

RESOLUTION 2020 - 86

**A RESOLUTION TO ADOPT REGULATIONS FOR SPECIAL ZONE DISTRICT NO. 51
(TENMILE ALLUVIAL FAN PLANNING AND ZONE DISTRICT)**

WHEREAS, the Lewis and Clark County Board of Commissioners (Board) created the boundaries for Special Zoning District No. 51 (District) on January 7, 2020 (Resolution 2020-5); and

WHEREAS, the Planning and Zoning Commission adopted the Neighborhood Plan for the District, as proposed by Staff and as amended by the Planning and Zoning Commission, on September 21, 2020 (Resolution 2020-01); and

WHEREAS, due and legal notice of the public hearing before the Planning and Zoning Commission regarding the proposed regulations for the District was given on September 6, 2020 and September 13, 2020 in the Independent Record and three (3) signs were posted in the District a minimum of 15 days in advance of the public hearing; and

WHEREAS, a public hearing regarding regulations for the District was duly held by the Planning and Zoning Commission on September 21, 2020; and

WHEREAS, the Planning and Zoning Commission reviewed the regulations prepared by Staff, Staff presentation, written comments, and testimony given at the public hearing; and

WHEREAS, the Planning and Zoning Commission voted 6-0 to recommend that the Board adopt the regulations proposed by Staff, and as amended by the Planning and Zoning Commission, on September 21, 2020; and

WHEREAS, due and legal notice of the public hearing before the Board regarding the proposed regulations for the District was given on September 6, 2020 and September 13, 2020 in the Independent Record and three (3) signs were posted in the District; and

WHEREAS, a public hearing regarding regulations for the District was held by the Board on October 1, 2020; and

WHEREAS, the Board reviewed the regulations prepared by Staff, the Staff presentation regarding the regulations, written comments, testimony given at the public hearings, and the recommendation from the Planning and Zoning Commission; and

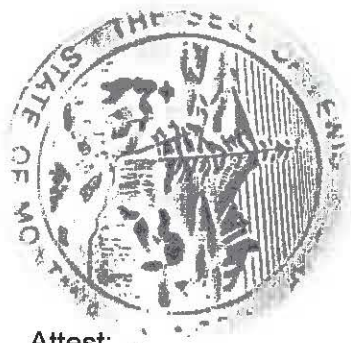
WHEREAS, the Board voted ____ to adopt the regulations, as recommended by the Planning and Zoning Commission, for the District on October 1, 2020.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners:

1. That the regulations for the District be adopted as shown on Exhibit "A", attached hereto, and made a part hereof.

PASSED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS on this 1st Day of October, 2020.





LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS

A handwritten signature in blue ink, appearing to read "Susan Good Geise".

Susan Good Geise, Chair

Attest:

A handwritten signature in black ink, appearing to read "Amy Reeves".

Amy Reeves, Clerk of the Board

Attachments: Exhibit - A (Regulations)

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Exhibit "A" to Resolution No. 2020-86

TENMILE ALLUVIAL FAN ZONE DISTRICT REGULATIONS (SPECIAL ZONE DISTRICT #51)

1. GENERAL PROVISIONS

1.1. Title

These regulations are known as the Tenmile Alluvial Fan Zone District Regulations (Special Zone District #51).

1.2. Authority

These regulations are adopted under the authority of Section 76-2-101, MCA and Section 76-2-107, MCA.

1.3. Purpose

The purpose of these regulations is to implement the development pattern for the Tenmile Alluvial Fan neighborhood that is consistent with the adopted Tenmile Alluvial Fan Neighborhood Plan and the policy recommendations of the Lewis and Clark County Growth Policy and its Helena Valley Area Plan Update (2015). Additionally, these regulations are intended to:

- a. Accommodate and protect high-density, residential development, along with low-density, residential development in Special Flood Hazard Areas or areas with density constraints.
- b. Enhance the aesthetic character of the area.
- c. Protect public health, safety, and welfare of residents; and
- d. Protect property values of residents.

1.4. Applicability

These regulations apply to the creation of parcels of land and to uses of land and structures within the Tenmile Alluvial Fan Zone District as established on the official Tenmile Alluvial Fan Zone District Map attached as Exhibit A.

1.5. Compliance Required

No parcel of land shall be created, and no uses of land or structures shall be conducted unless in conformance with these zoning regulations.

1.6. Conflict with Other Laws & Severability

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

1.7. Vested Rights

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

1.8. Continuation of Nonconforming Parcels and Uses

All parcels and uses of land that exist at the time of adoption of these regulations may continue in conformance with all local, state, or federal laws and regulations. Expansions of non-conforming uses are expressly prohibited.

1.9. Private Agreements

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

1.10. Interpretation

The language of these regulations must be read literally. These regulations are no more or less strict than stated. In the event a question arises concerning any provision or the application of any provision of these regulations, the Zoning Administrator shall be responsible for such interpretation and will look to the overall purpose of these regulations and the Lewis and Clark County Growth Policy and its Helena Valley Area Plan Update (2015) for guidance. Any person who disputes the interpretation of the Zoning Administrator, may appeal the Administrator's decision using the procedure in Section 3.2, Administrative Appeals.

1.11. Requirements Minimum

All requirements of these regulations shall be interpreted as the minimum necessary to protect the public health, safety, and general welfare. These regulations are designed for consistency with the Lewis and Clark County Growth Policy and its Helena Valley Area Plan Update (2015), and the Tenmile Alluvial Fan Neighborhood Plan, and should be interpreted to achieve their goals, objectives, policies, and strategies.

2. ZONE DISTRICT AND MAP

2.1. Zone District

The following zone district and its boundaries, as shown on the official Tenmile Alluvial Fan Zone District Map (Exhibit A), are established:

- a. Tenmile Alluvial Fan Zone District.

2.2. Zone District Map

The Tenmile Alluvial Fan Zone District Map is adopted by reference as part of these regulations. The most recently adopted, official copy of that map shall be maintained for public inspection at the office of the Zoning Administrator.

2.3. Zone District Boundaries

When definite distances or boundaries are not shown on the Tenmile Alluvial Fan Zone District Map, the following rules apply:

- a. Boundaries indicated as approximately following the right-of-way or centerlines of roads, highways, trails, pathways, or alleys shall be construed to follow such rights-of-way or centerlines.
- b. Boundaries indicated as approximately following municipal limits shall be construed as following those boundaries.
- c. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- d. Boundaries indicated as approximately following centerlines of lakes, streams, rivers, canals, irrigation ditches or other bodies of water or other physical features shall be construed as following such centerlines.

Any person who disputes the location of a zone district boundary, as interpreted by the Zoning Administrator, may appeal the Administrator's decision using the procedure in Section 3.2, Administrative Appeals.

2.4. Zone District Regulations

a. Maximum and Minimum Parcel Size

1. Density in the district is being determined by the guidance provided in the County Growth Policy and its Helena Valley Area Plan Update (2015), which describes the District as being partially located in both the Urban Growth Area and the Transitional Growth Area. See the official Tenmile Alluvial Fan Zone District Map (Exhibit A) for the location of each area.
2. The following densities in the District are allowed:
 - a. Urban Growth Area (UGA):
 - i. No minimum lot size in areas outside of a Special Flood Hazard Area.
 - ii. Ten (10) acre minimum lot size for lots containing any Special Flood Hazard Areas.
 - b. Transitional Growth Area (TGA):
 - i. ¼-acre minimum lot size.
3. In the case where parcels of any size exist at the time of adoption of these regulations, the boundaries between parcels may be relocated to result in one or more parcels with less than the minimum parcel sizes stated in Section 2.4.a.2., provided that there is no net increase in the number of developable lots.

b. Land Uses

The following uses of land are expressly allowed:

1. UGA:
 - a. Accessory uses.
 - b. Bed and breakfasts.
 - c. Condominiums (up to a four-plex).
 - d. Group homes.
 - e. Home day cares.
 - f. Home occupations.
 - g. Multiple-dwelling unit residences.
 - i. Tri-plexes
 - ii. Four-plexes
 - h. Parks and trails.
 - i. Professional services.
 - j. Single-dwelling unit residences.
 - k. Townhomes.
 - l. Two-dwelling unit residences.

All other land uses are expressly prohibited in the UGA.

2. TGA:

- a. Accessory uses.
- b. Agriculture.
- c. Group homes.
- d. Home day cares.
- e. Home occupations.
- f. Parks and trails.
- g. Single-dwelling unit residences.

All other land uses are expressly prohibited in the TGA. In addition, only one (1) single-dwelling unit residence or group home is allowed on each parcel.

c. Space and Bulk Standards

1. Lots under ¼-acre in size:

- a. Minimum building setback from property lines and road rights-of-way: 10 feet.
- b. Maximum building height: 24 feet.
- c. Maximum lot coverage: 30%.

2. Lots ¼-acre and larger in size:

- a. Minimum building setback from property lines and road rights-of-way: 15 feet.
- b. Maximum building height: 35 feet.
- c. Maximum lot coverage: 25%.

d. Special Flood Hazard Area Standards

Residential, commercial, and accessory structures are prohibited within Special Flood Hazard Areas.

e. Ephemeral Channel Standards

There are ephemeral channels located within the Zone District that are capable of carrying stormwater and floodwaters. See Exhibit B for the approximate location of these channels. Any construction within these channels that would reduce the capacity of the channels to carry or hold stormwater or floodwaters is prohibited. Prior to any construction within or adjacent to these drainages, a property owner must contact the County Public Works Department to determine the exact location of the channel(s). If a proposed construction project would be located within a channel, the property owner shall work with the Department staff to determine if

the proposed project will impact the stormwater or floodwaters capacity of the channel. This may require a property owner/applicant to provide a hydrology and hydraulic analysis to verify no impact. If the Department determines that the proposed work will reduce the capacity of the channel, the construction project will be prohibited.

3. ADMINISTRATION

3.1. Variances

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

- a. The applicant shall submit a complete and sufficient application form, the required supporting materials including a narrative evaluating the variance request under the review criteria (Section 3.1.f), and the required application fee with the Zoning Administrator.
- b. The Zoning Administrator shall determine whether the application form and supporting materials are complete and sufficient. When an application is determined to be incomplete or insufficient, the Zoning Administrator shall provide written notice to the applicant indicating what information must be submitted for the review to proceed.
- c. When the application is determined to be complete and sufficient, the Zoning Administrator shall schedule a public hearing on the agenda of the next available meeting of the Lewis and Clark County Planning and Zoning Commission (Planning and Zoning Commission) for which notice requirements can be met and providing thirty-five (35) working days for processing of the application materials. Notice shall be published at least once in a newspaper of general circulation and mailed to all adjacent landowners at least fifteen (15) days prior to the public hearing. Notice shall, at a minimum, include the nature of the request and the time and place of the public hearing.
- d. The Zoning Administrator shall prepare a report that describes the proposed variance, its site, its context, and an evaluation of the request under the review criteria in Section 3.1.f.
- e. The Planning and Zoning Commission shall conduct a public hearing on the proposed variance. At that public hearing, the Planning and Zoning Commission shall review the particular facts and circumstances of the proposed variance and develop findings and conclusions in support of its decision.
- f. Review Criteria. The Planning and Zoning Commission shall make a recommendation to approve a variance only upon finding that:
 1. The need for a variance results from physical limitations or unique circumstances related to the lot or parcel on which the variance is requested.

2. The failure to approve the variance will result in undue hardship because without a variance, strict compliance with the terms of these regulations will limit the reasonable use of the property and deprive the applicant of the rights enjoyed by other properties similarly situated in the district;
 3. The alleged hardship has not been created by action of the owner or occupants.
 4. Approval of the variance will not have a substantial adverse impact on neighboring properties or the public; and
 5. Granting of the variance will observe the spirit of these regulations and provide substantial justice.
- g. Conditions may be attached to the approval of any variance if:
1. They are clearly designed to ensure compliance with one or more specific requirement(s) of these or other adopted regulations; or
 2. They are roughly or directly related to the anticipated impacts of the applicant's proposal.
- h. The decision on a variance shall be referred by the Planning and Zoning Commission to the Board of County Commissioners (BoCC) with its recommendation(s) for approval, approval with conditions, or denial.
- i. The BoCC shall make its decision on the variance request following its standard procedures.
- j. The Zoning Administrator shall notify the applicant of the decision by the BoCC.

3.2. Administrative Appeals

A determination of the Zoning Administrator may be appealed to the Planning and Zoning Commission using the following procedure:

- a. The applicant shall submit a properly completed notice of appeal and supporting materials to the Zoning Administrator within thirty (30) working days after the determination was issued.
- b. The Zoning Administrator shall place a public hearing on the appeal on the agenda of the next Planning and Zoning Commission meeting for which these notice requirements can be met, and at which time will permit its proper consideration. Public notice shall be published at least once in a newspaper of general circulation and mailed to all adjacent landowners at least fifteen (15) working days prior to the public hearing. Notice shall, at a minimum, include the nature of the decision being appealed and the time and place of the public hearing.
- c. The Zoning Administrator shall prepare a summary report that includes the determination and the surrounding circumstances and forward it to the Planning and Zoning Commission.

- d. The Planning and Zoning Commission shall conduct a public hearing on the appeal following the procedure established in the Commission's bylaws. At the conclusion of the hearing, the Planning and Zoning Commission shall decide whether the determination being appealed is in compliance with these regulations, and affirm, modify, or overturn that determination accordingly. The Planning and Zoning Commission's decision shall be in writing and contain a summary of the facts relied on as the basis for its decision.
- e. The Planning and Zoning Commission Chairperson shall notify the applicant of the Planning and Zoning Commission's decision within ten (10) working days after it is made.

3.3. Appeals to Court of Record

Any person aggrieved by any decision of the Planning and Zoning Commission or the BoCC may, within thirty (30) working days after such decision or order, appeal to the district court as provided in Section 76-2-110, MCA.

3.4. Amendments

Any person may petition for the amendment of the Tenmile Alluvial Fan Zone District Regulations. The amendment procedure shall be as provided here and in Section 76-2-107, MCA. Amendments may also be initiated by the Planning and Zoning Commission or the Zoning Administrator, in which case steps a.1, a.2, and a.3, are not required.

a. Amendment Process for Zoning Regulations

1. The applicant shall submit a complete and sufficient application form, the required supporting materials, including a narrative evaluating the amendment request under the review criteria (subsection 3.4.b.), and the required application fee with the Zoning Administrator.
2. The Zoning Administrator shall determine whether the application for and supporting materials is complete and sufficient. When an application is determined to be incomplete or insufficient, the Zoning Administrator shall provide written notice to the applicant indicating what information must be submitted for the review to proceed.
3. When the application is determined to be complete and sufficient, the Zoning Administrator shall schedule a public hearing on the application for a zoning text amendment on an agenda of the Planning and Zoning Commission meeting for which notice requirements can be met, and providing thirty-five (35) working days for processing of the application materials.
4. The Zoning Administrator shall publish notice of the hearing in a newspaper of general circulation at least fifteen (15) working days prior to the Planning and Zoning Commission's public hearing.

5. The Zoning Administrator shall prepare a report that describes the proposed amendment and how it complies, or fails to comply, with the amendment criteria contained in Section 3.4.b, Amendment Criteria.
6. The Planning and Zoning Commission shall conduct a public hearing on the proposed amendment. At the public hearing, the Planning and Zoning Commission shall determine whether the proposed amendment meets the amendment criteria. The Planning and Zoning Commission shall review the particular facts and circumstances of the proposed amendment and develop findings and conclusions that support its recommendation for approval, approval with modifications, or denial.
7. The Zoning Administrator shall convey the Planning and Zoning Commission's recommendation and public comments to the BoCC and place a public hearing on the agenda of the next regular meeting for which notice and posting requirements can be met, and at which time allows for its proper consideration.
8. The BoCC shall conduct a hearing on the proposed amendment. After the public hearing, the BoCC shall review the proposals of the Planning and Zoning Commission and make any revisions or amendments that it determines to be proper.
9. At the conclusion of the amendment process, the Zoning Administrator shall notify the applicant of the decision within ten (10) working days.

b. Amendment Criteria

Zoning amendments shall be made:

1. Consistent with the Tenmile Alluvial Fan Neighborhood Plan.
2. In accordance with the Lewis and Clark County Growth Policy and its Helena Valley Area Plan Update (2015).
3. To secure safety from fire and other danger.
4. To promote public health, safety, and general welfare; and
5. To facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

c. Amendment Process for Zoning Map Changes

The boundary of the Tenmile Alluvial Fan Zone District shall not be amended except through the process outlined in Section 76-2-101, MCA.

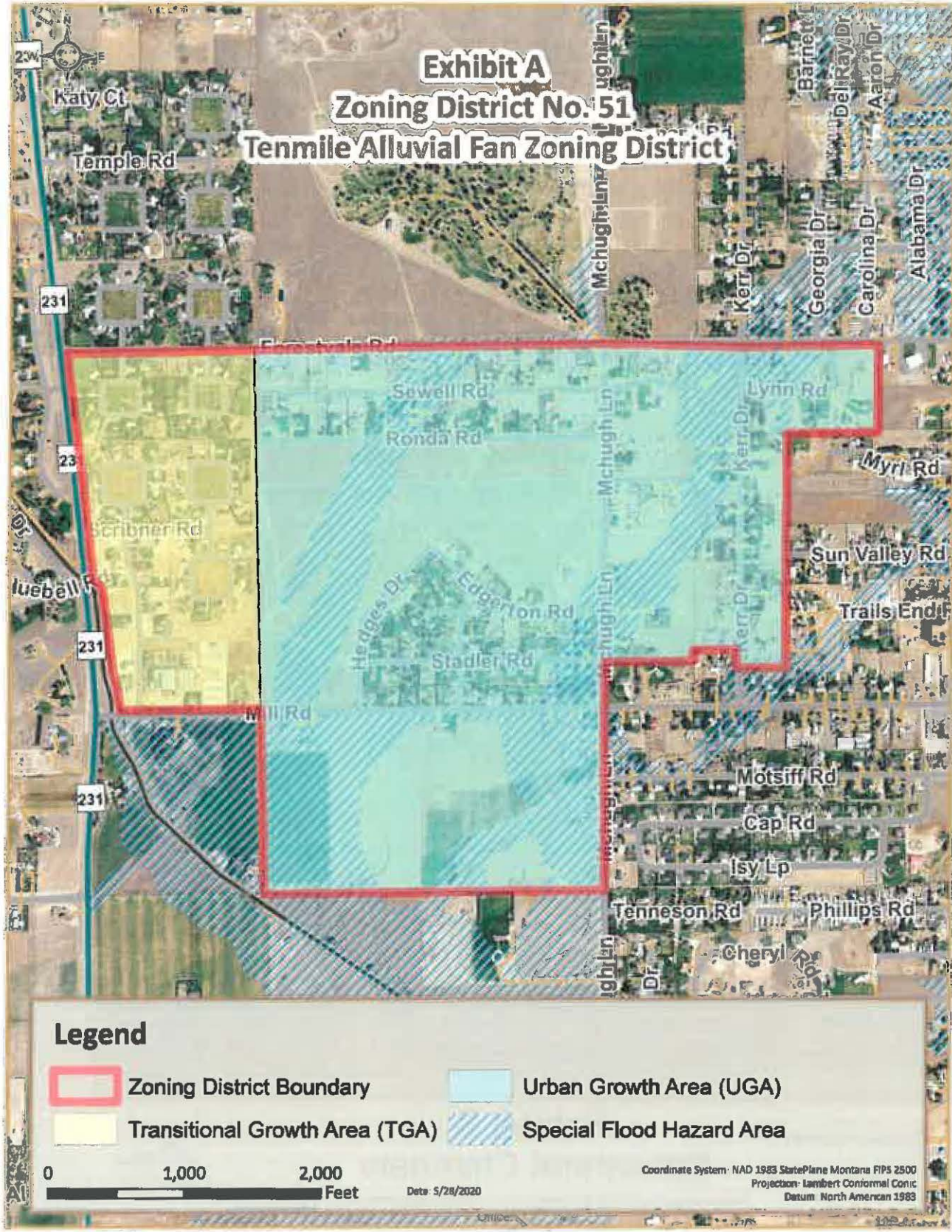
4. DEFINITIONS

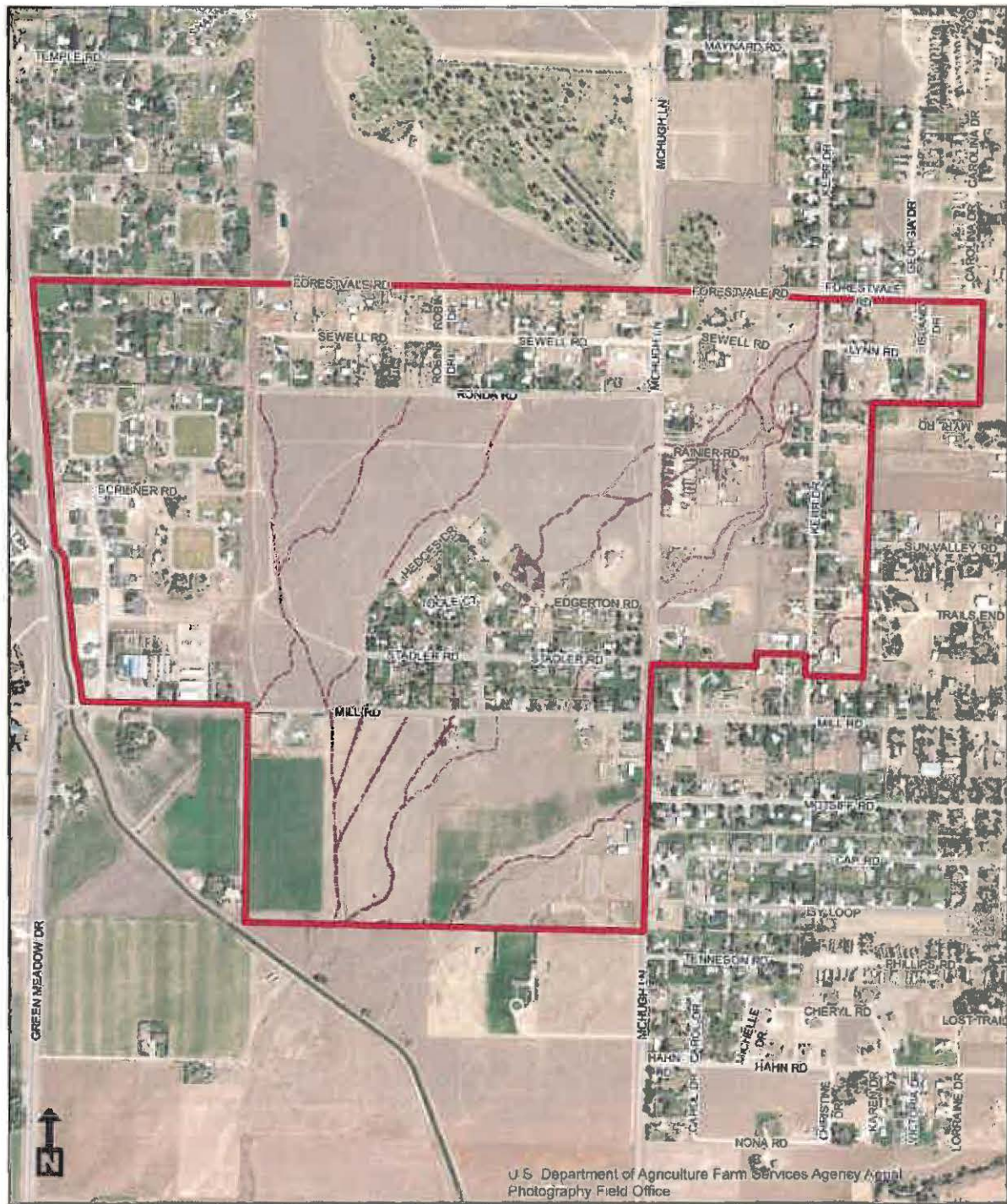
- 4.1. Accessory Use** – A use, building, or structure that is incidental and subordinate to and customarily found with a principal use.

- 4.2. Agriculture** – The science and art of farming, work, or business of cultivating the soil, producing crops, and raising livestock. Agriculture includes horticultural production of flowers, fruits, vegetables, and ornamental plants. This definition does not include uses such as concentrated animal feeding operations (CAFO) or similar activities.
- 4.3. Bed and Breakfast** - A private residence other than a hotel, motel, or multiple-unit dwelling, with no more than eight (8) guestrooms used for temporary accommodation of guests for compensation, and that may serve meals to its guests.
- 4.4. Building Height** – means the vertical distance at any point from natural ground level to the uppermost part of the building above that point (roof ridge, parapet, or wall), excluding minor projections above that point.
- 4.5. Condominium** - A legal form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project with the land and all other parts of the project held in common ownership or use with owners of the other units. The term does not include a townhome, a townhouse, a community land trust, or a housing unit located on land belonging to a community land trust.
- 4.6. Creation of New Parcels of Land** – The creation of new parcels includes, but is not limited to, lots or parcels created through court order (Section 76-3-201(1)(a), MCA); mortgage exemption (Section 76-3-201(1)(b), MCA); the reservation of a life estate (Section 76-3-201(1)(e), MCA); condominium declaration (Section 76-3-203, MCA); family transfer (Section 76-3-207(1)(b), MCA); agricultural exemption (Section 76-3-207(1)(c), MCA), and subdivision review (Section 76-3-101, MCA).
- This term does not include cemetery lots, (Section 76-3-201(1)(d), MCA); lease or rental for farming and agricultural purposes (Section 76-3-201(1)(f), MCA); lots created in a location where the state does not have jurisdiction (Section 76-3-201(1)(g), MCA); or lots created for rights-of-way or utility sites (Section 76-3-201(1)(h), MCA). *Also see Parcel of land.*
- 4.7. Develop or Development** – Commercial, industrial, or residential use or any combination thereof. This term does not include land to be used for agricultural production or open space.
- 4.8. Dwelling Unit** - Any building, or portion thereof, designed to provide complete, independent, and permanent living facilities for one family.
- 4.9. Ephemeral Channel** – A topographic feature in which water flows only in direct response to flooding or precipitation.

- 4.10. Family** - One or more persons related by blood, marriage, or adoption, and/or a group of persons, not related by blood or marriage, living together as a single housekeeping unit in a dwelling unit.
- 4.11. Group Home** – A community residential facility housing eight (8) or fewer residents as provided for in Section 76-2-412, MCA, and licensed by or registered with the State of Montana, including a youth foster home, a kinship foster home, a youth shelter care facility, a youth group home, or a community residential facility as defined in Section 76-2-411, MCA.
- 4.12. Home Day Care** – A facility which provides daily care and supervision of five (5) or more, but not exceeding twelve (12) children or handicapped, disabled or elderly adults, not related by blood or marriage, and not the legal ward of the attendant adult(s), that is registered with an appropriate state agency.
- 4.13. Home Occupation** – Any use conducted on a residential property that is clearly incidental and secondary to the dwelling for dwelling purposes and does not change the character of the property. A home occupation must not: (1) involve more than the equivalent of two persons, whom work on the site, and who do not live in the residence; (2) create noticeable glare, noise, odor, vibration, smoke, dust, or heat at or beyond the property line(s); or (3) generate more than an average of ten additional vehicle trips per day on a weekly basis, including deliveries.
- 4.14. Lot Coverage** – The percentage of a parcel of land that is covered with buildings.
- 4.15. MCA** – Montana Code Annotated, the laws of the State of Montana.
- 4.16. Multiple-Dwelling Unit Residence** - A single building containing three (3) or four (4) dwelling units for occupancy by three (3) or four (4) families living separately from each other, including condominiums and townhomes.
- 4.17. Parcel of land** – An individual tract of record, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the Lewis and Clark County Clerk and Recorder’s office. The terms parcel and lot are used interchangeably in these regulations.
- 4.18. Parent parcel** – The original tract or tracts of record from which new parcels are created.
- 4.19. Person** – Any individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.
- 4.20. Professional Services:** Professional services where customers come to the property for the service, including engineering, accounting, legal, architectural, real estate, insurance, photography, hairstyling and pet grooming.

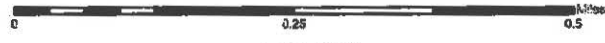
- 4.21.Setback** - The required separation between a lot line and a building or structure.
- 4.22.Single-Dwelling Unit Residence** - A single building situated on one lot that contains one dwelling unit for residential occupancy by one family. This includes manufactured homes, factory-built homes, homes built on site, and townhouses.
- 4.23.Special Flood Hazard Areas** - Flood hazard areas identified on the Flood Insurance Rate Maps for the District are known as Special Flood Hazard Areas (SFHAs). SFHAs are defined as the area that will be inundated by a flood event having a one (1 %) percent chance of being equaled or exceeded in any given year.
- 4.24.Townhome** – Property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities. Also referred to as a Townhouse.
- 4.25.Two-Dwelling Unit Residence** - A single building situated on one lot that contains two (2) dwelling units for occupancy by two (2) families living separately from each other, also known as a Duplex Dwelling Unit Residence, or two buildings situated on one lot that each contain one dwelling unit for occupancy by one family.
- 4.26.Utility Sites** – Parcels of land specifically designed and used to provide a public or quasi-public service subject to special governmental regulations. Such services would typically include, but are not limited to, water tanks, electrical substations, and communications facilities.
- 4.27.Zoning Administrator** – The Director of the Lewis and Clark County Community Development and Planning Department, or designee, who is responsible for interpreting and carrying out the provisions of these regulations.





- Zoning District 51
- Ephemeral Channels

Exhibit B Ephemeral Channels



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