



**PUBLIC MEETING**  
September 14, 2017  
**MINUTES**

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, September 14, 2017, at 9:00 AM in Commission Chambers Room 330.

**Roll Call**

Chairman Susan Good Geise called the meeting to order at 9 a.m.

Commissioner Andy Hunthausen and Commissioner Jim McCormick were present. Others attending all or a portion of the meeting included Roger Baltz, Charles Lane, Lindsay Morgan, Laura Erikson, Dave Wood, Eunice Graham, Roger Ala, Kacie Noonan, Frank Boucher, Brian Coplin, Andrea Silverman, Corey Meier, Tara Petersen, Cheryl Boucher, Terri Burgess, Kelly Fischer, Debra LaFontaine, Cassandra Bogard, Kathleen McMahon, Patricia Wood, Rick Lamack, Gerald Meyer, Brad Robinson, Shawn Whyte, Sarah Bauer, Mike O'Connor, Sherry Hall, Patricia Helvey, Dylan Berg, JP Pujol, Kyle Perkins, Teresa McDaniel, Tim Scheuer, Curt Kelvey, Jake Samuelson, Karin Janssen, Ann Reber, Wendy Gonnay, and Misty Edwards, Recording Secretary.

**Pledge of Allegiance**

Everyone recited the pledge.

**Consent Action Items**

There were no consent action items.

**Establishment of Military Affected Area Regulations and Zoning District (Staff:  
Laura Erikson and Lindsay A. Morgan)**

Laura Erikson, Community Development Coordinator and Lindsay Morgan, Planner II, presented the Military Affected Area (MAA) zoning district and associated regulations. The proposed MAA consists of approximately 20,722 acres located around Fort Harrison. The boundary extends approximately one mile from the Fort Harrison boundaries. Fort Harrison is comprised of land that is owned by the Department of Defense, State of Montana, and Veterans Hospital. Large tracts of land within the Fort Harrison boundary are also leased from the Bureau of Land Management and private landowners. The proposed MAA boundaries are located outside of City limits and are not currently zoned. The proposed zoning and regulations create two districts: MAA-Rural Growth Area (MAA-RGA) and MAA- Urban Growth Area (MAA-UGA).

Ms. Erikson added that the County is working with the military because the military does provide an economic benefit to the County. In 2015, approximately \$50 million dollars in personnel was spent in the local area by the military. Ms. Erikson stated that the proposed zoning area and regulations came about as a result of the Joint Land Use Study (JLUS). The JLUS planning process has been a

collaborative effort between multiple partners including Lewis and Clark County, Broadwater County, Army National Guard, City of Helena, and the City of Townsend. The study area included the Fort Harrison training area and the Limestone Hills training area, which is just outside of Townsend in Broadwater County. Recommended goals and items that came as a result of the JLUS include promoting inter agency coordination and public communication to address issues identified in the JLUS; protect areas near Fort Harrison from incompatible development; minimize encroachment from new development within the Fort Harrison MAA; and provide adequate roadway facilities and transportation improvements to reduce congestion and promote safety. One recommendation from the JLUS was to amend the growth policy to include the Fort Harrison Land Use Study in the Helena Valley Area Plan. That addition to the growth policy was adopted in March, 2017.

Ms. Morgan stated that the purpose of the regulations is to promote health, safety and general welfare by reducing conflicts with adjoining land uses and increasing compatibility with the military operations occurring at Fort Harrison. The proposed MAA is being adopted under the authority of the Montana Code Annotated, Chapter 76 - County Zoning and Chapter 10 - Military Area Compatibility Act. The MAA regulations establish boundaries for the district, establish minimum lot sizes, list permitted uses, list prohibited land uses and establish performance standards for communication towers, residential uses, accessory uses, arenas and outdoor lighting. The MAA also includes provisions for administration, appeals, variances and enforcement of regulations. The regulations list the prohibited land uses, which include landfills, multi-family dwellings, congregate living facilities and items that result in glare in the eyes of operators of aircraft. As part of the zoning, a development permit will be required when erecting a new non-agricultural structure, when replacing existing structures or for re-establishing a use that has been abandoned for a period of 12 or more months.

Ms. Morgan stated that the MAA-RGA and the MAA-UGA Districts require a minimum lot size of 10 acres for residential use. The boundaries for the Districts are generally intended to encompass the area within one mile of the Fort Harrison boundary and are consistent with the boundaries identified with the Helena Valley Area Plan. The MAA-RGA comprises the majority of the land area in the MAA and is characterized by low density rural residential development, public lands and agriculture.

Commissioner Hunthausen asked about existing properties being under 10 acres with uses that may be prohibited under the proposed regulations. Ms. Morgan stated that existing properties that are under 10 acres and that may have an existing lawful use would be grandfathered in. If a subdivision has already been platted and the lots are smaller than 10 acres, that subdivision would be grandfathered in. As long as the subdivision has submitted a sufficient application, it would be grandfathered in so long as nothing has expired.

According to the Montana Code Annotated, zoning regulations must meet the following criteria and guidelines: must be made in accordance with the growth policy; must secure safety from fire and other dangers; must promote public health, safety and general welfare; and must facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. In the adoption of zoning regulations, the Commission shall consider: reasonable provision of adequate air and light; the effect on motorized and non-motorized transportation systems; compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities; the character of the district and its peculiar suitability for particular uses; and conserving the value of buildings and encouraging the most appropriate use of lands through the jurisdictional area. Additionally, zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of nearby municipalities.

Ms. Morgan added that the Planning Board held a public meeting on August 15, 2017 and recommended approval of the adoption of the regulations and they did adopt the 18 findings of fact.

Debra LaFontaine, Planning Manager with the Department of Military Affairs, stated that the Joint Land Use Study came about as a result of encroachment upon military installations around the country. This encroachment limits the times and types of training that can occur at installations. The Department of Defense realizes that these limitations on training is an issue and that installations that currently do not have encroachment issues should start looking at ways to mitigate future impacts. Ms. LaFontaine added that they have tried to address issues that may come up with neighbors including noise reduction and lighting. Ms. LaFontaine stated that they have also participated in the Army Compatible Use Buffer Program. This program allows installations the ability to acquire money to partner with land conservation organizations to purchase conservation easements or fee title on lands surrounding the installations. This program aims to help minimize the encroachment upon installations. Fort Harrison partnered with Prickly Pear Land Trust to purchase 560 acres surrounding the Fort. This will limit development around Fort Harrison.

Rick Lamach, Master Planner for State of Montana Department of Military Affairs, addressed concerns that were expressed by local residents. The Army National Guard (ANG) has addressed fire response coordination and that they continue to work with relevant agencies to improve coordination, to review and update the integrated wildland fire management plans and to enact mutual aid agreements. Mr. Lamach added they have also addressed noise issues and reduced the volume of the PA system used to play the morning reveille and also the number of times each day the PA system is used. The ANG has tried to minimize all impacts listed in the JLUS on neighbors by not scheduling training at certain times or in certain conditions. Mr. Lamach also added that they are committed to pursuing federal funds through the Defense Access Roads Program to improve Country Club Avenue.

#### PUBLIC COMMENT -

Roger Ala, 4025 Chapparral Drive, supports the MAA but they wish to request to make the regulations more equitable by having the County make arrangements with the ANG to provide fire protection for landowners in the immediate area surrounding Fort Harrison. Mr. Ala feels this will help reduce homeowner's insurance.

Ms. LaFontaine, responded that Fort Harrison does not have fire protection themselves and that they contract with the VA for those services therefore, they can't provide fire protection to the landowners in the area.

Sarah Bauer, 6895 Austin Road, opposes the new zoning and regulations that are being proposed. The proposed zoning boundaries will divide her property into 2 pieces with one half being zoned and the other half will not which will create a hardship on her. The zoning will reduce the value of her property by encumbering it with regulations that are not currently present and therefore she feels the regulations constitute a takings. She does not feel like any problems exist with Fort Harrison as far as noise or lighting. If the zoning is approved, Ms. Bauer requests that her entire property be left out of the area.

Ms. Morgan responded that the Planning Department could look at her property boundaries and make a decision on whether or not to remove all of it from the MAA.

Andrea Silverman, Land Protection Coordinator for Prickly Pear Land Trust, stated that they are proud to collaborate with the County and Fort Harrison and that they support the zoning and regulations.

Therresa McDaniel, St. Louis Gulch, opposes the MAA and the implementation of zoning. She opposes limitations that do not currently exist being placed on her property. She purchased the property because it did not have any restrictive covenants on it. Ms. McDaniel added that she felt the essence of the regulations was to inhibit individual property owner rights.

Kacie Noonan, 3820 Barretts Road, lives across the street from Fort Harrison and expects the lights and the noise that come from the Fort. However, she does oppose the regulations that are being proposed. Ms. Noonan asked for clarification on hardship as well as what literal interpretation meant.

Gerald Meyer, 1216 Green Street, had questions regarding maintaining a home and asked if a permit would be needed to do basic home maintenance. He also had concerns regarding the literal interpretation of the regulations and the 10 acre minimum parcel size.

Shane Whyte, 3413 Terrace, owns 62 acres near Williams Street in the MAA-UGA. Mr. Whyte is concerned that he will not be able to sell the 36 lots that are on the 62 acres because they are smaller than the 10 acre minimum. Stated that the regulations impact him financially by restricting his use and he is opposed to the regulations.

Kyle Perkins, 6445 St. Louis Gulch, feels that placing zoning regulations in the MAA-RGA places an undue hardship on the relatively few landowners in the area. Mr. Perkins added that artificially limiting development in this specific area primarily fulfills the military's agenda but it does not promote public health and safety or general welfare; an uneven burden would be placed on homeowners that live in the draft boundaries. Mr. Perkins supports the ANG and Fort Harrison but is opposed to the regulations.

Dave Wood, property owner in the MAA-RGA area, stated that he feels public notice was not adequate and that many landowners were not aware of the proposed regulations. Mr. Wood asked if Fort Harrison was required to respond to all fires in the MAA. Mr. Wood also asked if public lands that are located in the MAA would still be available for public use.

Tim Scheuer, 3916 Barrett Road, stated his family has been on the property since 1987 and that he understands the needs of the military as he is retired from there but he does not feel like the proposed regulations will solve any issues. He feels that the regulations favor the military and are one sided in the military's favor and are not compatible to all. It allows Fort Harrison to continue activities as is while limiting private property landowner rights.

Bob Branson, 6655 St. Louis Gulch, feels that the regulations are solely for the benefit of Fort Harrison. Mr. Branson stated that he believes the objectives can be accomplished with the Lewis and Clark County Growth Policy and by restricting parcel sizes to 10 acres.

Hayden Janssen, 4150 Oesterle Drive, feels that some good has come of from the JLUS recommendations, such as the land purchase by Prickly Pear Land Trust. However, Mr. Janssen is worried that if notifications regarding noise and light pollution must be placed on deeds, property values will decline. Mr. Janssen is also concerned that properties can only be used for one purpose. He would like clarification on the definition of home business.

Ms. Morgan responded to the question that multiple citizens had regarding developing properties that are less than the 10 acre minimum lot size. Ms. Morgan stated that those properties can be developed with any of the uses that are allowed. The regulations only list specific uses that are prohibited. If somebody has a parcel that is less than 10 acres in size, they can develop it with a house. If the landowner wants to have any accessory use with that house such as a garage or a shed, that is allowed. Ms. Morgan also added that staff will work on a clarification of home business.

Kate McMahon, consultant for the County on the regulations, added that any residential use in the district is a permitted use, any accessory use to that residential use is a permitted use, any home business that is part of a residence is a permitted use, any agricultural use is a permitted use. Ms. McMahon added that a permit is only needed when you are expanding a structure or building a new non-agricultural structure. Solar panels are also considered an accessory use and would not require a development permit. Solar panels are allowed, however, if they cause glare, there may be an administrative action asking the homeowner to move or adjust those solar panels. Basic repair and maintenance such as painting, repairing a deck or replacing windows does not require a permit. Additionally, there is no requirement that the permit be recorded with the deed.

Charles Lane, Deputy County Attorney, will draft a memo regarding takings and present to the Commission. Commissioner Geise also had concerns regarding the permit and would like staff to address the need for the permit and what the process is trying to accomplish.

Commissioner Geise stated that the public comment period is still open.

A motion was made by Commissioner Hunthausen to table the item until the October 12th regular public meeting. The motion was seconded by Commissioner McCormick. The motion passed 3-0.

**Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.**

**Adjourn**

There being no further business, the meeting adjourned at 12:42 p.m.

LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Susan Good Geise, Chair  
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Andy Hunthausen, Vice Chair  
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Jim McCormick, Member

ATTEST:

  
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Paulette DeHart, Clerk of the Board