

From John
Herrin distributed
to ZAP 12-8-2021

From: John W. Herrin

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Subject: Photo example of County Permitted 2-3 acre lots that would be banned under L & C 2020 Zoning Regs. 10-acre lot-size restrictions. No scientific, factual or legal basis for targeting only rural lands. Also 5 LC added Sub Regs are likely illegal.

December 7, 2021

L & C County and ZAP committee and concerned citizens and business interest representatives,

I have been frustrated at not being able to communicate the problems the Zoning Advisory Panel and County face in proceeding ahead with rewriting the County Subdivision regulations and zoning regulations without first doing the necessary scientific, social economic, legal homework work necessary to produce updated Zoning and Subdivision Regulations.

The County has produced Zero factual documentations for the 2020 Zoning regulations 10-acre tract size restrictions that would apply to every blade of grass in the 100,000 plus acres of private property within the Helena Valley Planning area. One major piece of evidence that the County planning staff has steadfastly refused to produce is the growth patterns of the HVPA over the past 6 to 10 years since the last GP and 2010 Census data was produced.

The County planning staff has had 2020 census data for months yet is still presenting power point presentations based in 2000-2010 census trends with 2015 GP projects that could easily be refined and used to drive real policy decisions.

In addition L & C County has detailed information about the specific design details all approved new land parcels and subdivisions in the HVPA yet the County refuses to supply the public, the ZAP panel or anyone the real information.

WHY? Why are we all being kept in the dark? Where is the social and economic regulatory impact assessment baseline work – Oh yeah it would show the severe damage the existing subdivision regulations have caused this entire county for over 17 years.

The County Subdivision regulations stop nearly all rural development that is not located very close to a state maintained highway – significantly limiting the supply of more reasonably price rural lots to this County which is sorely needed in the time of significant increased demand.

Simply Economics 101. Increase demand and prices will go up. Decrease supply and prices will go up. If Demand goes way up and the supply goes way down you have the perfect storm of runaway housing and land prices.

L & C County's 5 layers of above State Subdivision Regulations has severely restricted the availability of all rural land in the County and the 2020 Zoning regulations merely fall in line with the 17-year history of anti-rural "Smart Growth" target and discriminatory regulatory property value takings administrative actions.

As stated many different times in many different public meeting and regulatory decision hearings – past, present and future generations of property owners, business owners, economically challenged etc. etc. etc. – meaning everyone in the Tri-County area is being unduly harmed by past, present, and proposed regulatory changes without doing the necessary legal foundational research to build a solid castle.

The two case examples that will be presented to the ZAP panel on December 8, 2021 will underscore the need for real science and facts for the county to no put and immediate stop to the 10-acre lot size discussions and change course to solid ground.

The first real life example existing and proposed smaller tract (2-3-acre size parcels) in property I have owned for the past 6 years and plan to develop into a small rural development located in the Silver City area on the historic SC Airport landing fields.

The second is the 60-80 number of smaller track subdivisions with again 2-3 acre tract size parcels, known as the Wheat Ridge Estates (Phases I-IV). This Subdivision is surrounded very large dryland grain-fields and many larger 5-20 acre tracts that eat up a lot of real estate and promote development sprawl.

Yet all sites generally have the same underlying groundwater, wildland fire and transportation conditions and as such how can the County use parcel size as a means to **protect some undefined and undocumented public health or safety issues???**

These two simple case examples underscore the insanity of using blanket one-size-fits-all lot-size restrictions without professional expert reports based on real facts, science and legal mandates.

So the question the county must address. How is this not the definition of arbitrary and capricious when there literally thousands of what would be termed Non-conforming parcels and only a few proven examples of cumulative impacts (e.g. North Star and Emerald Ridge)? The County can not prove most of the thousands of existing homes that would be labeled non-conforming are causing severe cumulative impacts to public health and safety.

Anyone with any common sense should be able to see through the smoke and mirrors and determine the County never had the documental proof or justification to present to the public any form of Lot-size density controls without real scientific factual information proving the regulations are both needed and solve problem and are the least restrictive solution to solving the problem.

Also State Subdivision regulations clearly state that all county's must consider the costs of regulations to the regulated public but I strongly suspect L & C County has never bothered to undertake the required Cost benefit regulatory analysis plus it clearly is the intent of the State regulations that each subdivision applicant has the right to appeal a harsh regulatory County added regulation and cost/benefits are to be fairly considered (e.g. two entrances into all subdivisions when most major ski resorts around the world only have one major and many branching offshoot roads, Prorata Shar Contributions to two offsite roads, on-site water supply/storage systems for undefined wildland fire risks, and harsh unscientific waterbody setback requirements).

By drafting County Regulations with these 5 added administrative regulations, L & C County has significantly reduced the number of rural subdivision applications oversight stopped many rural landowners from even considering a subdivision development --- all across the entire million acres of private property in the county.

In addition, the added regulations also significantly increase the costs of subdivision development which does two things --- significantly reducing supply but also driving up the costs of all new rural lots and thereby all property in the Tri-county Real Estate Market.

As such, the County for nearly 17 years has been illegally deny many subdivision variance requests and outright forcing applicants to bare additional development costs or face application denials. That is exactly what happened in the 2005-2008 Zoning and Subdivision Off-site road litigation battles resulting in the County having to pay out more than \$7million in legal costs and damages. State Subdivision regulations indicate that the County administrators and Commissioners must only force the least cost and applicant preferred alternatives, unless that approach does not meet some form of State/local Health and Safety requirement. But L & C County has not been doing RE permitting business based on these State regulatory requirements and thereby unduly harmed many subdivision applicants over decades.

WOW. I read this to mean Any County Administrative Actions involving denial of a variance request without the County Considering the impact costs, then the County could have been sued – had anyone read the actual State Subdivision regulations. And I don't believe I am wrong in this interpretation, but I welcome the County Staff and legal department to respond in writing proving me wrong.

Why did the County Planning Staff and BoCC ever conceive that the right solutions was restriction all rural property to 160, 20, and 10 acre average lot size density controls made any sense even on paper let alone in the real world?

The County's own 2017 contracted Consultants (Wildland Professional Solutions, Inc and Wildfire Planning International LLC and Land Solutions, LLC) on page 32 clearly refutes any blanket edict by L & C County for across the board Density Control for any of the other four 2015 Growth Policy trumped up excuses for Density Controls (e.g. transportation, flooding, groundwater supply and groundwater quality).

The L & C County's contracted Wildland Fire Report page 32 reads as follows "This (Wildland Urban Interface Code review under Subdivision Regulation) approval process will determine the number of

developable lots that can be properly mitigated in the WUI. **As a result, Section 18-7.4 (building Density Requirements) will no longer apply and should be deleted.**

How can the County Planning Staff, ZAP Panel and BoCC etc. defend the 10-acre arbitrary lot size restrictions if the County's paid consultants determined that the 2015 Growth Policy was absolutely wrong and should have never stated that the only valid solution for managing Rural growth is Density Controls? How stupid does the County think everyone is? Really this is shameful bias designed to meet the select few anti-rural planners drafting the 2015 Growth Policy and they County can not defend these biased statements given the County's own other more professionally trained and none-agenda driven scientist have clearly stated that the 2015 Growth Policy Rural Growth density control recommendations are baseless and have to be rewritten going forward to avoid perpetuating the Big Lie.

Why this message was never considered by the County relative to all 5 claimed Environmental and safety concerns is beyond me. The Impacted landowners repeatedly warned the County and made their voices heard.

Just to highlight the warnings the public was making I will recount what future County Commissioner Tom Roth famously asked the CCCPB "Are you listening now. Are You Listening now. Are you listening now". Commissioner Roth made these prophetic statements at one of the many fall 2020 public hearings.

How could the County read the State Growth Policy Regulations and not determine that the Growth Policy was biased and had to be in part be rewritten to remove the interjected bias. And how could the county ignore the Citizens pleas for not harming their primary investment – their property without just cause.

How can the County justify the harm caused?

How could the county ignore the 1822 pages of almost 90-95 negative adverse written comments and hundreds of verbal testimony about the harm being caused and the unjust nature of this unproven County staff and BoCC driven administrative nightmare?

We the public have been demanding the County conduct a detailed Economic and Social impact assess for the 2020 Zoning Regulations, and that is exactly what Gregory Thomas __ Chairman of the Consolidated C&C Planning Board recommended they recommend that BoCC table the 2020 Zoning plan to complete additional impact assessments or he warned the County would be sued.

How does the County justify their actions of harming many thousands of rural landowners for no real positive benefit or proven justification. The County is marching towards a serious cliff without a parachute. Can you hear anyone outside your circle? Are you really listening and dropping defensive posturing to reach real truth and purpose? To serve the public and reach for the Greater Good.

Where is the proof that the County has carefully and thoroughly evaluated information contained in the 2015 Growth policy which State Statutes clearly mandate be done every 5 years and updated wherever major conditions have changed (e.g. transportation etc)?

L & C County can not justify updating any Zoning or Subdivision regulation without proof they have legal foundations to proceed and without making some effort to update the Growth Policy and define basic growth patterns, affordable housing etc. Without taking these necessary planning studies, then L & C County absolutely can not hope to win any legal challenges if they blatantly violate State law.

L & C County absolutely can not proceed with updating Zoning and Subdivision Regulations without adequately informing the citizens, business interest and landowners proving they are on solid legal and technical footing.

The number 1 planning task the County should have paid for before assembling the ZAP panel was --- update all legally required growth changes and develop recommendations for future growth policy that is unbiased and helps our community plan for future growth. Growth will come, and we desperately need good planning documents to help guide us forward not backwards.

I presented these same basis facts to the Planning Board and BoCC, and not one person --except for Gregory Thomas – on the County Side of the table ever acknowledged the true facts and recommended a course correction.

Why did the County not stop pushing forward and hire competent environmental, economic and legal consultants? Last fall I clearly stated to the BoCC that the County should at minimum budget \$400,000 instead of the inadequate \$100,000 Chairwomen Good Geise stated would be allocated for the 1.5 year long ZAP committee efforts.

The Existing to Community Development and Planning Staff are already overworked and underpaid, so hiring outside experts would have been and still is the best path forward.

Are you listening now?

Sent from  for Windows

SILVER CITY AIRPORT PROPERTY at the intersection of Lincoln Road and Birdseye Road. The Great Divide Estates Subdivision will be resubmitted to BoCC soon, creating 13 on 34-acres (2.5-acre lots) that received L & C County preliminary Plat approval in 2008 for 19 lots on 44-acres.



Pending 13 lot Subdivision on 34-acres (2.5-acre lot size) on historic Silver City Airport approved by DNRC Water Rights Division and also was approved by L & C County in 2008 for 19 lots on 44-acres. Where is public health and safety issues? Located just outside of HVPA and therefore more valuable due to the county subdivision regulations off-site road improvements proportionate share requirements for most County rural property fortunately does not apply to this property because it is located on State Highway 279 Lincoln Road, and therefore not subject to L & C 2020 HVPA Zoning Regs or the County costly off-site road improvement proportionate share Subdivision regulations.

**Preliminary Plat Application and
Supplements for**

**Great Divide Estates
Subdivision**



Lewis & Clark County , MONTANA

John W. Herrin

SUNWEST RESOURCES LLC -

ENVIRONMENTAL CONSULTING

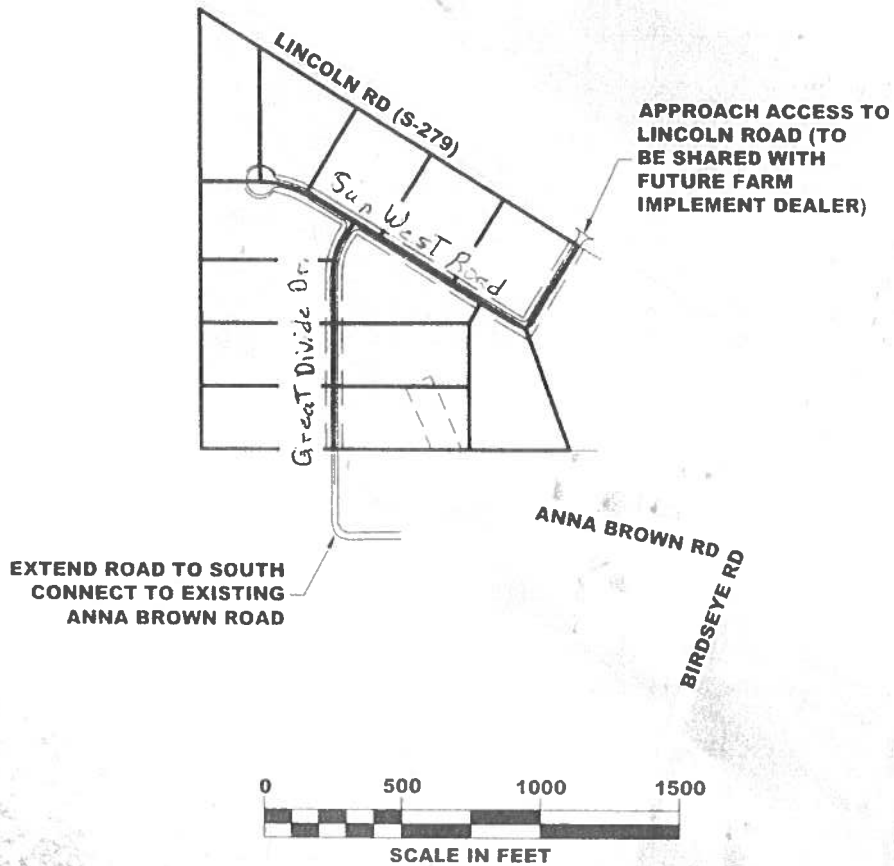
2855 SUNDOWN ROAD

HELENA, MONTANA 59602

406-202-0528

GREAT DIVIDE ESTATES SUBDIVISION:

- > 13 SINGLE FAMILY RESIDENTIAL LOTS
- > PRIMARY ACCESS FROM EXISTING FIELD ACCESS APPROACH TO LINCOLN ROAD - UPGRADED TO SUBDIVISION ACCESS ROAD APPROACH
- > LINCOLN ROAD APPROACH TO BE SHARED WITH FUTURE FARM IMPLEMENT DEALER
- > SECONDARY ACCESS FROM EXTENSION OF INTERNAL SUBDIVISION ROAD SOUTH TO ANNA BROWN ROAD



Great Divide Estates
VICINITY MAP
LEWIS & CLARK COUNTY MONTANA

SHEDHORN
ENGINEERING LLC

1808 11TH AVENUE
HELENA, MT 59601

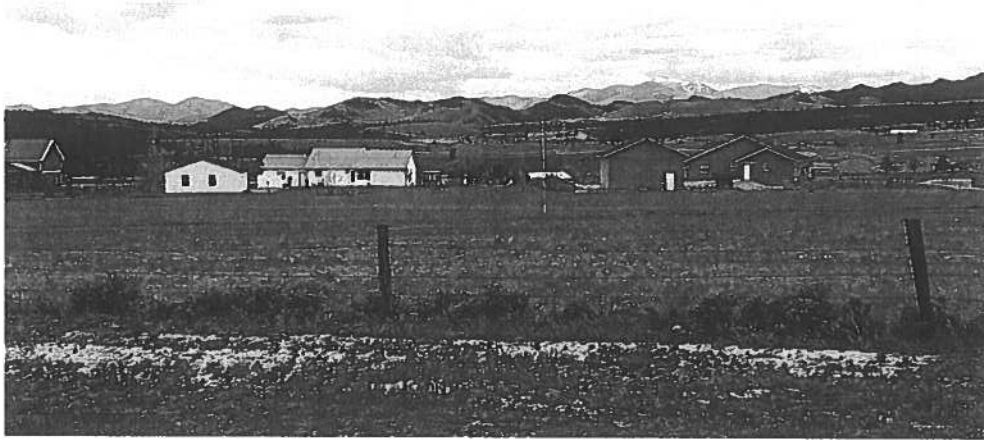
(406) 439-8027

P.O. Box 151
CLANCY, MT 59634

FIGURE 1

18-13

05/20/18



Note: 5 existing homes -- located on south fence-line of the pending 13-lot Great Divide Estates Subdivision -- all are 2-3 acres in size and county approved for individual septic and wells.

All these proposed and existing homesites have very low fire hazard. In addition, a very large pond exist less than 1 mile away and the local Canyon Creek Rural fire-chief will not recommend costly on-site water storage/supply systems but instead annual moving of 20' perimeter around the Great Divide Estates subdivision to further reduce low wildland fire risk

This land is also an easy 15-minute drive to Helena via either the Birdseye Road (County Owned) or via Lincoln Road West. The Montana Department of Transportation will soon start the major reconstruction and realignment of Lincoln Road from Green Meadow Drive to just past Birdseye Road providing increase safety travel to and from the Helena Valley.

If these parcels were inside the County's Rural area HVPA Subzone, the County supported and proposed 10-acre minimum lots size restrictions would have stopped the 5 lot Anna Brown subdivision and the pending 13-lot Great Divide Estates subdivision.

WHY? What are scientific justifications for this regulatory taking action by the county? The overwhelming answer has always been the same since the first December 2019 County sponsored listening Session:

The County has never produced -- nor can produce -- proven scientific health and safety issue that justifies all private property being at least 10-acres in size or a major health and safety crisis will occur.

It should be understood by the ZAP panelist and the County that financial damage and harm has already occurred to HVPA rural landowners, realtors and builders etc. starting with the

first County Planning Staff public hearing in December 2019 – resulting in 2 years of real estate uncertainty and financial harm to the community.

The Anna Brown homes and land -- and the pending Great Divide Est. 13 new lots -- all have increased value because of the County's has for the past 17-years artificially and illegally restricted only rural growth in the county by adding unproven health and safety triggers using unscientific generalities to justify the unjustifiable regulatory subdivision and Zoning restrictions.

These same false claims apply to literally 10 of thousands if not 100,000 plus of acres of the Rural Subzone being unfairly discriminated and targeted by L & C County Staff and County Commissioners under the adopted 2020 Zoning Regulations and 5 County added Subdivision Regulations that appear to both illegal and discriminatory.

WHEAT RIDGE ESTATES PHASES I-IV. Locate about 1.5 mile of Highway 12 West and west of State Highway Spokane Creek Road. Roughly 60 plus lots most being 2-3 acres in size. Subdivision built in four phases – located on relatively flat lying former dryland grainfields -- with individual wells and septic systems on each lot.



