promote orderly and appropriate use of land.

- Protect the character and stability of existing land uses.
- Prevent the destruction or impairment of the airfield and the public investment therein.
- Enhance the quality of living in the areas affected.
- Protect the general economic welfare by restricting incompatible land use.
- A.4.2 Policy 2. In furtherance of Policy 1, it is appropriate to:
 - Establish guidelines of land use compatibility.
 - Restrict or prohibit incompatible land use.
 - Prevent establishment of any land use which would unreasonably endanger aircraft
 operations and the continued use of the airfield.
 - Incorporate the Air Installation Compatible Use Zone concept into community land use plans, modifying them when necessary.
 - Adopt appropriate ordinances to implement airfield environs land use plans.
- A.4.3 Policy 3. Within the boundaries of the AICUZ, certain land uses are inherently incompatible. The following land uses are not in the public interest and must be restricted or prohibited:
 - Uses that release into the air any substance, such as steam, dust, or smoke, which
 would impair visibility or otherwise interfere with the operation of aircraft.
 - Uses that produce light emissions, either direct or indirect (reflective), which would interfere with pilot vision.
 - Uses that produce electrical emissions which would interfere with aircraft communication systems or navigation equipment.
 - Uses that attract birds or waterfowl, such as operation of sanitary landfills, maintenance or feeding stations, or growth of certain vegetation.
 - Uses that provide for structures within ten feet of aircraft approach-departure and/or transitional surfaces.
- A.4.4 Policy 4. Certain noise levels of varying duration and frequency create hazards to both physical and mental health. A limited, though definite, danger to life exists in certain areas adjacent to airfields. Where these conditions are sufficiently severe, it is not consistent with public health, safety, and welfare to allow the following land uses:
 - Residential.
 - Retail business.
 - Office buildings.
 - Public buildings (schools, churches, etc.).
 - Recreation buildings and structures.

- A.4.5 Policy 5. Land areas below takeoff and final approach flight paths are exposed to significant danger of aircraft accidents. The density of development and intensity of use must be limited in such areas.
- A.4.6 Policy 6. Different land uses have different sensitivities to noise. Standards of land use acceptability should be adopted, based on these noise sensitivities. In addition, a system of Noise Level Reduction guidelines (Appendix E) for new construction should be implemented to permit certain uses where they would otherwise be prohibited.
- A.4.7 Policy 7. Land use planning and zoning in the airfield environs cannot be based solely on aircraft-generated effects. Allocation of land used within the AICUZ should be further refined by consideration of:
 - · Physiographic factors.
 - Climate and hydrology.
 - · Vegetation.
 - Surface geology.
 - Soil characteristics.
 - Intrinsic land use capabilities and constraints.
 - Existing land use.
 - Land ownership patterns and values.
 - Economic and social demands.
 - Cost and availability of public utilities, transportation, and community facilities.
 - Other noise sources.

Each runway end at Malmstrom AFB has a 3,000 foot by 3,000 foot clear zone and two accident potential zones (Appendix B). Accident potential on or adjacent to the runway or within the clear zone is so high that the necessary land use restrictions would prohibit reasonable economic use of land. As stated previously, it is Air Force policy to request Congress to authorize and appropriate funds for the necessary real property interests in this area to prevent incompatible land uses. At Malmstrom AFB, land use control within clear zones is compatible with AICUZ recommendations.

Accident potential zone I is less critical than the clear zone, but still possesses a significant risk factor. This 3,000 foot by 5,000 foot area has land use compatibility guidelines which are sufficiently flexible to allow reasonable economic use of the land, such as industrial/manufacturing, transportation, communication/utilities, wholesale trade, open space, recreation, and agriculture. However, uses that concentrate people in small areas are not acceptable.

Accident potential zone II is less critical than accident potential zone I, but still possesses potential for accidents. Accident potential zone II, also 3,000 feet wide, is 7,000 feet long extending to 15,000 feet from the runway threshold. Acceptable uses include those of accident potential zone I, as well as low density single family residential and those personal and business services and commercial/retail trade uses of low intensity or scale of operation. High density functions such as multi-story buildings, places of assembly (theaters, churches, schools, restaurants, etc.), and high density office uses are not considered appropriate.

High people densities should be limited to the maximum extent possible. The optimum density recommended for residential usage (where it does not conflict with noise criteria) in accident potential zone II is one dwelling per acre. For most non-residential usage, buildings should be limited to one story and the lot coverage should not exceed 20%.

A.5 Basic Land Use Compatibility

Research on aircraft accident potential, noise, and land use compatibility is ongoing at a number of federal and other agencies. One such effort is the Concentrations of Persons per Acre Standard developed by the Sacramento Area Council of Governments for incorporation into the land use planning process (Appendix F). These and all other compatibility guidelines must not be considered inflexible standards. They are the framework within which land use compatibility questions can be addressed and resolved. In each case, full consideration must be given to local conditions such as:

- Previous community experience with aircraft accidents and noise.
- Local building construction and development practices.
- Existing noise environment due to other urban or transportation noise sources.
- Time period of aircraft operations and land use activities.
- Specific site analysis.
- Noise buffers, including topography.

These basic guidelines cannot resolve all land use compatibility questions, but they do offer a reasonable framework within which to work.

A.6 Accident Potential

Land use guidelines for the two APZs are based on a hazard index system which compares the relationship of accident occurrence for five areas:

- On or adjacent to the runway.
- Within the clear zone.
- In APZ I.
- In APZ II.
- . In all other areas within a 10 nautical mile radius of the runway.

Accident potential on or adjacent to the runway or within the clear zone is so high that few uses are acceptable. The risk outside APZ I and APZ II, but within the 10 nautical mile radius area, is significant, but is acceptable if sound engineering and planning practices are followed.

Land use guidelines for APZs I and II have been developed. The main objective has been to restrict all people-intensive uses because there is greater risk in these areas. The basic guidelines aim at prevention of uses that:

- Have high residential density characteristics.
- · Have high labor intensity.
- Involve above-ground explosive, fire, toxic, corrosive, or other hazardous characteristics.
- Promote population concentrations.
- Involve utilities and services required for area-wide population, where disruption would have an adverse impact (telephone, gas, etc.).
- Concentrate people who are unable to respond to emergency situations, such as children, elderly, handicapped, etc.
- Pose hazards to aircraft operations.

There is no question that these guidelines are relative. Ideally, there should be no people-intensive uses in either of these APZs. The free market and private property systems prevent this where there is land development demand. To go beyond these guidelines, however, substantially increases risk by placing more people in areas where there may ultimately be an aircraft accident.

A.7 Noise

Nearly all studies analyzing aircraft noise and residential compatibility recommend no residential uses in noise zones above DNL 75 dB. Usually, no restrictions are recommended below noise zone DNL 65 dB. Between DNL 65-75 dB there is currently no consensus. These areas may not qualify for federal mortgage insurance in residential categories according to the Department of Housing and Urban Development (HUD) Regulation 24 CFR 51B. In many cases, HUD approval requires noise attenuation measures, the Regional Administrator's concurrence, and an Environmental Impact Statement. The Department of Veterans Affairs also has airfield noise and accident restrictions which apply to their home loan guarantee program. Whenever possible, residential land use should be located below DNL 65 dB according to Air Force land use recommendations.

Most industrial/manufacturing uses are compatible in the airfield environs. Exceptions are uses such as research or scientific activities which require lower noise levels. Noise attenuation measures are recommended for portions of buildings devoted to office use, receiving the public, or where the normal background noise level is low.

The transportation, communications, and utilities eategories have a high noise level compatibility because they generally are not people-intensive. When people use land for these purposes, the use is generally very short in duration. Where buildings are required for these uses, additional evaluation is warranted.

The commercial/retail trade and personal and business services categories are compatible without restriction up to DNL 70 dB; however, they are generally incompatible above DNL 80 dB. Between

DNLs 70-80 dB, noise level reduction measures should be included in the design and construction of buildings.

The nature of most uses in the public and quasi-public services category requires a quieter environment, and attempts should be made to locate these uses below DNL 65 dB (an Air Force land use recommendation), or else provide adequate noise level reduction.

Although recreational use has often been recommended as compatible with high noise levels, recent research has resulted in a more conservative view. Above DNL 75 dB, noise becomes a factor which limits the ability to enjoy such uses. Where the requirement to hear is a function of the use (i.e., music shell, etc.), compatibility is limited. Buildings associated with golf courses and similar uses should be noise attenuated.

With the exception of forestry activities and livestock farming, uses in the resources production, extraction, and open space category are compatible almost without restrictions.

APPENDIX B

ACCIDENT POTENTIAL ZONES

B.1 Guidelines For Accident Potential

Urban areas around airports are exposed to the possibility of aircraft accidents even with wellmaintained aircraft and highly trained aircraft crews. Despite stringent maintenance requirements and countless hours of training, past history makes it clear that accidents are going to occur.

When the AICUZ program began there were no current comprehensive studies on accident potential. In support of the program, the Air Force completed a study of Air Force accidents that occurred between 1968 and 1972 within 10 nautical miles of airfields. The study of 369 accidents revealed that 75 percent of aircraft accidents occurred on or adjacent to the runway (1,000 feet to each side of the runway centerline) and in a corridor 3,000 feet (1,500 feet either side of the runway centerline) wide, extending from the runway threshold along the extended runway centerline for a distance of 15,000 feet.

Three zones were established based on crash patterns: The clear zone, accident potential zone (APZ) I, and accident potential zone (APZ) II. The clear zone starts at the end of the runway and extends outward 3,000 feet. It has the highest accident potential of the three zones. The Air Force has adopted a policy of acquiring property rights to areas designated as clear zones because of the high accident potential. APZ I extends from the clear zone an additional 5,000 feet. It includes an area of reduced accident potential. APZ II extends from APZ I an additional 7,000 feet in an area of further reduced accident potential.

The Air Force research work in accident potential was the first significant effort in this subject area since 1952 when the President's Airport Commission published "The Airport and Its Neighbors," better known as the "Doolittle Report." The recommendations of this earlier report were influential in the formulation of the accident potential zone concept.

The risk to people on the ground of being killed or injured by aircraft accidents is small. However, an aircraft accident is a high consequence event and when a crash does occur, the result is often catastrophic. Because of this, the Air Force does not attempt to base its safety standards on accident probabilities. Instead, the Air Force approaches this safety issue from a land use planning perspective.

B.2 Accident Potential Analysis

Military aircraft accidents differ from commercial air carrier and general aviation accidents because of the variety of aircraft used, the type of missions, and the number of training flights. In 1973, the

U.S. Air Force (USAF) performed a service-wide aircraft accident hazard study in order to identify land near airfields with significant accident potential. Accidents studied occurred within ten nautical miles of airfields and were related airfield-associated in-flight mishaps.

The study reviewed 369 major USAF accidents during 1968-1972, and found that 61 percent of the accidents were related to landing operations and 39 percent were takeoff related. It also found that 70 percent occurred in daylight, and that fighter and training aircraft accounted for 80 percent of the accidents.

Because the purpose of the study was to identify accident hazards, the study plotted each of the 369 accidents in relation to the airfield. This plotting found that the accidents clustered along the runway and its extended centerline. To further refine this clustering, a tabulation was prepared which described the cumulative frequency of accidents as a function of distance from the runway centerline along the extended centerline. This analysis was done for widths of 2,000, 3,000, and 4,000 total feet. The location analysis found the following:

Table B.1

LOCATION ANALYSIS

	Width of Runy	vay Extension	(Pect)
Length From Both Ends of Runway (feet)	2,000	3,000	4,000
Percent of A	ccidents		
On or Adjacent to Runway (1,000 feet to each si	dc of		
runway centerline)	23	23	23
0 ta 3,000	35	39	39
3,000 to 8,000	8	8	8
8,000 to 15,000	5	5	7
Cumulative Percen	t of Accidents		
On or Adjacent to Runway (1,000 feet to each si	de of		
runway centerline)	23	23	23
0 to 3,000	58	62	62
3,000 to 8,000	66	70	70
8,000 to 15,000	71	75	77

Figure B-1 indicates that the cumulative number of accidents rises rapidly from the end of the runway to 3,000 feet, rises more gradually to 8,000 feet, then continues at about the same rate of increase to 15,000 feet, where it levels off. The location analysis also indicates that the optimum width of the runway extension, which would include the maximum percentage of accidents in the smallest area, is 3,000 feet.

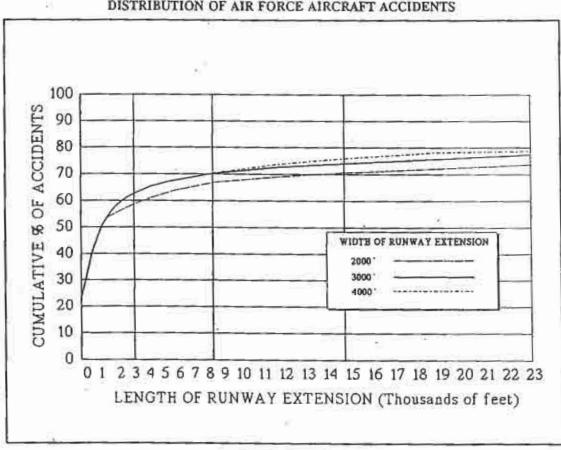


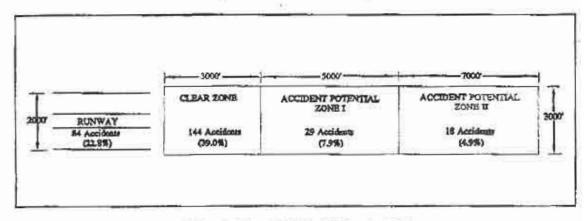
Figure B-1
DISTRIBUTION OF AIR FORCE AIRCRAFT ACCIDENTS

Using the optimum runway extension width, 3,000 feet, and the cumulative distribution of accidents from the end of the runway, zones were established which minimized the land area included and maximized the percentage of accidents included. The zone dimensions and accident statistics for the 1968-1972 study are shown in Figure B-2.

Figure B-2

AIR FORCE AIRCRAFT ACCIDENT DATA

(369 Accidents - 1968-1972)



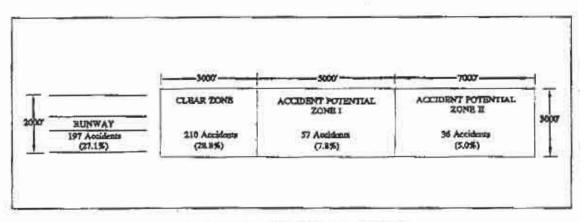
Other Accidents Within 10 Nautical Miles 94 Accidents 25.4%

The original study was updated to include accidents through 1985. The updated study now includes 728 accidents during the 1968-1985 period. Using the optimum runway extension width of 3,000 feet, the accident statistics of the updated study are shown below.

Figure B-3

AIR FORCE AIRCRAFT ACCIDENT DATA

(728 Accidents - 1968-1985)



Other Accidents Within 10 Nautical Miles 228 Accidents 31.3%

Using the designated zones and accident data, it is possible to calculate a ratio of percentage of accidents to percentage of area size. These ratios indicate that the clear zone, with the smallest area size and the highest number of accidents, has the highest ratio, followed by the runway and adjacent area, APZ I, and then APZ II.

Table B.2

ACCIDENT TO AREA RATIO

	Ratio o	of Percentage o		o Percentage 1968 - 1985)	of Arca	
	Area ¹ (acres)	Number ¹ Accident	Accident Per Acre	% Total Area	% Total Accident	Ratio: ³ Accident to Area
Runway Area	487	197	1 Per 2.5	0.165	27.1	164
Clear Zone	413	210	1 Per 1.9	0.140	28.8	206
APZ I	689	57	1 Per 12.1	0.233	7.8	33
APZ II	964	36	1 Per 26.7	0.327	5.0	15
Other	292,483	228 .	1 Per 1282.8	99.135	31.3	3

- 1. Area includes land within 10 nautical miles of runway.
- 2. Total number of accidents is 728 (through 1985).
- 3. Percent total accidents divided by percent total area.

Additional accident data for 1986 through July 1990 has been analyzed. Specific locational data for some of the 1986-1990 accidents was not available, and these were not included in the analysis. The following is a comparison of data through 1985 and data through July 1990:

Table B.3

ADDITIONAL ACCIDENT DATA

ZONE	1968-1985	1968-1990	
On-Runway	197-27.1 %	199-24.7 %	
Clear Zene	210-28.8 %	226-28.1 %	
APZ I	57-7.8 %	84-10.4 %	
APZ II	36-5.0 %	45-5.6 %	
Other (Within Ten NM)	228-31.3 %	251-31.2 %	

Analysis has shown that the cumulative changes evident in accident location through July 1990 reconfirm the dimensions of the clear zones and accident potential zones.

B.3 Definable Debris Impact Areas

The Air Force also determined which accidents had definable debris impact areas, and in what phase of flight the accident occurred. Overall, 75 percent of the accidents had definable debris impact areas, although they varied in size by type of accident.

The Air Force used weighted averages of impact areas, for accidents occurring only in the approach and departure phase, to determine the following average impact areas:

Average Impact Areas for Approach and Departure Accidents

Overall Average Impact Area	5.06 acres
Fighter, Trainer, and Misc. Aircraft	2.73 acres
Heavy Bomber and Tanker Aircraft	8.73 acres

B.4 Findings

- Designation of safety zones around the airfield and restriction of incompatible land uses can reduce the public's exposure to safety hazards.
- Air Porce accident studies have found that aircraft accidents near Air Force installations occurred in the following patterns:
 - 61% were related to landing operations.
 - 39% were related to takeoff operations.

- 70% occurred in daylight.
- 80% were related to fighter and training aircraft operations.
- 27% occurred on the runway or within an area extending 1,000 feet out from each side of the runway.
- 29% occurred in an area extending from the end of the runway to 3,000 feet along the extended centerline and 3,000 feet wide, centered on the extended centerline.
- 13% occurred in an area between 3,000 and 15,000 feet along the extended runway centerline and 3,000 feet wide, centered on the extended centerline.
- U.S. Air Force aircrast accident statistics found that 75% of aircrast accidents resulted in definable impact areas. The size of the impact areas were:
 - 5.1 acres overall average.
 - 2.7 acres for fighters and trainers.
 - · 8.7 acres for heavy bombers and tankers.

APPENDIX C

DESCRIPTION OF THE NOISE ENVIRONMENT

C.1 **Noise Contours**

The following paragraphs describe the methodologies used to produce the noise contours contained in this AICUZ Study.

C.2 Noise Environment Descriptor

The noise contour methodology used herein is the Day-Night Average A-Weighted Sound Level (DNL) metric for describing the noise environment. Efforts to provide a national uniform standard for noise assessment have resulted in adoption by the Environmental Protection Agency of DNL as the standard noise prediction metric for this procedure. The Air Force uses the DNL descriptor as the method to assess the amount of exposure to aircraft noise and predict community response to the various levels of exposure. The DNL values used for planning purposes are 65, 70, 75, and 80+ dB. Land use guidelines are based on the compatibility of various land uses with these noise exposure levels. DNL is a measurable quantity and can be measured directly.

It is generally recognized that a noise environment descriptor should consider, in addition to the annoyance of a single event, the effect of repetition of such events and the time of day in which these events occur. DNL begins with a single event descriptor and adds corrections for the number of events and the time of day. Since the primary development concern is residential, nighttime events are considered more annoying than daytime events and are weighted accordingly. DNL values are computed from the single event noise descriptor, plus corrections for number of flights and time of day (Figure C-1).

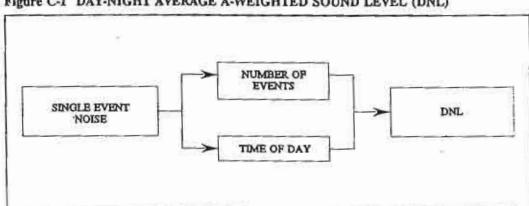


Figure C-1 DAY-NIGHT AVERAGE A-WEIGHTED SOUND LEVEL (DNL)

As part of the extensive data collection process, detailed information is gathered on the type of aircraft and number and time of day of flying operations for each flight track during a typical day. This information is used in conjunction with the single event noise descriptor to produce DNL values. These values are combined on an energy summation basis to provide single DNL values for the mix of aircraft operations at the base. Equal value points are connected to form the contour lines.

C.3 Noise Event Descriptor

The single event noise descriptor used in the DNL system is the Sound Exposure Level (SEL). The SEL measure is an integration of an "A" weighted noise level over the period of a single event, such as an aircraft flyover, in dB. Frequency, magnitude, and duration vary according to aircraft type, engine type, and power setting. Therefore, individual aircraft noise data are collected for various types of aircraft/engines at different power settings and phases of flight. The following diagram shows the relationship of the single event noise descriptor (SEL) to the source sound energy.

STANDARD

STANDARD

SLANT RANGE

VALUES

PROFILE/POWER

VARIATIONS

LOCALIZED SEL

VS

SLANT RANGE

VALUES

Figure C-2 SOUND EXPOSURE LEVEL (SEL)

SEL vs. slant range values are derived from noise measurements made according to a source noise data acquisition plan developed by Bolt, Beranek, and Newman, Inc., in conjunction with the Air Force's Armstrong Laboratory (AL), and carried out by AL. These standard day, sea level values form the basis for the individual event noise descriptors at any location and are adjusted to the location by applying appropriate corrections for temperature, humidity, and variations from standard profiles and power settings.

Ground-to-ground sound propagation characteristics are used for altitudes up to 500 feet absolute with linear transition between 500 and 700 feet and air-to-ground propagation characteristics above 700 feet. In addition to the assessment of aircraft flight operations, the DNL system also incorporates noise resulting from engine/aircraft maintenance checks on the ground. Data concerning the orientation of the noise source, type of aircraft or engine, number of test runs on a typical day, power settings used and their duration, and use of suppression devices are collected for each ground run up or test position. This information is processed and the noise contribution added (on an energy summation basis) to the noise generated by flying operations to produce noise contours reflecting the overall noise environment with respect to aircraft air and ground operations.

C.4 Noise Contour Production

Data describing flight track distances and turns, altitudes, airspeeds, power settings, flight track operational utilization, maintenance locations, ground runup engine power settings, and number and duration of runs by type of aircraft/engine is assembled by each AFB. The data is screened by the Major Command (MAJCOM) and Headquarters, Air Force Center for Environmental Excellence (HQ AFCEE/DGP). Trained personnel process the data for input into a central computer. Flight track maps are generated for verification and approval by the base/MAJCOM. After any required changes have been incorporated, DNL contours are generated by the computer using the supplied data and standard source noise data corrected to local weather conditions. These contours are plotted and prepared for photographic reproduction. A set of these contours is provided in the body of the report.

Additional technical information on the DNL procedures are available in the following publications:

- Community Noise Exposure Resulting from Aircraft Operations: Applications Guide for Predictive Procedure, AMRL-TR-73-105, November 1974, from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22151.
- Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with Adequate Margin of Safety, EPA Report 550/9-74-004, March 1974, from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

APPENDIX D

HEIGHT AND OBSTRUCTIONS CRITERIA

D.1 Height And Obstructions Criteria

D.1.1 General

This appendix establishes criteria for determining whether an object or structure is an obstruction to air navigation. Obstructions to air navigation are considered to be:

- Natural objects or man-made structures that protrude above the planes or surfaces
 as defined in the following paragraphs, and/or;
- Man-made objects that extend more than 500 feet above the ground at the site of the structure.

D.1.2 Explanation of Terms

The following will apply (see Figure D-1):

- Controlling Elevation. Whenever surfaces or planes within the obstructions criteria overlap, the controlling (or governing) elevation becomes that of the lowest surface or plane.
- Runway Length. Malmstrom AFB has one runway with 11,500 feet of pavement designed and built for sustained aircraft landings and takeoffs.
- Established Airfield Elevation. The elevation, in feet above mean sea level, for Malmstrom AFB is 3,526 feet.
- Dimensions. All dimensions are measured horizontally unless otherwise noted.

D.1.3 Planes and Surfaces.

Definitions are as follows:

- Primary Surface. This surface defines the limits of the obstruction clearance requirements in the immediate vicinity of the landing area. The primary surface comprises surfaces of the runway, runway shoulders, and lateral safety zones and extends 200 feet beyond the runway end. The width of the primary surface for a single class "B" runway is 2,000 feet, or 1,000 feet on each side of the runway centerline.
- Clear Zone Surface. This surface defines the limits of the obstruction clear requirements in the vicinity contiguous to the end of the primary surface.

- length and width (for a single runway) of a clear zone surface is 3,000 feet by 3000 feet.
- Approach-Departure Clearance Surface. This surface is symmetrical about the extended runway centerline, begins as an inclined plane (glide angle) 200 feet beyond each end of the primary surface of the centerline elevation of the runway end, and extends for 50,000 feet. The slope of the approach-departure clearance surface is 50:1 along the extended runway (glide angle) centerline until it reaches an elevation of 500 feet above the established airfield elevation. It then continues horizontally at this elevation to a point 50,000 feet from the start of the glide angle. The width of this surface at the runway end is 2,000 feet; it flares uniformly, and the width at 50,000 feet is 16,000 feet.
- Inner Horizontal Surface. This surface is a plane, oval in shape at a height of 150
 feet above the established airfield elevation. It is constructed by scribing an arc
 with a radius of 7,500 feet above the centerline at the end of the runway and
 interconnecting these arcs with tangents.
- Conical Surface. This is an inclined surface extending outward and upward from
 the outer periphery of the inner horizontal surface for a horizontal distance of
 7,000 feet to a height of 500 feet above the established airfield elevation. The
 slope of the conical surface is 20:1.
- Outer Horizontal Surface. This surface is a plane located 500 feet above the established airfield elevation. It extends for a horizontal distance of 30,000 feet from the outer periphery of the conical surface.
- Transitional Surfaces. These surfaces connect the primary surfaces, clear zone surfaces, and approach-departure clearance surfaces to the outer horizontal surface, conical surface, other horizontal surface, or other transitional surfaces. The slope of the transitional surface is 7:1 outward and upward at right angles to the runway centerline. To determine the elevation for the beginning of the transitional surface slope at any point along the lateral boundary of the primary surface, including the clear zone, draw a line from this point to the runway centerline. This line will be at right angles to the runway axis. The elevation at the runway centerline is the elevation for the beginning of the 7:1 slope.

The land areas outlined by these criteria should be regulated to prevent uses which might otherwise be hazardous to aircraft operations. The following uses should be restricted and/or prohibited.

- Uses which release into the air any substance which would impair visibility or otherwise interfers with the operation of aircraft (i.e. steam, dust, or smoke).
- Uses which produce light emissions, either direct or indirect (reflective), which would interfere with pilot vision.
- Uses which produce electrical emissions which would interfere with aircraft communications systems or navigational equipment.
- Uses which would attract birds or waterfowl, including but not limited to, operation of sanitary landfills, maintenance of feeding stations, or the growing of certain vegetation.
- Uses that provide for structures within ten feet of aircraft approach-departure and/or transitional surfaces.

D.2 Height Restrictions

City/County agencies involved with approvals of permits for construction should require developers to submit calculations which show that projects meet the height restriction criteria of FAR Part 77 as described, in part, by the information contained in this Appendix.

Malmstrom AFB, Montana

Coordinates and Elevations

Airport Elevation

3,526 Ft. MSL

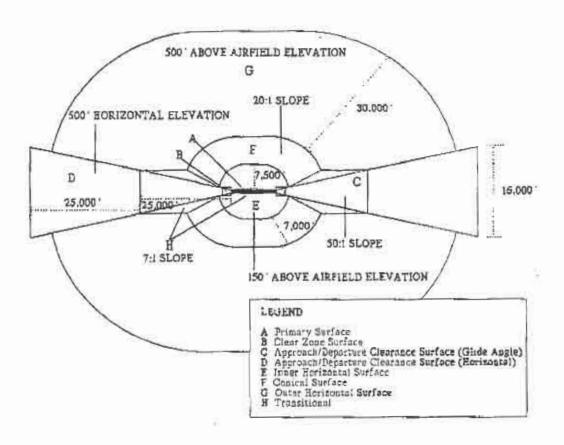
Coordinates

RUNWAY 03/21

Lat. 47° 29' 39.3" N Long. 111° 11' 58.9" W

Lat. 47* 31' 3.1" N Long. 111* 10' 6.1" W

Figure D-1
AIRSPACE CONTROL SURFACE PLAN



For a more complete description of airspace control surfaces, refer to FAR Part 77, Subpart C or AFR 86-14.

APPENDIX E

NOISE LEVEL REDUCTION GUIDELINES

A study which provides in-depth, state-of-the-art noise level reduction guidelines was completed for the Naval Facilities Engineering Command and the Federal Aviation Administration, by Wyle Laboratories in November 1989. The study title is Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations, Wyle Research Report WR 89-7. A copy of this study may be obtained by calling the Defense Technical Information Center at 1-800-225-3842.

APPENDIX F

SAMPLE POPULATION DENSITY GUIDELINES

Uses are compatible if they do not result in a gathering of individuals in an area that would result in an average density of greater than 25 persons per acre per hour during a 24 hour period, not to exceed 50 persons per acre at any time. Population density guidelines where developed by the Sacramento Area Council of Governments.

F.1 Average Density

Average densities of persons per hour during a 24-hour period are determined by calculating the number of persons per acre expected on a site, multiplying by the number of hours they will be on the site, and dividing the total by 24.

- Example #1. One 8-hour shift of 30 workers on a one acre site.
 Avg. density = 30 persons expected X 8-hours on site = 240
 Then 240/24=10: Thus avg. density = 10 persons per acre per hour per a 24-hour period.
- Example #2. Two 8-hour shifts of 30 workers on a one acre site.
 Avg. density = 30 persons expected X 16 hours on site = 480
 Then 480/24=20: Thus avg. density = 20 persons per acre per hour per a 24-hour period.

F.2 Maximum Density

The maximum number of persons allowed per acre per hour is calculated by dividing the number of hours persons will be on site by 24 hours, and then dividing 25 persons per acre per hour by the result. The resulting number is the maximum number of persons allowed per acre per hour, provided it does not exceed 50. Fifty persons per acre at any one time is the maximum number of persons allowed under the standard.

- Example. Maximum density for two 8-hour shifts on a one acre site.
- 25 divided by 16/24 = 37.5 persons per acre per hour allowed.

Application of this formula results in the following table which specifies the maximum persons per acre per hour for the duration of the time that persons are expected to be on site during a 24-hour period.

Table F.I

PERSONS PER ACRE

HOURS OF OPERATION PER DAY	MAXIMUM PERSONS ALLOWED PER ACRE/DURING EACH HOUR
24	25
23	26
22	27
21	28
20	30
19	. 31
18	33
17	35
16	37
15	40
14	42
13	46
12 or Less	50*

Notes: • Fractions in the maximum persons allowed column are rounded to the lowest whole number.

^{*} Concentration of people may not exceed 50 people/acre at any time.

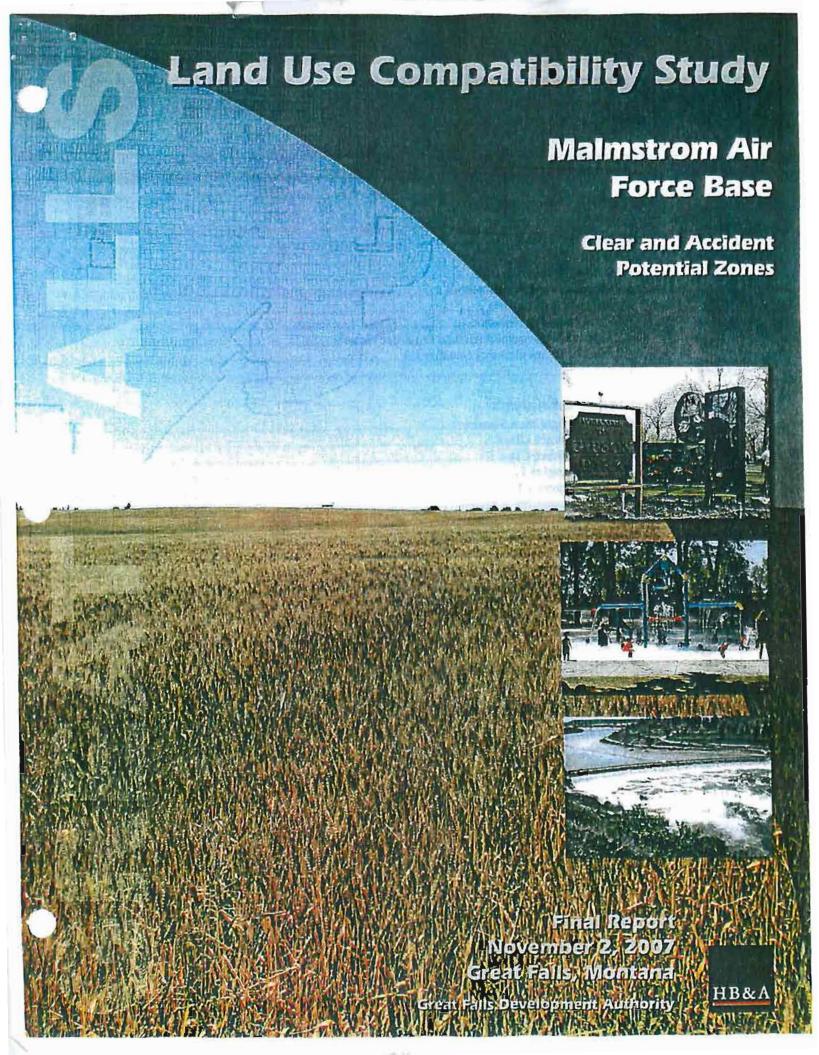


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Chapter 1 - Background

1.1 Introduction

Since its inception, Malmstrom Air Force Base (MAFB) has been a critical part of the economy and culture of Great Falls and Cascade County. In the 12 years since the Base's flying mission was officially realigned in 1995, the community has been searching for ways to shore up the strength of the local economy and the Base.

Over the years, and with increasing intensity in the last few years, local officials and community representatives have teamed with Montana's congressional delegation to try to enhance and strengthen the Base by finding a mission that would reactivate the runway. The rationale behind this effort is the recognition that the Base's reliance on its missile squadron mission could make it vulnerable to realignment or closure actions in the future as the US Intercontinental Ballistic Missile (ICBM) inventory ages and the Air Force evaluates the future necessity of an ICBM-based deterrence threat. The community members that are advocating for a new runway mission at the Base argue that a base with a flying mission will be significantly less vulnerable in the future. By this line of reasoning, the community should do everything possible to maintain the land uses surrounding the Base in a form that would be attractive to any future airfield users.

Other community members have argued that the best prospect for the economic stability of Great Falls and Cascade County is to continue development on the east side of the City, an area they say is the natural corridor for further City growth. They reason that the land surrounding the Base should be developed according to the desires of the landowners and the demands of the local market for new residential and commercial development. These community members contend that 12 years has been sufficient time to secure a flying mission and the community should take advantage of the economic development associated with residential and commercial expansion on the east side of the City.

These two viewpoints, both focused on economic growth and stability, have brought the Great Falls and Cascade County community to a critical crossroads, and the time has come for the community to make tough choices about the costs and benefits of allowing a variety of development on the land surrounding MAFB's closed runway.

1.2 Project Purpose

This study is the first part of a new effort to bring the community toward consensus. As shown on Figure 1-1, the community will come to this consensus by

- Identifying the most critical land areas,
- Identifying the land protection tools and strategies available,
- Estimating the cost of implementing applicable strategies around MAFB, and
- Debating the relative costs and benefits in the public arena.

This particular study covers the early stages of this process. Its aim is to provide sufficient information and potential strategies to inform the choices of decision makers. The study has three basic objectives:

- Educate and inform the public about airfield clearance zones for both DoD and FAA operations.
- Identify potential incompatibilities between planned off-base land uses and airfield clearance zones.
- Develop specific strategies to address any land use incompatibilities

1.3 Malmstrom AFB

It is important that the reader of this study appreciate and understand the past, present, and future of Malmstrom AFB. There have been a number of studies and surveys that have presented the historical facts and future potential future for the Base.



Figure 1-1: Overall Planning Process

1.3.1 History and Background

Malmstrom AFB has a long and distinguished history. The Base has weathered many changes and evolutions throughout the years, but has always held an important role locally and nationally. It has retained a close, supportive, interdependent relationship with the Great Falls and Cascade County community, and has been a critical part of many of the 20th century's defining historical moments.

The Base's origins can be traced to the initiative of the local community. In 1939, the local Chamber of Commerce, concerned about the outbreak of World War II, suggested the area as a good place for a military installation. In 1942, construction began on Great Falls Army Air Base, which was informally referred to as East Base and was intended to support the air route between the continental U.S., Alaska, and the Soviet Union. This air route enabled the US to supply the Soviet Union with aircraft and

General historical information summarized from the Malmstrom AFB website's History Fact Sheet (www.malmstrom.af mil/library/history/malmstromhistory.asp)

supplies needed to fight the German Army. During World War II, the Base was used as a training site for B-17 bombers which later went on to participate in decisive raids over Germany.

After World War II, the Base served a support role for military personnel stationed in Alaska, and was designated as Great Falls Air Force Base in 1947 when the Air Force became a separate service. During the early years of the Cold War, the Base again rose to the challenge, playing a key role in the Berlin airlift, which provided vital supplies to 2,000,000 residents of West Berlin. The Base was transformed to resemble Tempelhof Airport in Berlin, and was used to train aircrews on flight procedures to and from Berlin.

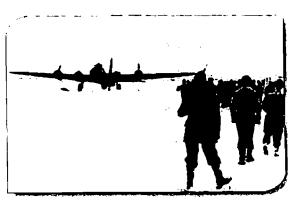
During the Korean conflict, the Base took on the responsibility of routing and scheduling flights throughout the Pacific Ocean, and also played a role training C-54 aircrews.

Starting in the 1950s, the Base also played a major aerial defense role, housing fighter interceptor squadrons to provide security to the region.

In 1954, the Base received a new mission to provide fighter escort and aerial refueling for long-range bombers. In that year, the wing's Vice Commander, Col. Einar Axel Malmstrom, died in an airplane crash. The local civilian community led an effort to rename the Base after the well-liked Colonel, and in 1956, the Base was officially dedicated as Malmstrom AFB.

In the 1960s, the Base's mission shifted to include being at the forefront of the development of the ICBM force. In 1962, the Base received its first Minuteman missile and installed it into what would be the first operational Minuteman missile site, which was soon followed by many others. These first missiles would play a critical role later in 1962 during the Cuban Missile Crisis, when President Kennedy would refer to them as the "Ace in the Hole" that prompted the Soviets to back down. By 1963, the wing and its three squadrons were operational, with 150 Minuteman I missiles. Two years later, another squadron was added, bringing the total strength to 200 missiles.

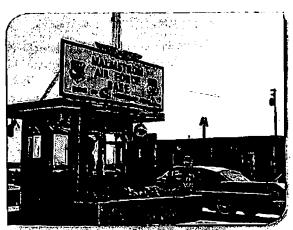
During the 1970s and 1980s, the Base continued to maintain and upgrade its missile inventory, providing support to North American Aerospace



The first B-17 stationed at Great Falls Army Air Base lands in 1942. (Photo courtesy of Maimstrom AFB Website)



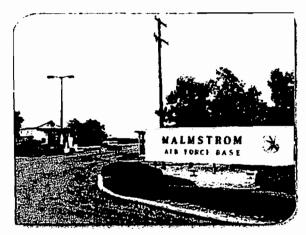
Maimstrom Air Force Base Gate in 1958 (Photo courtesy of Maimstrom AFB Website)



Malmstrom Air Force Base Gate in 1968 (Photo courtesy of Malmstrom AFB Website)

Defense Command (NORAD) and sometimes providing aircraft and aircrew testing and training in harsh winter conditions. In 1989, the Base received an air refueling mission, which deployed to the Persian Gulf during Operation Desert Storm.

In 1995, the Defense Base Realignment and Closure (BRAC) Commission recommended the deactivation of the Air Refueling mission at Malmstrom AFB. The commission justified their recommendation by citing a "saturation of KC-135 tankers in the northwest continental United States" and "a shortfall in tanker capability in the southeastern United States." In addition, the Commission was "concerned about operating limitations" for the Malmstrombased aircraft, which were "unable to take-off fully loaded because of the 3,500 foot field elevation and 11,000 foot runway length." Despite the diligent



Malmstrom Air Force Base Gate in 1978 (Photo courtesy of Malmstrom AFB Website)

efforts of many community members and local and national elected leaders, the BRAC recommendation was not changed, and the KC-135 aircraft were reassigned to Macdill AFB, Florida. At the end of the calendar year in 1996, Malmstrom's runway was declared inactive, and in 1999, it was declared excess, meaning that it could be used for commercial purposes with the consent of the DoD.

Since 1995, the Base has undergone many changes. In late 1995, a Rapid Engineer Deployable Heavy Operational Repair Squadron Engineers (RED HORSE) Squadron was assigned to the Base. This squadron is a unique blend of active duty, Air National Guard, and Air Force Reservists, and helped to backfill some of the space left vacant by the departure of the airplane mission. More recently, the Base added a Network Operations and Security Center mission which performs space surveillance and satellite tracking functions. In general, the Base has been careful not to build new facilities in areas that would hamper any future reopening of the runway, but the Air Force has been careful to note that it has no plans to do so.

In early 2006, the Department of Defense concluded that 50 of the nation's 500 ICBMs could be removed without weakening the nation's strategic defense. The Air Force selected the 50 missiles from one of Malmstrom's squadrons. Unfortunately, the efforts of Montana's congressional delegation and local community members were unable to persuade the Air Force to retain the missiles, and deactivation of the squadron started in July of 2007. This loss of missiles will have a significant impact on the economy of Great Falls, but brings the overall missile responsibility of Malmstrom AFB down to 150, equal to the other two missile bases.³

1.3.2 A Summary of Opportunities

Appreciating the breadth of opportunities for new missions is key in making decisions for the future of the Malmstrom AFB runway. However, questions remain, such as, are there numerous potential missions that could make use of the runway or are the opportunities few or unlikely? The runway pavement is in decent shape and has been evaluated as being in better condition than many operational runways. The navigational aids and runway lighting have been removed, and the Flight Control Tower has been demolished. Despite the significant investment that would be required to bring the runway up

² 1995 BRAC Commission Findings (Available via www.brac.gov)

³ Johnson, Peter and Kim Skornogoski, "Malmstrom Readies to Remove 50 Missiles" Great Falls Tribune, July 3 2007.

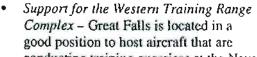
to operational standards, the cost still pales in comparison to the cost of building a new runway from scratch. As such, the runway represents a sizeable asset that could benefit many potential runway users.

In 2005, an Opportunity Assessment was prepared for MAFB.⁴ This detailed study examined the close economic and social interaction between the Base and the Region, analyzed the potential impact of current trends in the Air Force and Department of Defense, identified several potential future missions for the Base, and provided a roadmap for navigating the operational, political, and bureaucratic obstacles for obtaining a new mission. A summary of the potential future missions recognized in the assessment follows:

- Global Intelligence, Surveillance, and Reconnaissance (GISR) This highly classified mission
 would fit well on a secure base like Malmstrom. This mission is largely communications-based,
 but could involve the use of the runway for Unmanned Aerial Vehicles (UAVs).
- Department of Defense Information Operation (IO) This type of mission, which essentially
 maintains network security for US systems, is increasingly important and would benefit from
 Malmstrom's unique geography, security infrastructure, and communications links. It would not
 have a runway component.
- Army National Guard Maintenance This would represent an expansion of the existing Army
 presence at the Base without use of the runway.
- Joint Tactical Air Control School A joint mission like this could evolve from an increased Army footprint at the Base, and might include aircraft for training purposes.
- Joint DoD/Department of Homeland Security (DHS) UAV Operations Both the DoD and the
 DHS are placing an increasingly large emphasis on UAV operations. Some of the factors that
 make Malmstrom unique, such as proximity to the northern border, access to uncongested
 airspace, and available land for new facilities, would make the Base an ideal location to house
 UAV operations for Air Force Training and for DHS border surveillance missions.

Active-Associate Fighter Wing – As the Air Force goes through airframe and organizational

transitions, it is considering the establishment of "blended" active duty/guard wings more often. This concept increases the efficiency and lowers the cost for a fighter wing. Because of the presence of the Montana Air National Guard (MANG) at the Great Falls International Airport, the close proximity to Malmstrom AFB, and the existence of excess facilities and the runway, Malmstrom could offer an excellent opportunity to field this kind of unit. This activity could have a runway component in the future.





The MQ-9 Reaper, the newest USAF UAV model

conducting training exercises at the Nevada Test and Training Range (NTTR) and the Utah Test and Training Range (UTTR). This kind of a mission would mean support and refueling for transient aircraft, but no resident flying mission.

SAIC, Malmstrom Air Force Base Opportunity Assessment, 2005.

- Support for NORTHCOM The Base's location near the U.S.-Canadian border positions it as a support base for US and Canadian planes conducting bilateral homeland defense missions. This type of mission would involve transient aircraft support but no resident aircraft.
- Support for the Office of Domestic Preparedness (ODP) There is a need for locations where
 materiel could be pre-positioned for the use of non-DoD emergency response agencies.
 Malmstrom has the logistical capacity and an ideal location to serve as one of these locations.
- Lighter Than Air Airship, Commercial Space Launch, Satellite Launch These three missions
 represent the assessment's view of some of the emerging aerospace trends that could require
 basing in the future.
- Hypersonic Test Facility This non-runway research and development effort to build a wind
 tunnel capable of simulating speeds in excess of Mach 15 would benefit from location on a
 secure Air Force Base. MAFB would be a natural choice, as the technology is being developed
 in Butte, Montana.

In general, because of Malmstrom's solid relationship with the Region, the availability of land and, possibly, underutilized hangar space, and its proximity to clear airspace and the northern border, the runway is viewed as an attractive and valued resource. However, the Air Force's official position is that there is no identified flying mission for the Malmstrom AFB runway.

Several proposals for the Base have been especially active recently, and therefore deserve more discussion. An Air National Guard Active-Associate Wing at the Great Falls International Airport would primarily make use of Base support facilities. Although this kind of unit would use the runway at Great Falls International Airport and would not require the Malmstrom AFB runway, it could eventually use the Malmstrom runway in the long-term future. The DHS has expressed interest in the security benefits of operating out of a secured military base rather than the airport. There has also been some interest in utilizing the Federal

This study assumes that either the U.S. Air Force or the Federal Aviation Administration would operate a re-opened runway and that future missions would involve traditional manned or unmanned aircraft.

Aviation Administration (FAA) Military Airport Program to revitalize and transfer the management of the runway to the FAA. Through this program, the FAA awards grants to current or former military airfields to assist in converting them to civil use and to reduce congestion at existing airports experiencing significant delays. Because of the adjacent Weapons Storage Area at Malmstrom, there are significant security obstacles to using the runway for FAA passenger traffic, but under this program, there is a possibility that a non-passenger, non-DoD runway user such as DHS could operate at the Malmstrom AFB runway if the runway was transferred to FAA ownership and management. Finally, local, state, and Air Force leaders have been discussing the possibility of building and operating a Coal-to-Liquid plant at the Base. This \$1.3 billion facility would sit on approximately 400-700 acres at Malmstrom AFB. The eventual siting of the plant, which would require the Air Force to lease land to the private operator of the plant, could impact the ability to reopen the runway.

⁵ Johnson, Peter, "Homeland Security Favors Airport Over Malmstrom for Wing", Great Falls Tribune, January 31 2006.

More information on the Military Airport Program available at www.faa.gov/airports airtraffic/airports/aip/military airport program/

⁷ Puckett, Karl, "Officials Meet on Malmstrom Coal-to-Liquids Plant", Great Falls Tribune, October 3 2007.

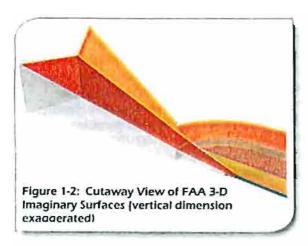
In order to stay simple, informative, and relevant, this study does not attempt to account for every possible future runway use. In addition, when defining the airfield criteria and the associated land use recommendations, the critical factor is not necessarily the use, but rather the owner and operator of the runway. This study assumes that either the US Air Force or the FAA would operate a re-opened runway and that future missions would involve traditional manned or unmanned aircraft. These assumptions would allow for most of the potential uses identified in the MAFB Opportunity Assessment, but exclude any potential space or airship missions.

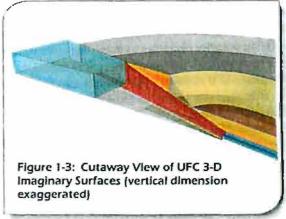
1.4 Airfield Land Use Criteria

Airfield users, whether the FAA or the DoD, have a deep interest in the patterns of land use surrounding their installations. Aircraft tend to create a large amount of noise and they may occasionally crash. According to these factors, airfields should be located far away from populations and buildings in order to eliminate the risk of accidents and noise disruption. Airfields, however, tend to attract populations because of their economic activity and the general growth of urban areas. This creates a tension between the disruptive and dangerous effects of an airfield's operations and the surrounding population growth and urban expansion.

Because it would be impractical for an airfield to acquire and own the full extent of its noise and safety impacts (potentially dozens, maybe hundreds of square miles), airfield users are placed in the position of indirectly influencing the development of land outside of their property. To do this, they create partnerships with local planning authorities and offer advice about the ideal spatial distribution of different types of development around the runway. Different airfield users have created complex systems of ground level clearance areas and three-dimensional aerial surfaces, collectively called "imaginary surfaces." These are intended to guide the type, location, and height of development around the runway. Figures 1-2 and 1-3 show cutaway views of the imaginary surfaces associated with FAA and DoD (US Air Force) runways. 8

The focus of this study is specifically on land use restrictions, and thus, it will only focus on the ground level safety clearance zones that are located at the ends of runways. These zones are intended to protect civilian populations from crash hazards, and therefore have the highest impact on land use recommendations. The zones are described in more detail below.





EDetailed descriptions of these imaginary surfaces can be found in the source governing documents for the DoD and the FAA:

DoD - Unified Facilities Criteria (UFC) 3-260-01, Airfield and Heliport Planning and Design, 1 November 2001.
FAA - Advisory Circular (AC) 150/5300-13, Airport Design, 29 September 1989.

1.4.1 Safety Zone Definitions

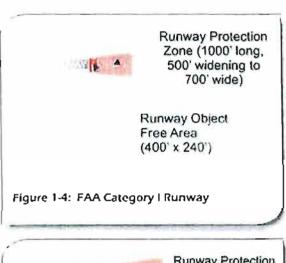
The safety zones around a runway are dictated by the agency or department that owns and manages the runway. The shape and size of the runway safety zones can vary based on different aircraft types, runway lengths, and runway designations. In order to capture the full range of possibilities for Malmstrom's runway, the largest and smallest footprints will be considered for both FAA and DoD. In the case of DoD ownership, the Air Force, Navy, and Army have established slightly different systems of zones and imaginary surfaces. Because of the current Air Force ownership of the runway and the likely missions, this study will limit its analysis to the Air Force criteria, and will not address the Navy and Army criteria.

Relevant FAA Safety Zones

FAA runways are given Precision Approach
Category designations (Category I-III) based on the
presence of an instrument approach, the decision
height, and the minimum visibility of the runway.
These categories are a convenient way to generalize
the different dimensions of the relevant FAA safety
zones, which are determined according to the type
of aircraft and the approach visibility minimum
associated with the runway end. 10

FAA Category I Airfield: For the purposes of this study, an FAA Category I runway will represent the minimum extreme possible under FAA ownership. This type of runway would be designed to handle smaller, slower aircraft at high visibility minimums. This type of runway could accommodate general aviation and other small airplane traffic, but would not be able to accommodate airliner traffic.

FAA Category II Airfield: An FAA Category II runway would be designed based on larger aircraft and moderate visibility minimums. The safety zones dimensions associated with this type of runway would lie between the Category I and Category III; therefore, for the sake of simplicity, this type of runway is not displayed on maps in this study.





FAA Category III Airfield: An FAA Category III runway is the typical designation for a full passenger and cargo airport. This designation would allow for any type of commercial air traffic, including all existing passenger jets. The Great Falls International Airport is a Category III airport.

The critical zones in FAA criteria are the Runway Protection Zone (RPZ) and the Runway Object Free Area (ROFA). These zones exist at both ends of the runway. The RPZ's function is to maintain land cleared of incompatible uses at the ends of the runway. The RPZ is trapezoidal in shape and centered about the extended runway centerline, starting 200 feet from the runway end.

⁹ Criteria for all three branches can be found in UFC 3-260-01.

¹⁰ FAA criteria can be found in FAA Advisory Circular (AC) 150/5300-13, Airport Design, 29 September 1989.

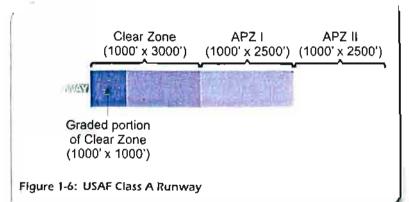
The ROFA is a rectangular clearance zone overlapping the RPZ. It is centered on the runway centerline and requires clearing of all above ground objects. The dimensions of the RPZ and ROFA are shown in Figures 1-4 and 1-5 for both types of FAA runways.

Relevant US Air Force Safety Zones

In the Air Force, the criteria are determined by the classification of the runway, which depends on the type of mission being supported. In general, there are two runway types, Class A and Class B. The regulations also define another type of runway, called a Contingency Landing Zone, which is limited to short dirt or paved runways used in-theatre or for training purposes. Because of the relative rareness of Contingency Landing Zones in the Air Force, this study will not address this criteria, and will consider the Class A and Class B options to represent the minimum and maximum runway footprints.

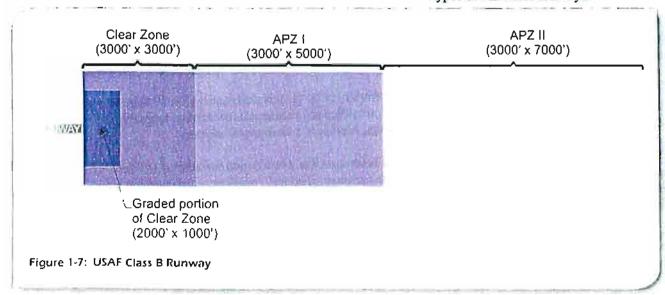
US Air Force Class A Runway: Class A runways are primarily intended for small light aircraft. Ordinarily, these runways are less than 8,000 feet long, and have less than 10 percent of their operations involving aircraft in the Class B category. This type of runway is not intended to support high performance and large heavy aircraft. In general, Class A runways are limited to auxiliary fields or secondary runways at larger Air Force Bases. There are few, if any, Air Force flying missions that are based on Class A runways.

US Air Force Class B Runway: Class B runways are designed to support high-performance and heavy



aircraft. This would include all fighter, bomber, and heavy lift missions. Most Air Force bases have at least one Class B runway to support their primary mission.

The DoD zones that are relevant to this study are the Clear Zone (including the Graded Portion of the Clear Zone), Accident Potential Zone I, and Accident Potential Zone II. These zones are located at both ends of each runway. The dimensions of the CZ and APZs are shown in Figures 1-6 and 1-7 for both types of Air Force runways.



The Clear Zone and APZ configurations shown in Figures 1-6 and 1-7 are standard configurations, and are seen in this form at the vast majority of Air Force Bases. However, the criteria do give some latitude in the design of the APZs. The criteria states that modifications will be considered if:

- The runway is infrequently used.
- Prevailing wind conditions are such that a large percentage (that is, over 80 percent) of the operations are in one direction.
- Local accident history indicates consideration of different areas
- Most aircraft do not overfly an APZ area as defined here during normal flight operations (modifications may be made to alter these zones and adjust them to conform to the line of flight).
- Other unusual conditions exist.

At a minority of Air Force airfields, the APZs have been curved, shortened, or lengthened in response to these factors. Figures 1-8 and 1-9 show the APZs at Dover AFB and Luke AFB. At Dover AFB, the APZ was curved to accommodate flight patterns, and at Luke AFB, the APZ II was lengthened to create a Live Ordnance Air Departure Corridor, which recognizes the increased hazards associated with live ordnance and the resident fighter training mission. It is important to note that APZs are not only changed in an effort to impact less land around an installation, but in some cases, they've been lengthened or widened to impact more land because of mission specifics.



Figure 1-8: Dover AFB Modified APZs



Figure 1-9: Luke AFB Modified APZs

1.4.2 Origin and Purpose of Airfield Land Use Criteria

The purposes of the Runway Protection Zones, Clear Zones, and Accident Potential Zones described previously are the same: to protect people and buildings from injury and damage due to aircraft mishaps (including crashes, dropped items, etc.) These zones are designed to contain a large proportion of the potential crashes, and the limitation on high-population-density development within the zones is intended to limit the impact of a catastrophic crash on peoples lives. Figure 1-10 shows the distribution of crash locations for both an FAA crash study and a US Air Force crash study, overlaid on the standard safety zones. As the figure demonstrates, the safety zones capture a large portion of the crashes examined in the studies.

The US Air Force data shown in Figure 1-8 is actually part a 1973 study that was commissioned by the Air Force to establish the dimensions of the Clear Zone and APZs. The study aimed to find acceptable safety zone dimensions that would cover milestone percentages of the accidents analyzed, and developed the idea of three accident potential zones extending to 3,000 feet, 8,000 feet, and 15,000 feet from the runway threshold. These zone dimensions were established to cover approximately 40%, 55%, and 65% of all off-runway accidents, and were later adapted into the Clear Zone, APZ I, and APZ II. Table 1-1 includes the data from the original 1973 study, but is also updated with information through September 1995. As the table shows, the Clear Zone encompasses the area that has the highest density of crashes. In total, the Runway Area, the Clear Zone, and the APZs account for almost 70% of the crashes within 10 nautical miles of US Air Force Bases. The accidents that have happened outside of these safety zones happened at an average of about one accident per 1000 acres over the 27-year study.

¹¹ McPhee, David A, 1LT USAF, HQ SAC/DEV, DCS/Civil Engineering, Aircraft Accident Analysis for AICUZ, May 1973

		Runway	Clear Zone	APZI	APZ II	Other
	300					
	250					1
		Manager	12.50			
	200	TI ST				255
Accident Count Bar Graph	150		H			
	100		1848			
	50				Taken C	
	0	63.1	(GE)	ELC.		是是是
Accident Count		200	230	85	47	267
Area (acres)*		209 487	413	689	964	264,053
Acres per accident		2.33	1.80	8.11	20.51	988.96
Percent of Total Area		0.18%	0.15%	0.26%	0.36%	99.04%
Percent of Total Accidents		24.9%	27.4%	10.1%	5.6%	31.9%
Ratio % Accidents to % Area**		137	177	39	16	0.3
	200					
	150	J. 70				
Ratio Bar Graph	100		808 84 84			
	50					
	0	后建			Barrion .	

Notes:

Data Source: Air Force Handbook (AFH) 32-7084, AICUZ Program Managers Guide, 1 March 1999

^{*}Runway area dimensions are 2000' by 10,600'. Total area includes land within ten nautical miles of runway.

^{**}Percent total accidents divided by percent total area

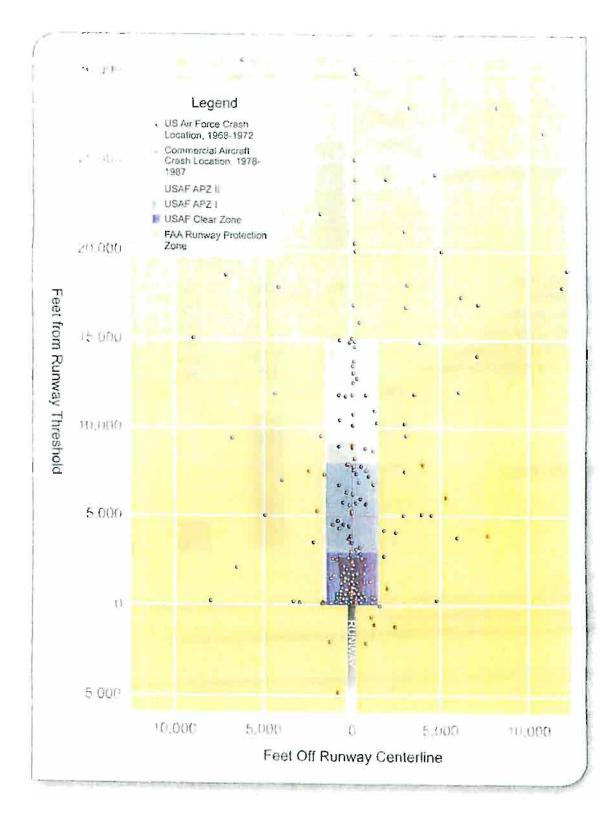


Figure 1-10: Historical FAA and USAF Airplane Crash Locations

1.4.3 Land Use Compatibility Standards

To help organize and address the compatibility of land uses, airfield users have set different standards for the types of land uses that would be allowed in the different safety zones discussed above. The lists below summarize the land use standards according to FAA and US Air Force criteria. In general, the standards try to discourage uses that bring concentrations of people, especially near the runway end. For example, there are no inhabited structures allowed in either the FAA's RPZ or the US Air Force Clear Zone. In the APZ I, some inhabited structures are considered compatible, but the allowed uses are lower density uses (e.g. wholesale commercial is allowed, but retail commercial is not). APZ II, in turn, allows for some limited, lower density residential development, but still discourages densely populated uses like multi-family housing, churches, or amphitheatres.

SEE APPENDIX B FOR MORE DETAIL ON COMPATIBLE LAND USES.

FAA - Compatible Land Uses

ROFA

No Development

<u>RPZ</u>

Agriculture

Undeveloped Land

Golf Courses

Parking

Source: FAA AC 150/5300-13, Airport Design,

29 Sept 1989

US Air Force - Compatible Land Uses

Graded Clear Zone

No Development

Clear Zone

Agriculture

Undeveloped Land

APZ I

Roadways/Utilities *

Parking

Some Manufacturing

Cemeteries

Some Services

Some Commercial

Golf Courses

Parks

Ranching

Forestry

Fishing

Mining

APZ II

Housing (1-2/acre)

Most Manufacturing

Most Services

Most Commercial

Source: Department of Defense Instruction (DODI) 4165.57, Air Installations Compatible Use Zones, 8 November 1977.

*Although Roadways and Utilities are an allowable Clear Zone use under the current UFC 3-260-01, they are an incompatible use in the draft revision of the UFC.

1.5 Aircraft Noise

Although it is not explicitly part of this study, aircraft noise can have an impact on the area surrounding an active flying operation. Because of the impact of noise on residential areas and the potential for noise complaints that can hamper operations, both the FAA and the Department of Defense have a requirement to map the noise contours associated with each runway's specific operations. These contours define the threshold between different levels of noise exposure, and can guide the types of development that are recommended in the noise impact area.

In general, the impact of noise zones is similar to the impact of the safety zones discussed above, in that the noise impact is greater nearer the runway end and along its extended centerline. However, the restrictions associated with noise zones are generally less strict than the restrictions that stem from the Clear Zones, Accident Potential Zones, and Runway Protection Zones. At the noise levels that typically occur off-base, Air Force and FAA regulations typically recommend noise abatement, the implementation of specific practices aimed at increasing the sound insulation of the building's envelope, and disclosure, the inclusion of certain clauses in the legal paperwork that accompanies the sale of homes, informing potential homeowners that the home is in a specific noise zone and that they should be aware of the impacts.

Because the noise zones are defined according to specific operations at a specific runway, including the type of aircraft, the frequency of flight operations, typical flight patterns and altitudes, and the time of day for typical flying operations, it can be difficult to estimate the impact of noise for an unknown potential future runway operation. One way to estimate the impact of noise is to use the noise contours that were defined before the runway closed. The flying mission that used the Malmstrom runway before it was closed was an air refueling mission, using the KC-135E aircraft. As a frame of reference, these

noise contours were largely contained within the Clear Zone and APZ I, where no residential development is allowed. So, in this case, the noise restrictions are "trumped" by the more restrictive safety criteria.

If the less restrictive FAA safety criteria are applied to the area, the noise impacts may become more of a factor because they might add conditions to the use of land outside of the Runway Protection Zone, the FAA's only safety-based land use restriction zone.

If the less restrictive FAA safety criteria are applied to the area, the noise impacts may become more of a factor...

Chapter 2 - Analysis

The second stage of this study applies the airfield criteria discussed in Section 1.4 to the existing conditions around Malmstrom AFB. By overlaying several hypothetical airfield configuration scenarios, the study analyzes the potential built and unbuilt incompatibilities associated with the different scenarios. The study then summarizes several tools used by other local communities to control and prevent incompatible land uses.

2.1 Airfield Configuration Scenarios

There are several different scenarios that would apply to different future runway users. If the Great Falls and Cascade County community makes the decision to protect the runway with the ultimate goal of attracting certain types of runway operations to Malmstrom AFB, it will have to choose which type of runway operations to attract. This decision will be influenced by many factors, but will need to balance the cost of compensating landowners for the lost potential of their land against the types of operations that will be attracted or discouraged by different land use protection patterns.

2.1.1 US Air Force Class A

This scenario applies if the runway remains under Air Force control, and a mission involving small or occasional aircraft is housed at the Base. The aircraft designated for Class A runways are listed in Table 2-1. This scenario represents the minimum US Air Force runway influence footprint.

2.1.2 US Air Force Class B

This scenario addresses the possibility of a full Air Force mission being located at the Base. It would apply to any permanent or transient support of Air Force fighter, bomber, or transport aircraft. The aircraft designated for Class B runways are listed in Table 2-1. This scenario represents the maximum size of a potential mission's footprint.

USAF Class A Advantages

- Minimal impact on surrounding off-base land uses, relatively low cost of protection
- Retains Air Force ownership and management of runway

USAF Class A Disadvantages

 Would disallow most types of runway operations outside of small planes.

USAF Class B Advantages

 Most conservative footprint, would allow all DoD or other agency operations

USAF Class B Disadvantages

- Greatest impact on off-base land use, high cost of protection.
- Landowner opposition likely to be high

T	able 2-1: DoD Aircraft Ty	pe Categorized by l	Runway Classifi	cation
	Class A Runway		Class B Run	way
C-1	OV-1	A-4	C-141	RQ-1
C-2	OV-10	A-6	E-3	S-3
C-12	T-3	EA-6B	E-4	SR-71
C-20	T-28	A-10	E-6	T-1
C-21	T-34	AV-8	E-8	T-2
C-22	T-41	B-1	R/F-4	T-6
C-23	T-43	B-2	F-5	T-37
C-26	T-44	B-52	F-14	T-38
C-32	U-21	C-5	F-15	T-39
C-37	UV-18	C-9	F-16	T-42
C-38	V-22	KC-10	F/A-18	T-43
E-1	DASH-7	C-17	F-22	T-45
E-2	DASH-8	C-130	FB-111	TR-1
		C-135	F-117	U-2
		C-137	P-3	VC-25 JSF (F-35)

Notes:

2. These are examples of aircraft which fall into these classifications, and may not be all inclusive.

3. Rotary aircraft are not addressed in this table.

Data Source: UFC 3-260-01, Airfield and Heliport Planning and Design, 22 Sept 2006 draft.

2.1.3 FAA Category I

The FAA Category I scenario would require a transfer of runway ownership from the Air Force to the FAA, and assumes a minimal aircraft load. A Category I runway could support only small airplanes. This scenario represents the minimum FAA runway land use footprint.

FAA Cat I Advantages

 Least possible impact on off-base land use, lowest possible cost of protection.

FAA Cat I Disadvantages

- Would discourage almost all types of operations from using the runway
- Would require a transfer of runway ownership from the Air Force to the FAA
- Non-DoD operations that could operate within the security environment at Malmstrom AFB might be few in number.

Only symbols for basic mission aircraft or basic mission aircraft plus type are used. Designations represent entire series. Runway classes in this table are not related to aircraft approach categories, aircraft weight, aircraft wingspan, or to pavement design classes or types.

2.1.4 FAA Category III

An FAA Category III runway would also require a transfer of ownership from the Air Force to the FAA, but would support all types of aircraft defined by the FAA regulations. This scenario would cover most possible uses of the runway that would fall under FAA control.

2.2 Land Use Compatibility Analysis

Different land areas around MAFB would be relevant under different airfield configuration scenarios. Within the zones defined by land use compatibility standards¹, there are some areas at the ends of the runway that are protected by existing restrictive easements owned by the Air Force or by local zoning restrictions. Some

FAA Cat III Advantages

- Would allow most types of commercial aircraft and other agencies that could operate on an FAA runway (i.e. DHS).
- Relatively small impact to surrounding off-base land uses, relatively low cost of protection

FAA Cat III Disadvantages

- Would preclude extensive DoD use
- Would require a transfer of runway ownership from the Air Force to the FAA
- Non-DoD operations that could operate within the security environment at Malmstrom AFB might be few in number.

parcels are also essentially protected because they have existing development or approved planned development that is compatible and unlikely to change over time. The land areas that are truly important to this analysis are those that, under the current Cascade County zoning codes and practices, could still be developed in an incompatible manner. All of the relevant parcels are currently located in unincorporated Cascade County. Although the parcels may have the potential of being annexed to the City, thereby losing their County zoning status, this study bases the future potential development on the current county zoning. The current County zoning classification for all unincorporated parcels in the study area is A2 Agricultural (applies to parcels greater than or equal to 20 acres).

If the runway at MAFB were to be reactivated, the maps on the following pages categorize the land areas that would be affected by land use compatibility standards. The land areas are categorized into the following groups:

- Compatible Development These areas represent developed or protected parcels that are compatible with applicable land use recommendations in their current state.
- Incompatible Development These areas represent developed parcels that are incompatible in their current state.
- Potentially Incompatible Development These undeveloped areas may be susceptible to incompatible development in the future because of their current zoning status.

¹ See Section 1.4.3

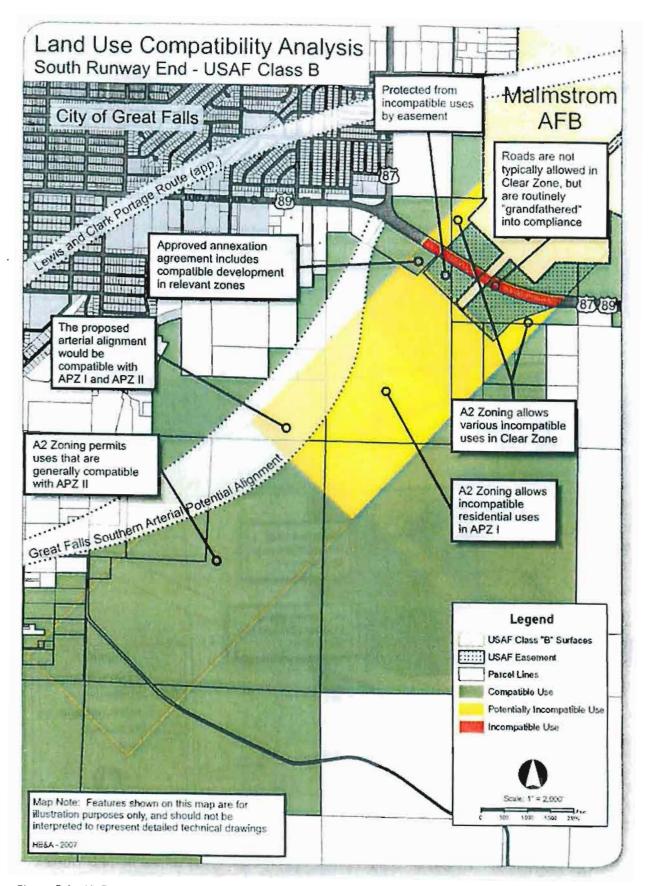


Figure 2-1: Air Force Class B Runway Scenario, South End

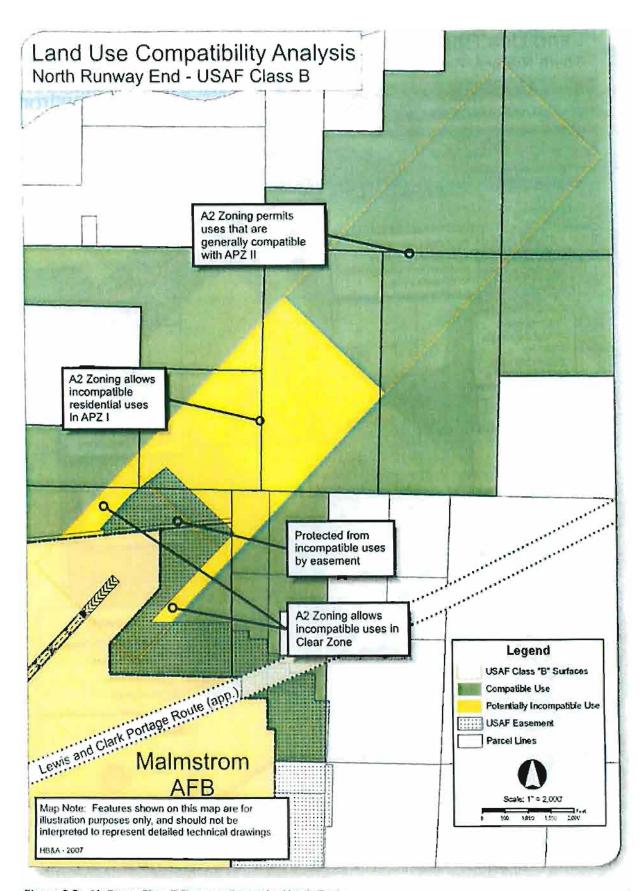


Figure 2-2: Air Force Class B Runway Scenario, North End

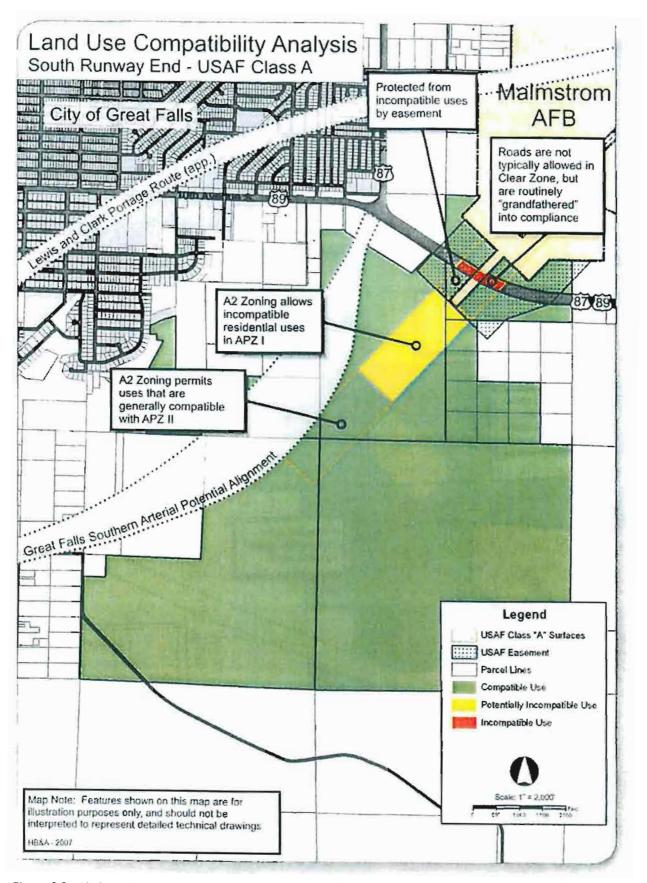


Figure 2-3: Air Force Class A Runway Scenario, South End

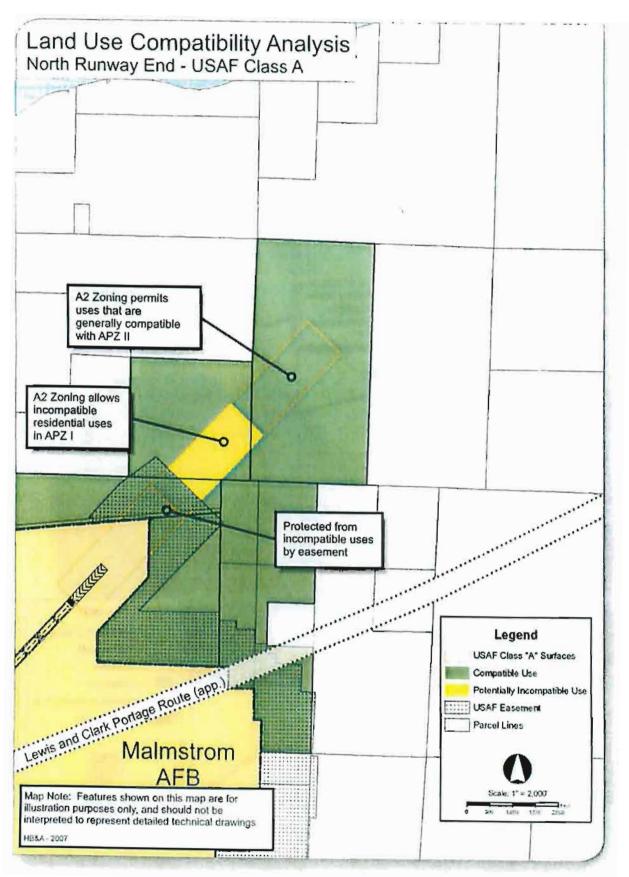


Figure 2-4: Alr Force Class A Runway Scenario, North End

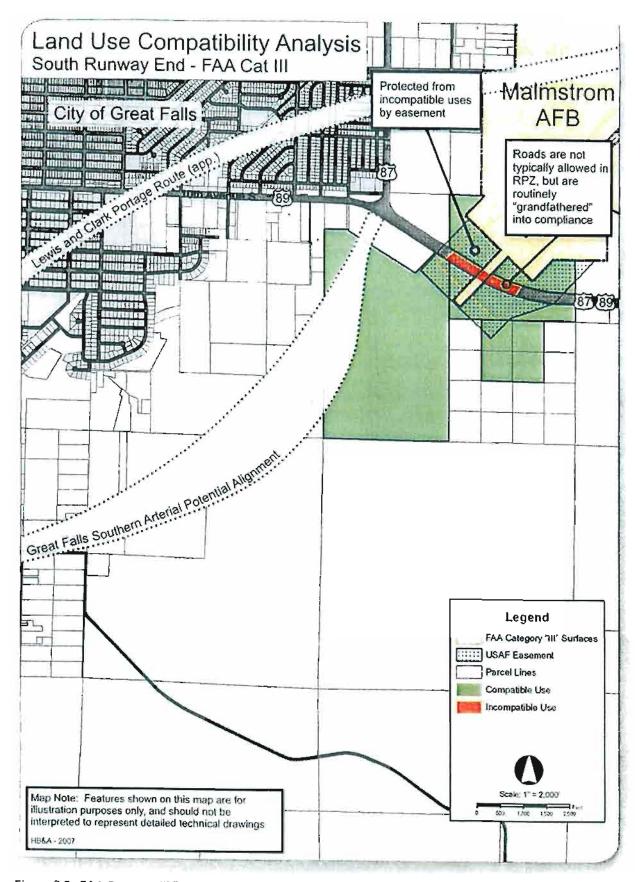


Figure 2-5: FAA Category III Runway Scenario, South End

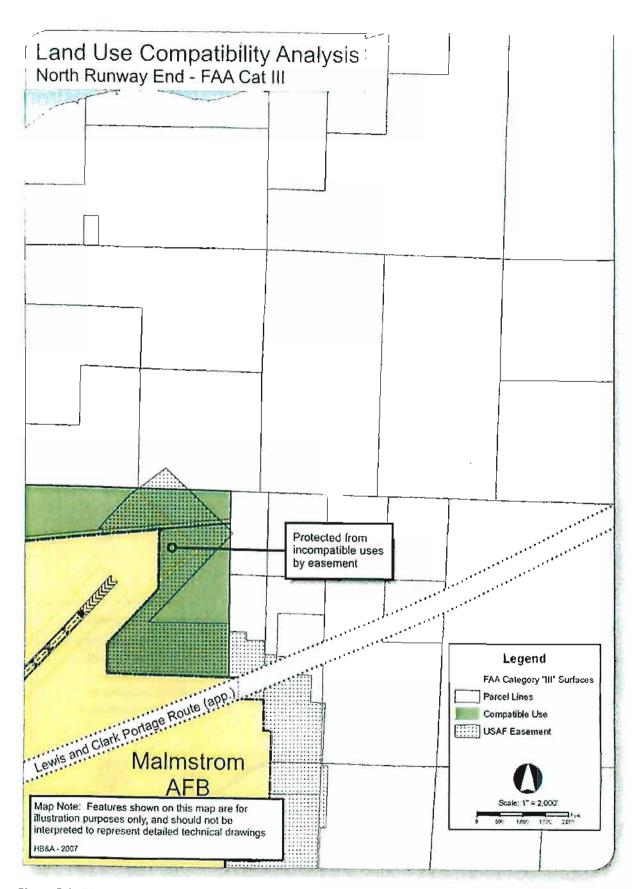


Figure 2-6: FAA Category III Runway Scenario, North End

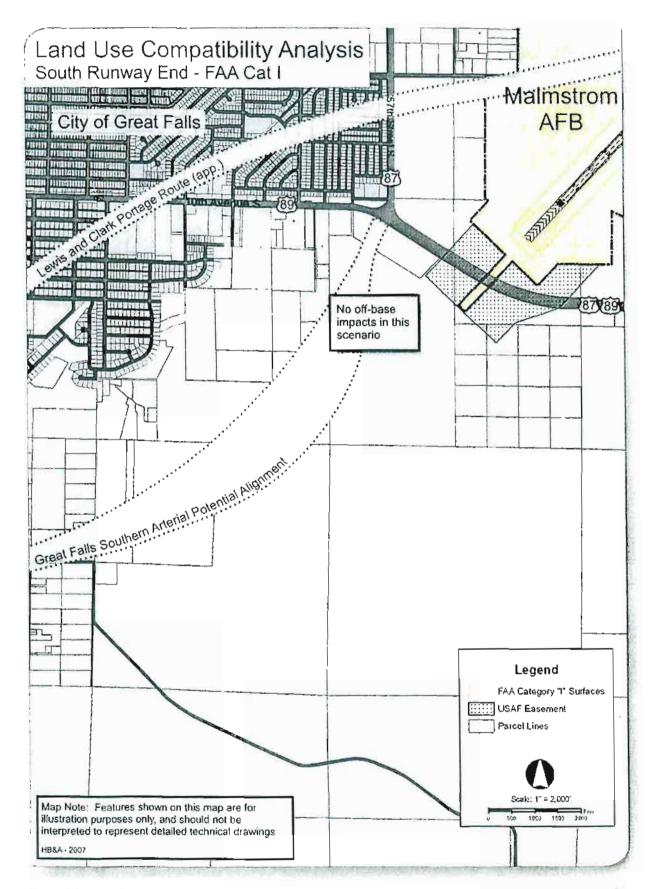


Figure 2-7: FAA Category I Runway Scenario, South End

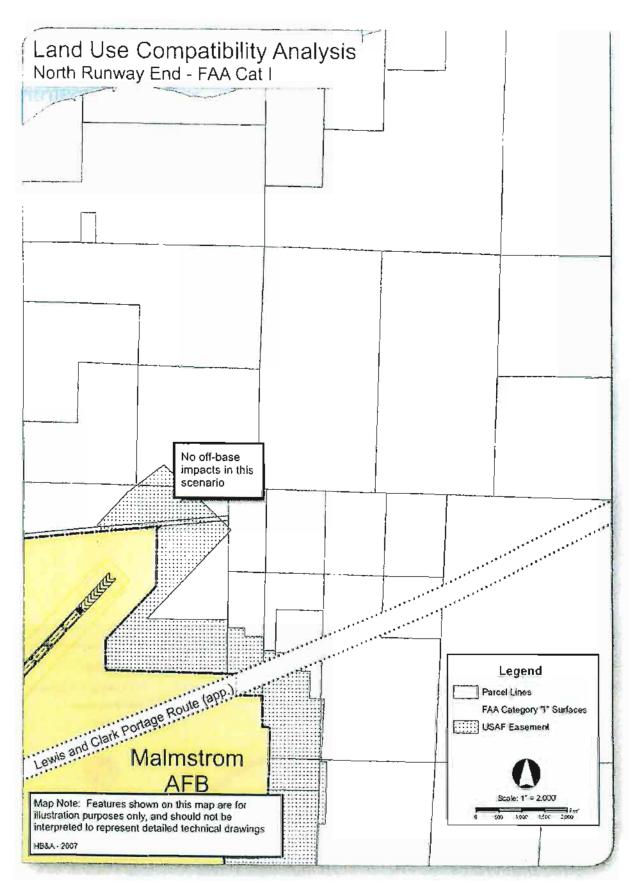


Figure 2-8: FAA Category I Runway Scenario, North End

2.3 Land Use Compatibility Summary

As the figures in Section 2.2 show, the US Air Force runway scenarios have an impact on more land area than the FAA scenarios. In general, the potential incompatibilities associated with the FAA scenarios are minor. On the south end of the runway, potential incompatibilities are contained within the existing restrictive easement, and on the north end of the runway, any land use protection strategies implemented would not affect large tracts of land. Table 2-2 summarizes the extent of the land area involved with the different scenarios.

		Potent Incomp	•	Incomp	atible
		# Parcels Affected	Acres	# Parcels Affected	Acres
	South	25	427.21	3	18.53
USAF Class B	North	14	351.93	0	0
	Total	39	779.14	3	18.53
	South	3	57.12	3	5.95
USAF Class A	North	3	45.16	0	0
	Total	6	102.28	3	5.95
	South	0	0	3	9.53
FAA Cat III	North	Ô	0	0	0
	Total	0	0	3	9.53
	South	0	0	0	0
FAA Cat I	North	0	0	0	0
	Total	0	0	0	0

Regarding the USAF scenarios, the Clear Zone and APZ I

represent the most critical areas for potentially incompatible development in the future. The zoning of these areas allows for residential development, which is explicitly discouraged by US Air Force land use standards and would represent a serious incompatibility. In the APZ II, the current County zoning of the land is compatible with land use standards. There are a few spot uses that are allowed by the zoning code that are not strictly compatible with US Air Force criteria, such as churches and daycare centers. Because this type of development would not be widespread, and could possible be controlled at the level of permit approval, it was not shown on the graphics as a serious incompatibility. The most secure way to protect this area would be to establish an airfield overlay zone to specifically disallow those specific uses.

Also worth noting is the potential impact of the Lewis and Clark Portage Route and the potential alignment of the Great Falls South Arterial, both shown on the figures. The Lewis and Clark Portage Route² runs through the center of MAFB and through nearby neighborhoods. Although it does not pass through the area impacted by the airfield criteria examined in this study, it is an important historical feature in the area. The proximity to this trail may offer some partnership agreements with historical conservation groups seeking to limit the extent of development near the portage.

The Great Falls South Arterial³ is a planned extension of 57th street that will bend around the southern edge of the City of Great Falls. The specific alignment of this arterial has not be determined, but the extent of the four proposed alignments is shown on the figures. Any of the currently proposed alignments will be compatible with all of this study's runway configuration scenarios.

²Mapping and other data provided by the US Forest Service Lewis and Clark Interpretive Center (http://www.fs.fed.us/r1/lewisclark/lcic/)

³ Montana Department of Transportation, "Great Falls South Arterial Alignment Study". Available at: http://www.mdt.mt.gov/pubinvolve/greatfalls/docs/great_falls_southern_arterial.pdf

2.4 Mitigation Strategies

If it is the interest and intent of the Great Falls and Cascade County community to protect the land around the MAFB runway in hopes of having the runway reactivated, there are a number of methods to consider. The ultimate goal would be to ensure that residential, commercial, industrial, and agricultural land uses are arranged in a manner that their existence does not impinge upon the airfield's ability to fulfill its mission, and that the airfield, in turn, does not affect the rights of private property owners and the well-being of community members that could be impacted by safety, noise, or nuisance concerns. These strategies are intended to create a "win-win" situation where local development and airfield operations are able to make stable contributions to the area's economic development.⁴

2.4.1 Zoning

Zoning is a tool used by local governments to divide their jurisdiction into districts within which permissible uses are prescribed. In Montana the overall future land use vision is expressed in the county Growth Policy, which is essentially a land use Master Plan for the county developed through an official public process and used as a general guide for development decisions. The Growth Policy is a guiding document, and is not regulatory in nature. It expresses the community's shared goals and preferences and serves as the legal basis for zoning principles and practices. Montana law requires that zoning and development permit regulations conform to an adopted plan.

The purpose of zoning is to protect public health, safety, and welfare, while also protecting property rights and promoting community economic development. Because the zoning ordinance can be used to specify the use, type, bulk, height, density, and location of structures on a given parcel, it is usually the primary tool used by local planners to protect the land surrounding military bases from incompatible uses, and to protect sensitive land use types such as residential or commercial uses from the negative safety, noise, and nuisance impacts of an installation. There are many different zoning strategies, but the most common include the following:

- Comprehensive Zoning Map Amendment. The primary way that zoning can be used to
 protect relevant land is through amendments to the local Zoning Map. This can set the stage for
 a comprehensive zoning, usually done in connection with a general plan or Growth Policy
 update, that would put into place restrictions on development that are in-line with the military's
 land use standards.
- Overlay Zone Classification. Another zoning method that is widely used is the overlay zone, in
 which underlying zoning classifications are not changed, but special restrictions or requirements
 are added to affect the density, use, or construction type of structures in the overlay area.

Zoning has been used extensively in the protection of civilian land outside of military installations, and an overwhelming legal basis has been built for this use of zoning if it is done properly. However, the case of MAFB is unique, in that the land being restricted is not impacted by any current active flying mission but rather desired future flying missions. In this situation, the legal basis for the use of zoning to

⁴ Information for Section 2.3 has been adapted from the following resources:

Office of Economic Adjustment, Practical Guide to Compatible Civilian Development Near Military Installations, July 2005.

Governor's Office of Planning and Research, State of California, California Advisory Handbook for Community and Military Compatibility Planning, February 2006.

protect the public health, safety, and welfare is not as well-defined and may be subject to legal challenges.

2.4.2 Land Purchase

One obvious method to control the use of certain areas of land is the outright purchase of the land through Fee Simple Acquisition. The land can be purchased directly by the installation, by a local authority such as the state, county, or city, or most commonly by a third party community group or land trust. This method is the most expensive option, and typically, the cost is more than what is justifiable to provide the level of required protection. However, in areas of particularly high accident potential, airfield users may be motivated to buy the land to completely control its access and use. Because of this, it is Air Force and FAA policy to own their runways' respective Clear Zones and Runway Protection Zones whenever possible.

One example of this approach is Tinker AFB, in Oklahoma. In 1973, county bond funds were used to purchase and clear 836 single-family homes, 32 vacant lots, and an elementary school from 262 acres located within the runway's Clear Zone and APZ I. After this land was purchased and cleared, the county donated it to the US Air Force. While this is an extreme example, it illustrates the commitment of that community and the extent to which it was willing to go.

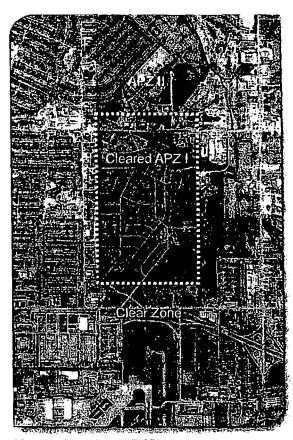


Figure 2-9: Tinker AFB APZs

2.4.3 Purchase of Development Rights (Easements)

An alternative to the purchase of land is the purchase of development rights from the landowner. This is a way for an interested party to partially purchase the land, basically purchasing a guarantee that certain types of development will never be allowed. This purchased set-aside of land is called an easement, and can cover the entire property or only a portion of the property. The transaction is voluntary on the part of the owner, who could either donate the easement or be paid fair market value for the rights that are purchased. The value of the purchased rights is roughly equal to the value of the land without restrictions minus the value with restrictions.

Easements have been used extensively in conservation and military buffering efforts, and the conditions of the easement can be tailored to specifically match the guidance provided by Air Force or FAA land use standards. In many examples, the DoD has partnered with States, local governments, and conservation-based nonprofit organizations to purchase easements that fulfill a dual role of preserving

⁵ Association of Central Oklahoma Governments (ACOG), *JLUS Application*, 2007. Available at: http://acogok.org/Newsroom/Downloads07/Project.pdf

habitat and open space while providing airfield operations an open-space buffer that insulates them from the effects of incompatible development nearby.

In the case of the MAFB runway area, the local community could enter into a partnership with a conservation-based entity such as the Nature Conservancy or the Trust for Public Land to purchase easements from the current landowners.

The US Air Force currently owns restrictive easements on lands immediately adjoining both the southern and northern ends of the former runway. These easements were purchased in the 1950s to prevent development within the Clear Zone as defined under the regulations at the time. These easements are illustrated on Figures 2-1 and 2-2.

2.4.4 Purchase of Delayed Development Rights

Easements can be granted for a number of years or in perpetuity. A temporary easement, also called a purchase of delayed development rights, would require that the landowner restrict development of the land for a certain period of time specified by the agreement. At the end of the period an option can be added to allow the purchaser to either abandon the easement or purchase a perpetual easement. The cost of a temporary easement is less than the cost of a permanent restriction of development rights, and it can be a cost-effective way to set a time limit for the restriction of development.

2.4.5 Transfer of Development Rights

Transfer of Development Rights is a concept that can reduce the financial hurdles associated with the purchase of development rights. In essence, rather than compensating the landowner financially, the public agency exchanges the development rights on the relevant land for the expansion or intensification of development rights in another area. In this type of situation, a more intense use would be permitted on specific land outside of the critical area (the "receiving" area), and restrictions would reduce the intensity of use permitted in the critical land area (the "sending" area). If the landowner does not own the "receiving" area, compensation is paid to the "sending" landowner by the "receiving" landowner. This type of arrangement, which is voluntary, can be a way to balance the protection of critical areas while still responding to market forces in a community. In this scenario, local public agencies would be responsible for designating "sending" and "receiving" areas, locating willing buyers and sellers, and acting as a broker to administer the program.

This concept has been well-tested in the protection of land for environmental, historical, or agricultural reasons, and could be a good alternative for protection of land for safety or community economic development reasons as well.⁶

⁶ American Farmland Trust, Farmland Information Center Fact Sheet: Transfer of Development Rights, January 2001.

2.5 Summary

The question of whether or not the MAFB runway should be protected will not be answered by this study, but will be debated in, and ultimately solved by, the Great Falls community. The chief goal of this study is to inform the future decisions of the Great Falls and Cascade County community. The study started by distilling the complex DoD and FAA land use standards down to the relevant and essential elements for the study area. By providing clear and

Study Purposes

- Provide information about airfield clearance zones
- Identify possible future land use incompatibilities
- Identify specific strategies for land protection

definitive descriptions of the derivation, dimensions, and application of the Clear Zone, Accident Potential Zones, and the Runway Protection Zones, this study starts to build a foundation for future decisions.

Once the clearance zones were defined, the study applied them to the existing conditions near MAFB. In Figures 2-1 through 2-8, the zones were analyzed for any potential incompatibilities that may exist should the runway reopen. Overall, the study finds that up to approximately 800 acres might be impacted by the safety zones, depending on the airfield configuration option.

Finally, the study examined and described several common strategies utilized by communities seeking to channel compatible development around airfields. These strategies, which include zoning, the purchase of property or development rights, the temporary purchase of restrictive easements, and the transfer of development rights, will hopefully provide decision makers with a toolbox for finding a solution to the critical question of how the community should treat the land near MAFB.

Appendix A Detailed Parcel Information

The following tables contain detailed information about the particular parcels that are impacted in the different scenarios described in Chapter 2.

	USAF	"Class B" Runwa	y Classification-S	outh End
Parcel Number	Total Area (Acres)	Affected Area (Acres)	Percentage of Total Area	Totals by Zone
2008000	5.00	0.54	11%	Clear Zone: None
				APZ I: None
				АРZ П: 0.54 (100%)
2008500	6.46	1.06	16%	Clear Zone: None
				APZ I: None
				APZ II: 1.06 (100%)
2008600	1.27	1.07	84%	Clear Zone: None
				APZ I: None
				АРZ П: 1.07 (100%)
2008700	0.41	0.38	93%	Clear Zone: None
				APZ I: None
				APZ. II: 0.38 (100%)
2008800	5.00	3.60	72%	Clear Zone: None
				APZ I: None
*****				АРZ П: 3.60 (100%)
2009000	5.00	5.00	100%	Clear Zone: None
				APZ I: None
202222				APZ II: 5.00 (100%)
2009000	5.00	5.00	100%	Clear Zone: None
				APZ I: None
2000000		- ^^		APZ II: 5.00 (100%)
2009000	5.00	5.00	100%	Clear Zone: None
				APZ I: None
2000000	4.00			APZ II: 5.00 (100%)
2009000	4.98	1.32	26%	Clear Zone: None
				APZ I: None
2009200	5.00	4.20		АРZ П: 1.32 (100%)
2009200	5.00	4.70	94%	Clear Zone: None
				APZ I: None
2009300	6.00	0.70	5.400	АРZ П: 4.70 (100%)
2009300	5.00	2.70	54%	Clear Zone: None
				APZ 1: None
2184800	4720.68			APZ II: 2.70 (100%)
(ROW)	4720.08	. 33	1%	Clear Zone: None
(KOW)				APZ I: None
2624100	20.01		• • •	APZ II: 5.32 (100%)
2624100	20.81	1.65	8%	Clear Zone: 1.65 (100%)
				APZ I: None
2626900	106.60	0.00		APZ II: None
2020900	106.62	2.07	2%	Clear Zone: 2.07 (100%)
				APZ I: None
				APZ II: None

USAF "Class B" Runway Classification-South End

	USAF	"Class B" Runway	y Classification-So	ouch Eng
Parcel	Total Area	Affected Area	Percentage of	Totals by Zone
Number	(Acres)	(Acres)	Total Area	
2628300	256.26	202.82	79%	Clear Zone: 6.15 (3%)
			77.1	APZ I: 196.67 (97%)
				APZ II: None
2628600	18.46	5.49	30%	Clear Zone: 3.22 (59%)
202000	20110	5,		APZ I: 2.27 (41%)
				APZ II: None
2628700	10.49	10.19	100%	Clear Zone: 0.08 (1%)
2020700	10.45	10.15	10070	APZ I: 10.44 (99%)
				APZ II: None
2628700	10.44	10.43	99%	Clear Zone: None
2020700	10.44	10.43	9370	APZ I: 10.43 (100%)
				APZ II: None
2620200	10.43	5 10	50a	Clear Zone: None
2628700	10.43	5.19	50%	
				APZ I: 5.19 (100%) APZ II: None
0/00000	10.40	0.01	100	
2628700	10.42	0.01	1%	Clear Zone: None
				APZ I: 0.01 (100%)
			200	APZ II: None
2628800	10.44	10.33	99%	Clear Zone: 6.10 (60%)
				APZ I: 4.23 (40%)
			•••	APZ II: None
2628800	10.43	3.48	33%	Clear Zone: 3.48 (100%)
				APZ I: None
				APZ II: None
2628800	10.41	4.28	41%	Clear Zone: None
				APZ I: 4.28 (100%)
				APZ II: None
2628800	10.42	0.01	1%	Clear Zone: None
				APZ I: 0.01 (100%)
				APZ II: None
2629600	18.54	17.69	95%	Clear Zone: 17.69 (100%)
				APZ I: None
				APZ II: None
2629600	36.95	31.24	84%	Clear Zone: 27.64 (88%)
				APZ I: 3.60 (12%)
				APZ II: None
2631000	125.95	40.17	32%	Clear Zone: None
				APZ I: 37.03 (92%)
				APZ II: 3.14 (8%)
2631800	9.54	0.08	1%	Clear Zone: None
				APZ I: 0.08 (100%)
				APZ II: None
2632200	9.54	5.97	62%	Clear Zone: None
				APZ I: 5.97 (100%)
				APZ II: None
2632300	9.46	0.09	1%	Clear Zone: None
				APZ I: 0.09 (100%)
				APZ II: None
2642000	20.42	0.25	1%	Clear Zone: None
	_ ••••	7		APZ I: None
				APZ II: 0.25 (100%)
				•

USAF "Class B" Runway Classification-South End

Parcel Number	Total Area (Acres)	Affected Area (Acres)	Percentage of Total Area	Totals by Zone
2642200	108.38	45.65	42%	Clear Zone: None APZ I: None
2642300	431.77	331.16	77%	APZ II: 45.65 (100%) Clear Zone: None APZ I: 15.13 (5%) APZ II: 316.03 (05%)
2642300	20.97	20.97	100%	APZ II: 316.03 (95%) Clear Zone: None APZ I: None APZ II: 20.97 (100%)
2642500	5.00	0.72	14%	Clear Zone: None APZ I: None
2643500	674.58	57.43	8%	APZ II: 0.72 (100%) Clear Zone: None APZ I: 48.67 (85%)
2650600	76.87	3.77	5%	APZ II: 8.76 (15%) Clear Zone: None APZ I: None
2650600	228.75	42.09	18%	APZ II: 3.77 (100%) Clear Zone: None APZ I: None
2652100	340.15	5.01	1%	APZ II: 42.09 (100%) Clear Zone: None APZ I: None
2669600	22.86	21.59	94%	APZ II: 5.01 (100%) Clear Zone: 21.59 (100%) APZ I: None APZ II: None

USAF "Class B" Runway Classification-North End

Damas	Total Ama		Poposition of	
Parcel	Total Area	Affected Area	Percentage of	Totals by Zone
Number	(Acres)	(Acres)	Total Area	o
2610000	111.67	58.44	52%	Clear Zone: 37.93 (65%)
				APZ I: 20.51 (35%) APZ II: None
2610000	12.16	8.60	71%	
2010000	12.10	8.00	/170	Clear Zone: 6.60 (77%)
				APZ I: 2.00 (23%) APZ II: None
2610100	145.93	70.70	48%	Clear Zone: 62.76 (89%)
2010100	143.73	70.70	4070	APZ I: 7.94 (11%)
				APZ II: None
2717400	119.60	5.98	5%	Clear Zone: 4.74 (79%)
2/1/400	117.00	3.70	370	APZ I: 1.24 (21%)
				APZ II: None
2717500	158.75	122.86	77%	Clear Zone: 1.03 (1%)
2/1/200	2001.0	122.00	77.10	APZ I: 121.62 (99%)
				APZ II: None
5311800	34.07	19.19	56%	Clear Zone: None
				APZ I: 19.19 (100%)
				APZ II: None
5311800	53.86	3.35	6%	Clear Zone: None
				APZ I: 3.35 (100%)
_				APZ II: None
2717350	239.86	11.85	5%	Clear Zone: None
				APZ I: 11.85 (100%)
====	-1			APZ II: None
5372400	314.14	243.91	78%	Clear Zone: None
				APZ I: 156.43 (64%)
5372300	212.10	101.55	200	APZ II: 87.48 (36%)
53/2300	312.10	101.55	32%	Clear Zone: None APZ I: 0.20 (1%)
			:	APZ II: 0.20 (1%) APZ II: 101.35 (99%)
5371300	391.53	184.48	47%	Clear Zone: None
3371300	371.33	104.40	4 / 70	APZ I: None
				APZ II: 184.84 (100%)
5373400	313.86	0.67	1%	Clear Zone: None
3373400	313.00	0.07		APZ I: None
			i	APZ II: 0.67 (100%)
5370300	631.73	108.11	17%	Clear Zone: None
30.0000	7525		,	APZ I: None
				APZ II: 108.11 (100%)

USAF "Class A" Runway Classification-South End						
Parcel Number	Total Area (Acres)	Affected Area (Acres)	Percentage of Total Area	Totals by Zone		
2628300	256.26	83.53	32%	Clear Zone: 0.55 (1%) APZ I: 49.49 (60%) APZ II: 33.03 (39%)		
2628700	10.49	3.59	34%	Clear Zone: None APZ I: 3.59 (100%) APZ II: None		
2629600	18.54	3.97	21%	Clear Zone: 3.97 (100%) APZ I: None APZ II: None		
2629600	22.86	5.29	23%	Clear Zone: 5.29 (100) APZ I: None APZ II: None		
2629600	36.94	15.26	41%	Clear Zone: 11.68 (76%) APZ I: 3.58 (24%) APZ II: None		
2631000	125.95	4.13	3%	Clear Zone: None APZ I: None APZ II: 4.13 (100%)		
2642300	431.77	12.58	3%	Clear Zone: None APZ I: None APZ II: 12.58 (100%)		
2643500	674.58	7.64	1%	Clear Zone: None APZ I: None APZ II: 7.64 (100%)		

	USAF "Class A	" Runway Cla	assification-North	End
Parcel Number	Total Area (Acres)	Affected Area (Acres)	Percentage of Total Area	Totals by Zone (Acres/Pecentage)
2610000	111.67	24.17	22%	Clear Zone: 8.82 (36%) APZ I: 15.35 (64%) APZ II: None
2610000	12.16	3.50	29%	Clear Zone: 3.09 (88%) APZ I: 0.41 (12%) APZ II: None
2610100	145.93	7.16	5%	Clear Zone: 7.13 (99%) APZ I: 0.03 (1%) APZ II: None
2610200 (USAF)	425,44	49.82	12%	Clear Zone: 49.82 (100%) APZ I: None APZ II: None
2717500	158.75	44.65	28%	Clear Zone: None APZ I: 39.86 (89%) APZ II: 4.79 (11%)
5372400	314.14	54.40	17%	Clear Zone: None APZ I: 1.80 (3%) APZ II: 52.60 (97%)

FAA "CAT III" Runway Classification-South End

Parcel Total Area Number (Acres)		Affected Area (Acres)	Percentage of Total Area	Totals by Zone		
2629600	18.54	5.45	29%	OFA*: None RPZ**: 5.45 (100%)		
2629600	22.86	9.25	40%	OFA: None RPZ: 9,25 (100%)		
2629600	36.95	8.62	23%	OFA: None RPZ: 8.62 (100%)		
2628300	256.26	0.81	<1%	OFA: None RPZ: 0.81 (100%)		
2628800	10.44	0.01	<1%	OFA: None RPZ: 0.01 (100%)		
2184800	4720.68	9.59	<1%	OFA: None RPZ: 9.59 (100%)		

FAA "CAT III" Runway Classification-North End

	- 1 - 1	CITI III Rullway Classification Tiorus End					
Parcel Number	Total Area (Acres)	Affected Area (Acres)	Percentage of Total Area	Totals by Zone			
2610000	111.67	9.79	9%	OFA*: None RPZ**: 9.79 (100%)			
2610000	12.16	2.98	24%	OFA: None RPZ: 2.98 (100%)			
26101000	145.93	12.48	8%	OFA: None RPZ: 12.48 (100%)			

^{*}OFA = Object Free Zone **RPZ = Runway Protection Zone

^{*}OFA = Object Free Zone **RPZ = Runway Protection Zone

Appendix B – Detailed Land Use Compatibility Table



The following pages contain a table that gives more detailed information about which particular land uses are compatible with the different DoD and FAA land use zones.

Suggested Land Use Compatibility In Clear Zones/Runway Protection Zones & Accident Potential Zones

Per Unified Facilities Criteria Document 3-260-01 (22 Sept 06 Draft) and the FAA Airport Design Advisory Circular 150/5300-13 (Revised 14 Feb 1997) AF & FAA AF & FAA AF Only. **Equivalent** Equivalent No FAA Surfaces Surfaces **Equivalent** Surface ₽ Air Force Accident Potentia Force Graded Clear Zone Air Force Clear Zone Force Accident Potential
Zone II (APZ II) Zone I (APZ SLUCM* Land Use Notes Residential 10 Household Units 11 (2) Suggested maximum density for detached single family housing: 11.11 Single units: No No 1-2 Dwelling Units/Acre. In a Planned Unit Development (PUD) of detached single family detached units this density could possibly be increased slightly, where the amount of open space is significant and the amount of surface area covered by structures does not exceed 20% of the PUD total area. Density Recomendation: Max 1-2 Dwelling Units per Acre. No No 11.12 Single units: No No No semidetached 11.13 No Single units: No No No No attached row 11.21 Two units: side-by-No No No No No No side 11.22 Two units: one No. No No above the other No No -11.31 Apartments: walk-up No No No No Apartment: elevator No 11.32 No No No No No No 12 Group quarters No No No No Residential Hotels No No No No No 13 No -No No No-No 14 Mobile home parks No No or courts Transient lodgings No No. No No No

Suggested Land Use Compatibility in Clear Zones/Runway Protection Zones & Accident Potential Zones Per Unified Facilities Criteria Document 3-260-01 (22 Sept 06 Draft) and the FAA Airport Design Advisory Circular 150/5300-13 (Powland 14 Feb 1997)

			AF Equ	& FAA livalent rfaces	AF Equ	& FAA ivalent rfaces	A AF Only. nt No FAA		No FAA Equivalent		No FAA Equivalent		No FAA Equivalent		No FAA Equivalent		No FAA Equivalent		No FAA Equivalent		No FAA Equivalent		No FAA Equivalent		No FAA Equivalent		No FAA Equivalen		No FAA Equivalent		ory Circular 150/5300-13 (Revised 14 Feb 1997)
Land Use	SLUCM*		Air Force Graded Clear Zone	FAA Rumway Protestaan Zone (RZZ) Object Free Alex	Air Force Clear Zone (CZ)	FAA Runney Protection Zone [RPZ] Controlled Activity Area	Air Force Accident Potential Zone I (APZ I)	Air Force Accident Potential Zone II (APZ II)	Notes																						
Residential (cont.)	16	Other residential	No	No.	No	. No	No	No																							
Manufacturing (3)	20								(3) Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare to pilots.																						
	21	Food & kindred products; manufacturing	No	Me.	No	K6	No	Yes	Density Recomendation: Max floor area ratio 0.56 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)																						
	22	Textile mill products; manufacturing	No	No.	No		No		Density Recomendation: Max floor area ratio 0.56 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)																						
	23	Apparel and other finished products; products made from fabrics, leather and similar materials; manufacturing	No	**	No	N	No	No																							
	24	Lumber and wood products	No	Ne	No		Yes		Density Recomendation: Max floor area ratio 0.28 in APZ I & 0.56 in APZ II (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)																						
	25	Furniture and fixtures; manufacturing	No	No.	No	No -	Yes		Density Recomendation: Max floor area ratio 0.28 in APZ I & 0.56 in APZ II (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)																						

Suggested Land Use Compatibility in Clear Zones/Runway Protection Zones & Accident Potential Zones

Per Unified Facilities Criteria Document 3-260-01 (22 Sept 06 Draft) and the FAA Airport Design Advisory Circular 150/5300-13 (Revised 14 Feb 1997)

Per Unified Facilities Criteria Document 3-260-01			AF & FAA Equivalent Surfaces		AF & FAA Equivalent Surfaces		AF Only. No FAA Equivalent Surface		
Land Use			Air Force Graded Clear Zone	EAN Runway Protection Zone	Air Force Clear Zone (CZ)	FAA Runway Protection Zone (RPZ) Controlled Activity Ava	Air Force Accident Potentia Zone I (APZ I	Air Force Accident Potentia Zone II (APZ II)	Notes
Manufacturing (cont.)	26	Paper and allied products; manufacturing	No	W	No	No	Yes	Yes	Density Recomendation: Max floor area ratio 0.28 in APZ I & 0.56 in APZ II (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	27	Printing, publishing, and allied industries	No	%6	No		Yes	Yes	Density Recomendation: Max floor area ratio 0.28 in APZ I & 0.56 in APZ II (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	28	Chemicals and allied products; manufacturing	No	No	No	No	No	No	· · · · · · · · · · · · · · · · · ·
	29	Petroleum refining and related industries	No	No	No	No	No	No	
	31	Rubber and misc. plastic products; manufacturing	No	No	No	No	No	No	
	32	Stone, clay and glass products; manufacturing	No	Mn	No	No	No		Density Recomendation: Max floor area ratio 0.56 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	33	Primary metal products; manufacturing	No		No	Ne	No		Density Recomendation: Max floor area ratio 0.56 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	34	Fabricated metal products; manufacturing	No	No	No	No	No	1	Density Recomendation: Max floor area ratio 0.56 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)

			AF & FAA Equivalent Surfaces		AF & FAA Equivalent Surfaces		AF Only. No FAA Equivalent Surface		ry Circular 150/5300-13 (Revised 14 Feb 1997)
Land Use	SLUCM*		Air Force Graded Clear Zone	A Rumway From Bon Zon [RPZ] Object Free Are Air Force Graded Clear Zon	Air Force Clear Zone (CZ)	FAA Runway Protection Zone [RPZ] Controlled Activity Ave.	Air Force Accident Potentia Zone i (APZ I		Notes
Manufacturing (cont.)	35	Professional scientific, and controlling instruments; photographic and optical goods; watches and clocks	No		No		No	No	
	39	Miscellaneous manufacturing	No	***	No		Yes		Density Recomendation: Max floor area ratio 0.28 in APZ I & 0.56 in APZ II (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
Transportation, Communication and Utilities (3)(4)	40								(3) Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare to pilots. (4) No structures (except airfield lighting and navigational aids necessary for the safe operation of the airfield when there are no other siting options), buildings or above-ground utility/communications lines should normally be located in Clear Zone areas on or off the installation. The Clear Zone is subject to severe restrictions.
-	41	Railroad, rapid rail transit, and street railway transportation	No		No		Yes (5)		(3) Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare to pilots. (5) No Passenger terminals and no major above ground transmission lines in APZ I.

			AF & FAA Equivalent Surfaces		AF &	AF & FAA Equivalent Surfaces		Only. FAA valent face	ry Circular 150/5300-13 (Revised 14 Feb 1997)
Land Use	SLUCM.		Air Force Graded Clear Zone	FAX Rumway/Protection Zor [RPZ] Object Free An	Air Force Clear Zone (CZ	FAA Riimway Prosection Zon [RPZ] Controlled Activity Are	Air Force Accident Potential Zone I (APZ I)	Air Force Accident Potentia Zone II (APZ II)	
Land Use Transportation, Communication and Utilities (cont.)	42	Motor vehicle transportation	No	86	No		Yes (5)	Yes	(3) Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare to pilots. (5) No Passenger terminals and no major above ground transmission lines in APZ I.
	43	Aircraft transportation	No (A)	(%)	No (A)	% (a)	Yes (5)		(3) Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare to pilots. (5) No Passenger terminals and no major above ground transmission lines in APZ I. (A) It is acceptable to place objects that need to be located for air navigation (Approach lighting, etc.) or aircraft ground maneuvering purposes as long as specified criteria are followed.
	44	Marine craft transportation	No	Ve	No		Yes (5)	,	(3) Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare to pilots. (5) No Passenger terminals and no major above ground transmission lines in APZ I.
	45	Highway and street right-of-way	No		No	No	Yes (5)		(3) Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare to pilots. (5) No Passenger terminals and no major above ground transmission lines in APZ I.

			AF & FAA Equivalent Surfaces		AF & FAA Equivalent Surfaces		AF (No Equi	Only. FAA /alent face	ry Circular 150/5300-13 (Revised 14 Feb 1997)
Land Use	SLUCM	SLUCM*		FAN Runway) Franciscon IZON	Air Force Clear Zone (CZ)	FAA Rummey Prosession Zone [RP2] Compoiled Activity Age	Air Force Accident Potentia Zone I (APZ I	Air Force Accident Potential Zone II (APZ II)	Notes
Transportation, Communication and Utilities (cont.)	46	Automobile parking	Zone 2	Bo	No	YE (O)		Yes	(3) Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare to pilots. (5) No Passenger terminals and no major above ground transmission lines in APZ I. (B) Automobile parking facilities, although discouraged, may be permitted, provided the parking facilities and any associated appurtenances are located outside the Object Free Area.
	47	Communication	No	*	No		¥æ (5)		(3) Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare to pilots. (5) No Passenger terminals and no major above ground transmission lines in APZ I.
	48	Utilities	No	No.	No	186	Yes (5)		(3) Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare to pilots. (5) No Passenger terminals and no major above ground transmission lines in APZ I.
	48.5	Solid waste disposal (landfills, incinerators, etc.)	No	No.	No	No	No	No	

	AF & FAA Equivalent Surfaces		& FAA ivalent	Equivalent No Surfaces Equi		Only. FAA valent face	ory Circular 150/5300-13 (Revised 14 Feb 1997)		
Land Use	SLUCM*		Air Force Graded Clear Zone	FAA RUINWAY Protection Zon (RPZ) Objest ince Are	Air Force Clear Zone (CZ)	PAN Rulman Protection Zon (RYZ) Controlled Activity Are	Air Force Accident Potential (5) Zone I (APZ I) (8)	Yes	Notes
Land Use Transportation, Communication and Utilities (cont.) Trade	49		No	No.	No				(3) Other factors to be considered: Labor intensity, structural coverage, explosive characteristics, air-pollution, electronic interference with aircraft, height of structures, and potential glare pilots. (5) No Passenger terminals and no major above ground transmissilines in APZ I.
Trade	50	1		100					
	51	Wholesale trade	No	160	No	No	Yes	i I	Density Recomendation: Max floor area ratio 0.28 in APZ I & 0.56 in APZ II (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	52	Retail trade – building materials, hardware and farm equipment	No	No.	No	N.	Yes		Density Recomendation: Max floor area ratio 0.14 in APZ I & 0.28 in APZ II (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	53	Retail trade – general merchandise	No	No.	No	100	No		Density Recomendation: Max floor area ratio 0.14 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	54	Retail trade - food	No	No.	No	Ne	No		Density Recomendation: Max floor area ratio 0.24 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	55	Retail trade – automotive, marine craft, aircraft and accessories	No	200	No	No	Yes		Density Recomendation: Max floor area ratio 0.14 in APZ I & 0.28 in APZ II (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)

			AF Equ	AF & FAA Equivalent Surfaces		AF & FAA Equivalent Surfaces		Only. FAA valent face	ary Circular 150/5300-13 (Revised 14 Feb 199/)
SE CCC SE Land Use			Air Force Graded Clear Zone	W.V. Salit Belico (Eza)	Air Force Clear Zone (CZ)	FAA Rumbray Pron-coon Zone (REZ) Controlled Authry Ana	Air Force Accident Potential Zone I (APZ I)	Air Force Accident Potential Zone II (APZ II)	Notes
Trade (cont.)	56	Retail trade - apparel and accessories	No	166	No		No	Yes	Density Recomendation: Max floor area ratio 0.28 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area)
	57	Retail trade – furniture, home, furnishings and equipment	No	ko	No	146	No	Yes	Density Recomendation: Max floor area ratio 0.28 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	58	Retail trade – eating and drinking establishments	No	146	No	76	No	No	
	59	Other retail trade	No	No	No		No		Density Recomendation: Max floor area ratio 0.22 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
Services (6)	60							 	(6) Low intensity office uses only. Ancillary uses such as meeting places, auditoriums, etc. are not recommended.
	61	Finance, insurance and real estate services	No	140	No		No	;	Density Recomendation: Max floor area ratio 0.22 for "General Office/Office park" (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	62	Personal services	No	dto	No		No	i	Density Recomendation: Max floor area ratio 0.22 for Office uses only (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	62.4	Cemeteries	No	No.	No	OF-4-7-7	Yes (7)	Yes (7)	(7) No Chapels are allowed within APZ I or APZ II.
Services (cont.)	63	Business services	No	N6	No	No	Yes		Density Recomendation: Max floor area ratio 0.11 in APZ I & 0.22 in APZ II (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)

			AF & FAA Equivalent Surfaces		AF & FAA Equivalent Surfaces		AF Only. No FAA Equivalent Surface		ory Circular 150/5300-13 (Revised 14 Feb 1997)
Land Use	SLUCM*		Air Force Graded Clear Zone	FAA Rumway Protection Zom (RPZ) Object Free Are	Air Force Clear Zone (CZ)	FAA Runway Protection Zon (RPZ) Controlled Activity Are	Air Force Accident Potentia Zone I (APZ I	Air Force Accident Potentia Zone II (APZ II)	Notes
and Use	63.7	Warehousing and storage services	No		No	86	Yes	Yes	Density Recomendation: Max floor area ratio 1.0 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	64	Repair services	No	***	No	100	Yes	Yes	Density Recomendation: Max floor area ratio 0.11 in APZ I & 0.22 in APZ II (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	65	Professional services	No	Ne	No	160	No	Yes	Density Recomendation: Max floor area ratio 0.22 (Floor area ratio is the ratio between the square feet of floor area of the building and the slte area.)
	65.1	Hospitals, nursing homes	No	100	No	-No	No	No	
	65.1	Other medical facilities	No	No.	No	16	No	No	
	66	Contract construction services	No	No	No		Yes		Density Recomendation: Max floor area ratio 0.11 in APZ I & 0.22 in APZ II (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	67	Government services	No	No	No	746	No		Density Recomendation: Max floor area ratio 0.22 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)
	68	Educational services	No	- No	No	No.	No	No	
Services (cont.)	69	Miscellaneous	No	No.	No	100	No		Density Recomendation: Max floor area ratio 0.22 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.)

10 T OF 10 TO 10 T			AF . Equ	& FAA ivalent faces	AF Equ	& FAA ivalent rfaces	AF No Equi	Only. FAA valent face	ory Circular 150/5300-13 (Revised 14 Feb 1997)
Land Use	SLUCM		Air Force Graded Clear Zone	FAA Runway Protection Zone (RPZ) Object Free Area	Air Force Clear Zone (CZ)	FAA Runway Protection Zone (RPZ) Controlled Activity Area	Air Force Accident Potential Zone I (APZ I)	Air Force Accident Potential Zone II (APZ II)	Notes
Cultural, Entertainment and Recreational	70			3000					
	71	Cultural activities	No.	No.	No	No	No.	No	
	71.2	Nature exhibits	No	Nn	No	150	Yes (f)	Yes (8)	(8) Facilities must be low intensity, club houses, meeting places, auditorium, large classes, etc. are not recommended.
	72	Public assembly	No	No	No	No	Ne	No	
	72.1	Auditoriums, concert	Ne	Nn	No	No	No	No	
	72.11	Outdoor music chells, amphitheaters	No	No	No	No	No	Ne	
	72.2	Outdoor sports arenas, spectator sports	No	No	No	No	No	No	
	73	Amusements	No	No	No	No	No	Yes	
	7.4	Recreational activities (including golf courses, riding stables, water recreation)	No	Na	Ne	No (C)	Yes (8)	Yes (8)	(3) Facilities must be low intensity, meeting places, auditories, large classes, etc. are not recommended. No club houses (C) Golf Courses, but not club houses, trees or water hazards, are permitted.
	75	Resorts and group camps	No	No	No	No	Nie	Ne	
Cultural, Intertainment and Recreational (cont.)	-76	Parks	No	No	No	No	Yes (8)	Yes (8)	(8) Facilities must be low intensity, meeting places, auditoriures, targe classes, etc. are not recommended. No dide houses

	AF & FA Equivale Surface		& FAA ivalent	AF & FAA Equivalent Surfaces		AF No Equi	Only. FAA valent face	ry Circular 150/5300-13 (Revised 14 Feb 1997)	
SEUCM.			Air Force Graded Clear Zone	FAARunway Protection Zon [RPZ] Object Free Are	Air Force Clear Zone (CZ	FAA Rumway Protection Zon (RPZ) Combolled Activity Are	Air Force Accident Potential Zone I (APZ I)	Air Force Accident Potential Zone II (APZ II)	Notes
	79	Other cultural, lentertainment and recreation	No	100	No		Yes (8)	Yes (8)	(8) Facilities must be low intensity, meeting places, auditoriums, large classes, etc. are not recommended. No club houses.
Resource Production and Extraction	80			4.50			-	i	
	81	Agriculture (except live stock) (9)	No	No.	Yes (4)	Ye	Yes		(4) No structures (except airfield lighting and navigational aids necessary for the safe operation of the airfield when there are no other siting options), buildings or above-ground utility/communications lines should normally be located in Clear Zone areas on or off the installation. The Clear Zone is subject to severe restrictions. (9) Excludes Peedlots and intensive animal husbandry. Activities that attract concentrations of birds creating a hazard to aircraft operations should be excluded.
ļ	81.5, 81.7	Livestock farming and breeding	No	N.	No	No	Yes (10)	Yes (10)	(10) Includes feedlots and intensive animal husbandry.
	82	Agriculture related activities (processing and husbandry services)	No		No	No.	Yes		Density Recomendation: Max floor area ratio 0.28 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.); No activity which produces smoke, glare, or involves explosives.

- Commed admices			AF Equ	AF & FAA Equivalent Surfaces		AF & FAA Equivalent Surfaces		Only. FAA valent face	ry Circular 150/5300-13 (Revised 14 Feb 1997)
Land Use	SLUCM*		Air Force Graded Clear Zone	FAA Runway Protection Cont (RFZ) Object Free Area	Air Force Clear Zone (CZ)	JAA Runway Protection Zone [RPZ] Controlled Activity /Area	Air Force Accident Potential Zone I (APZ I)	Air Force Accident Potential Zone II (APZ II)	Notes
Resource Production and Extraction (cont.)	83	Forestry Activities (11)	No		No	&6 .	Yes	Yes	(11) Lumber and timber products removed due to establishment, expansion, or maintenance of Clear Zones will be disposed of in accordance with appropriate DOD Natural Resources Instructions. Density Recomendation: Max floor area ratio 0.28 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.); No activity which produces smoke, glare, or involves explosives.
	84	Fishing Activities (12)	No		No (12)	No	Yes		(12) Controlled hunting and fishing may be permitted for the purpose of wildlife management. Density Recomendation: Max floor area ratio 0.28 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.); No activity which produces smoke, glare, or involves explosives.
	85	Mining Activities	No		No	No.	Yes (13)		(13) Surface mining operations that could create retention ponds that may attract waterfowl and present Bird Aircraft Strike Hazard (BASH), or operations that produce dust and/or light emissions that could impact pilot vision are not compatible. Density Recomendation: Max floor area ratio 0.28 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.); No activity which produces smoke, glare, or involves explosives.
	89	Other resource production or extraction	No	So	No	•	Yes	i	Density Recomendation: Max floor area ratio 0.28 (Floor area ratio is the ratio between the square feet of floor area of the building and the site area.); No activity which produces smoke, glare, or involves explosives.

Per Unified Facilities Criteria Document 3-260-01 (22 Sept 06 Draft) and the FAA Airport Design Advisory Circular 150/5300-13 (Revised 14 Feb 1997)

	AF & FAA Equivalent Surfaces		Eguñ	FAA valent aces	No Equi	Only. FAA valent face			
Land Use	SLUCM.		Alr Force Graded Clear Zone	FAA Runway Protection Zone (RPZ) Object Free Area	Air Force Clear Zone (CZ)	FAA Runway Protection Zone (RPZ) Controlled Activity Area	Air Force Accident Potentia Zone I (APZ I	Air Force Accident Potentia Zone II (APZ II	Notes
)ther	70			S 8			-0	- 10	
	-91	Undeveloped Land	No	No	Yes	Yes	Yes	Yes	
	93	Water Areas	No	Nel	No (14)	No	No (14)	No (14)	(14) Naturally occurring water features (e.g., nvers, lakes the wetlands) are pre-existing, non-conforming land uses. Naturally occurring water features that attract waterfowl present a potential Bird Aircraft Strike Hazard (BASH). Actions to expand naturally occurring water features should not be encouraged.

*SLUCM No. - Standard Land Use Coding Manual number, U.S. Department of Transportation

Yes - Land uses and related structures are normally compatible without restrictions.

No - Land uses and related structures are not normally compatible and should be prohibited.

You (2) - Yes with restrictions. The land uses and related structures are generally compatible but with caveats.

No (14) - No with exceptions.

Appendix C - Acronyms

AFB Air Force Base

AFI Air Force Instruction

AICUZ Air Installation Compatible Use Zoning

APZ I Accident Potential Zone I

APZ II Accident Potential Zone II

BRAC Base Realignment and Closure

DHS Department of Homeland Security

DoD Department of Defense

FAA Federal Aviation Administration

GISR Global Intelligence, Surveillance, and Reconaissance

ICBM Inter-Continental Ballistic Missile

IO Information Operation

MAFB Malmstrom Air Force Base

NORAD North American Aerospace Defense Command

NORTHCOM Northern Command

NTTR Nevada Test and Training Range

ODP Office of Domestic Preparedness

RED HORSE Rapid Engineer Deployable Heavy Operational Repair Squadron Engineers

ROFA Runway Object Free Area

RPZ Runway Protection Zone

TPL Trust for Public Land

UAV Unmanned Aerial Vehicle

UFC Unified Facilities Code

US United States

USAF United States Air Force

UTTR Utah Test and Training Range



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 341ST MISSILE WING (AFGSC)

XXX XXXXX XX XX XX XXXXXXXXX XXX XXXXX

XXXXX XXXXXX XX XXXXXXXXX XX XXX, XX XXXXX

Dear XX XXXXXX.

The Missile launch Facility X-XX, adjacent to property you own, plays a crucial role in the Air Force mission to protect and defend the United States. This site is one of the many that helped us win the Cold War and continues to deter aggression against our nation.

In October 2009, the Air Force began modernizing security systems at our Missile launch facilities. We are installing camera systems that provide surveillance capability at and around the unmanned site, similar to the commercial cameras used in urban areas for traffic and security measures.

The installation will require placement of a utility and associated buried conduit on the USAF-owned property outside the fence. Our goal is to make the installation and operation of the new system transparent to you as the adjacent property owner. Our contractor is planning to remain within the government-owned property; however, access to the area during the installation may require crossing of property lines due to the size of the equipment. Based on the ease of access at each location, it may be necessary for our contractor to notify you prior to the installation.

The Government agrees to be responsible for damages caused by the activity of the Government, its officers, employees, or representatives on said land, and will repair such damage or, at the option of the Government, make an appropriate settlement with the Owner in lieu thereof.

If you have property concerns as a result of the installation process, please contact the Real Estate Management Office at (406) 731-7898 or toll free (866) 257-2264, ext 7898 or write to 341 CES/CEAOR, 39 78th Street North, Malmstrom AFB, MT 59402. I have included two copies of this letter, please sign and return one of the copies in the self address stamped envelope. This is for the base's records and will ensure you have been notified of the project.

Thank you for your patience with this ma as transparent as possible to property or	atter. Again, our goal is to make this installation wners.
	Sincerely
	MICHAEL E. FORTNEY, Colonel, USAF Commander, 341st Missile Wing
XXXX XXXXXX Land Owner	

Malmstrom AF B-1 , Montana ()
Tract B 100-1

WARRANTY DEED

The Grantors

for and in Collection of the sum of Collection (Collection) blawful money of the United States of America, to them in hand paid, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm unto the UNITED STATES OF AMERICA, and its assigns, the following described real estate, situate, lying and being in the County of Judith Basin and State of Montana:

Judith Basing County, Montana, described as follows:

Containing an area of 0.95 acres, more or less.

The above bearings are based on true north.



THIS CONVEYANCE FOR THE DEPARTMENT OF THE AIR FORCE.

Subject to existing easements for public roads, public highways, public utilities, rallroads and pipelines; and to reservations, exceptions, and any other outstanding rights contained in or referred to in patents issued by the United States; Subject, also, to that royalty reservation in that deed recorded 22 July 1942 in Book 120 of Deeds, page 139, records of Judith Basin County, Montana.

excepting and reserving to the Grantois and/or mineral lessee all oil, gas and other minerals in and under the hereinabove described land, but without the right to mine or remove any solid minerals from said described land in any manner whatsoever for as long as the United States owns the land, or to enter upon the surface of of described land or for a depth of five hundred (500) feet below said surface for the purpose of drilling thereon, extracting therefrom, or exploring for oil and gas, or for any other purposes, and in no event will explosives be used in any oil and gas operations for as long as the United States owns the land.

Grantors do hereby convey and quitclaim to the UNITED STATES OF AMERICA, and its assigns, all of their right, title and interest in the banks, beds and waters of any streams or lakes opposite to or bordering upon said lands, and in any alleys, roads, streets, ways, strips, gores, railroad rights of way, and irrigation ditch or canal rights of way crossing; abutting or adjoining said lands, and in any means of ingress or egress appurtenant to sald-lands.

In Witness Whereof, the said Grantors have hereunto set their hands september, 1961.

this 26th day of

Signed, Sealed, and Delivered in the Presence

or South m. Watkins

NPS Form 1.4b (0.T.)

BOOK 142 PAGE 114

STATE OF MONTANA)					
County of Cascad	e) ss.					
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Montana Code Annotated 2011

Previous Section MCA Contents Part Contents Search Help Next Section

76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

- (a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);
- (b) except as provided in <u>76-3-509</u>, <u>76-3-609</u>, or <u>76-3-616</u>, require the subdivider to submit to the governing body an environmental assessment as prescribed in <u>76-3-603</u>;
- (c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;
 - (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;
- (e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.
- (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;
 - (g) prescribe standards for:
 - (i) the design and arrangement of lots, streets, and roads;
 - (ii) grading and drainage;
- (iii) subject to the provisions of $\overline{16-3-511}$, water supply and sewage and solid waste disposal that meet the:
- (A) regulations adopted by the department of environmental quality under $\frac{76-4-104}{2}$ for subdivisions that will create one or more parcels containing less than 20 acres; and
- (B) standards provided in <u>76-3-604</u> and <u>76-3-622</u> for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and
 - (iv) the location and installation of public utilities;
- (h) provide procedures for the administration of the park and open-space requirements of this chapter;
- (i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.
- (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:
- (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land:
 - (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed

to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

- (iii) reserve and sever all surface water rights from the land;
- (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:
- (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
- (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
- (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
 - (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:
- (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or
- (B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.
- (l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;
- (m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.
- (n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;
- (o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to $\frac{76-3-605}{2}$ and $\frac{76-3-615}{2}$;
- (p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in <u>76-3-201</u> or <u>76-3-207</u> is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.
 - (q) establish a preapplication process that:
- (i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;
- (ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process:
 - (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of

local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

- (iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and
- (v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604;
- (r) requires that the written decision required by <u>76-3-620</u> must be provided to the applicant within 30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision.
- (2) In order to accomplish the purposes described in <u>76-3-501</u>, the subdivision regulations adopted under <u>76-3-509</u> and this section may include provisions that are consistent with this section that promote cluster development.
 - (3) The governing body may establish deadlines for submittal of subdivision applications.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981; amd. Sec. 238, Ch. 418, L. 1995; amd. Sec. 18, Ch. 471, L. 1995; amd. Sec. 1, Ch. 201, L. 1999; amd. Sec. 21, Ch. 582, L. 1999; amd. Sec. 5, Ch. 348, L. 2001; amd. Sec. 3, Ch. 527, L. 2001; amd. Sec. 1, Ch. 564, L. 2001; amd. Sec. 11, Ch. 599, L. 2003; amd. Sec. 3, Ch. 298, L. 2005; amd. Sec. 1, Ch. 302, L. 2005; amd. Sec. 1, Ch. 317, L. 2007; amd. Sec. 3, Ch. 443, L. 2007; amd. Sec. 13, Ch. 446, L. 2009.

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