

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into between the **CITY OF HELENA, MONTANA**, 316 North Park Avenue, Helena, Montana 59623 (“City”), and **LEWIS AND CLARK COUNTY**, 316 North Park Avenue, Helena, Montana 59623 (“County”),

Recitals

1. The Parties recognize the value of sustainable land development. “Sustainable” means meeting the needs of the present without compromising the ability of future generations to meet their own needs. Sustainable development is especially necessary in the efficient provision of services and infrastructure such as water and wastewater treatment, parks, transportation networks, and emergency services in the Helena Valley.

2. The cumulative impacts of urban-density development that are served by septic systems in the Helena Valley and the pattern of community and individual septic system failures contribute significant amounts of nutrients that affect the quality of groundwater and surface water. This has created a situation where millions of dollars are required to retrofit on-site septic and community lagoon systems. The standards by which these developments were built have demonstrated substantial failure and have and will continue to require significant local, state, and federal funds to retrofit. The problem in these neighborhoods goes beyond water and wastewater and includes lack of stormwater infrastructure, adequate fire flows, and transportation systems. The Parties are aware that these problems have taken decades to rise to this level and that solutions will not be reached immediately.

3. The parties agree that it is a more efficient and equitable use of public funds if new development pays the cost of its own impacts through more lasting infrastructure investment rather than taxpayers paying to fix problems at a later date.

4. The Parties desire to synthesize their collective approach to encourage sustainable development and establish standards where measureable improvements in the provision of services can be made.

5. The Montana First Judicial District Court recently ruled in *Simmons v. Helena City Commission*, Cause No. BDV-2005-883, that environmental assessments for subdivision development must consider and analyze the impacts of development upon the quality of groundwater and surface water. This analysis includes impacts from residential land uses.

6. The City has spent over \$400 million on water, wastewater, and stormwater infrastructure.

7. The population of Lewis and Clark County, between the years 2007 and 2030, is expected to grow by 36%.

8. Development at urban densities, utilizing City services or County community-wide services, is the most efficient use of land and provides essential services most effectively and at the lowest cost to its residents. The most efficient way to expand the City is through deliberate and incremental growth so that the cost of providing City services is spread across a larger number of people.

9. The City wastewater treatment plant accepts septic biosolids from the pumping of septic systems located throughout the Helena Valley. The City Public Works

Department estimates that septic biosolids account for 8% to 14% of nutrient load at the City wastewater treatment plant.

10. The City desires to maintain and reserve water and wastewater treatment capacity for future growth.

11. In its regulation and permitting process for individual septic tank installations, the Montana Department of Environmental Quality does not analyze the cumulative impacts of septic systems on water quality and quantity, which is critical in the Helena Valley.

12. The Parties recognize that municipal water and wastewater service is not appropriate for all areas of the Helena Valley.

13. The parties have worked together through years of mutual cooperation to solve common problems and, particularly in the past, have concurred on setting informal goals with respect to water quality and more sustainable development patterns in the Helena Valley.

14. The parties recognize the benefits of working together and coordinating regulations, policies, and plans. The parties have created numerous joint City-County boards including, the Helena/Lewis and Clark Consolidated Planning Board, Lewis and Clark City-County Board of Health, City-County Consolidated Park Board, Lewis and Clark/City Library Board, Ambulance Service District, Support Services Board of Directors, and the Lewis and Clark Water Quality Protection District.

15. The Parties have jointly commissioned a consultant to develop and propose implementation of impact fees to fund the capacity for additional fire and rescue

services, parks, water and wastewater services, and transportation services required by developments that receive said services.

16. Sections 76-1-601 and 76-3-608, MCA, encourage and recognize the value of long-range joint planning between cities and counties.

17. The Parties previously entered in to the Lake Helena Basin Memorandum of Understanding which includes the EPA and DEQ. The Parties also jointly commissioned the Helena Area Wastewater Treatment study as a vision for providing wastewater treatment services for areas of the Helena Valley.

18. The Parties desire to continue to work together to promote sustainable development that includes the provision of water, wastewater collection and treatment, fire and police protection, and motorized and non-motorized transportation systems so that future development does not create risks to the public health, safety, and welfare, and public funds are used in the most efficient manner possible.

19. Due to the development pattern with septic system and community system failures, the parties desire to define and address the standards and procedures that have permitted this type of residential development and substantial system failures to occur.

20. The parties agree there is a need to formalize those previously agreed upon informal goals and identify the implementation of a specific plan and tools to be used to achieve those goals through this Memorandum of Understanding.

Agreement

In furtherance of this Memorandum of Understanding, the Parties, subject to their respective legal and budgetary authorities and constraints, mutually agree to:

1. cooperatively develop a plan for sustainable land development in the City of Helena and southern Lewis and Clark County;
2. continue to engage in outreach efforts that educate the community about water quality issues and the role of community systems and the necessity and means for maintenance of septic systems;
3. continue to work together on the development and promulgation of the urban standards boundary and joint infrastructure standards;
4. work within the framework established by the Lake Helena Basin MOU to develop a process for the implementation of total daily maximum nutrient loads as required by the EPA and DEQ;
5. continue to partner to retrofit neighborhood systems; and
6. make a joint appeal to the Montana Department of Environmental Quality to review the cumulative impacts of on-site and community septic systems on water quality.

The City agrees to:

1. continue to accept and treat septic biosolids pumped from Helena Valley septic systems that pass City standards with regard to contaminants or heavy metals if the County makes measurable improvements to develop standards for sustainable development;
2. continue working to upgrade the water and wastewater treatment plants to meet future capacity demands and to comply with environmental requirements;

3. continue to make City water and wastewater treatment services available to County neighborhoods located outside the City when appropriate and in compliance with Helena City Code, which requires annexation;

4. assist and engage with the County to define an urban growth area outside City limits that encompasses:

a. properties that may potentially be suitable for future connection to city utility systems and annexation into the City; and

b. properties with existing or projected land-uses that may impact the environment, city utility infrastructure, or other properties' land-uses; and

5. work with the County to establish joint development standards and comprehensive zoning for the urban growth area that:

a. achieves an efficient and smooth transition for properties being annexed into the City; and

b. promotes environmental and land-use compatibility with the City and other properties within the urban growth area.

The County agrees to:

1. explore and implement more efficient ways to provide for sustainable development growth, including the development and promulgation of subdivision regulations and infrastructure standards that prevent or mitigate degradation of the quality of groundwater and surface water, including cumulative impacts from multiple septic tank systems and impacts from proposed land use;

2. define an urban growth area outside the limits of the City that encompasses:

- a. properties that may potentially be suitable for future connection to city utility systems and annexation into the City; and
 - b. properties with existing or projected land-uses that may impact the environment, city utility infrastructure, or other properties' land-uses;
3. By July 1, 2011 establish and implement for the urban growth area joint development standards and comprehensive zoning that:
- a. achieves an efficient and smooth transition for properties being annexed into the City; and
 - b. promotes environmental and land-use compatibility with the City and other properties within the urban growth area.
4. create and implement a septic maintenance district by the end of fiscal year 2010; and
5. to the extent legally possible, encourage the repair or replacement of failed or environmentally ineffective on-site and community wastewater treatment systems serving developed areas outside of the City of Helena.

The parties recognize that there may be alternative solutions not contained in this Memorandum of Understanding and that those alternatives should be explored and implemented even if they are not contained in this Memorandum of Understanding.

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IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the last signature date written below.

CITY OF HELENA, MONTANA

LEWIS AND CLARK COUNTY, MONTANA

By James E. Smith
James E. Smith, Mayor

By Andy Hunthausen
Andy Hunthausen, Chairman,
Lewis and Clark County
Commission

Date: 07-06-09

Date: 7-7-09

By Paul Cartwright
Paul Cartwright
City Commissioner

~~By _____
Michael A. Murray
County Commissioner~~

Date: 7-8-09

~~Date: _____~~

By Alan G. Peura
Alan G. Peura
City Commissioner

~~By _____
Derek Brown
County Commissioner~~

Date: 7/16/2009

~~Date: _____~~

By Matthew A. Elsaesser
Matthew A. Elsaesser
City Commissioner

APPROVED AS TO FORM:

Date: 7-10-09

By Leo J. Gallagher
Leo J. Gallagher, County Atty.

By Robin Shropshire
Robin Shropshire
City Commissioner

ATTEST:

Date: 7/20/09

Paulette DeHart
Paulette DeHart, Clerk of the Board

APPROVED AS TO FORM:

By Thomas J. Jodoin
Thomas J. Jodoin, Deputy City Atty.