

# STAFF REPORT

## Mt Helena City Park Addition

### *Pre-Zoning*

*Case# PREZ2309-001*

Christopher J. Brink, AICP  
*Director*

Community Development Department  
316 North Park Avenue, Room 445  
Helena, Montana 59623





City of  
**Helena**

## Table of Contents

Section 1 - Project Overview .....	3
Section 2 - Staff Recommendation .....	3
Section 3 - General Information .....	3
Section 4 - Public Process .....	5
Section 5 – Pre-Zone Evaluation .....	6
Section 6 - Growth Policy Analysis.....	7
Section 7 - Staff Recommendation .....	8
Appendix A – Maps.....	9
Appendix B – Comments.....	12



## Section 1 - Project Overview

The applicant, the City of Helena and the Parks, Recreation, and Open Lands department, are requesting annexation into the City of Helena and pre-zoning of property that has yet to be added and included in the City Limits of Helena. The properties in question are described as Parcel I: Blocks 7, 8, 16, and 24 of Highland Park in Lewis and Clark County, Montana, as shown on Retracement Survey filed under Doc. No. 3339312; and, Parcel II: Blocks 17, 18, 22, and 23 of Highland Park in Lewis and Clark County, Montana, as shown on Retracement Survey filed under Doc. No. 3331784; and, The West 1/2 of the Southwest 1/4 of Section 26, Township 10 North, Range 4 West, P.M.M., Lewis and Clark County, Montana, EXCEPTING THEREFROM Tract A of Certificate of Survey filed under Doc. No. 589492-T, records of Lewis and Clark County, Montana, all being known as a portion of Mt. Helena City Park and consists of approximately 136.43 acres.

The subject property is located adjacent to city limits to the east and south and adjacent to unincorporated county (Lewis and Clark) to the north and west. The adjacent zoning district to both the east and south is R-2 and PLI (existing Mt Helena Park property) and to the north and west is R-2 and R-3 and county unzoned zoned.

**In addition to the pre-zoning request and action, the applicant is also requesting a separate but simultaneous action:**

- Annexation into the City of Helena of the same, subject property

## Section 2 - Staff Recommendation

Approval of an ordinance pre-zoning to PLI (Public Lands and Institutions), prior to annexing into the City of Helena, property legally described as Parcel I: Blocks 7, 8, 16, and 24 of Highland Park in Lewis and Clark County, Montana, as shown on Retracement Survey filed under Doc. No. 3339312; and, Parcel II: Blocks 17, 18, 22, and 23 of Highland Park in Lewis and Clark County, Montana, as shown on Retracement Survey filed under Doc. No. 3331784; and, The West 1/2 of the Southwest 1/4 of Section 26, Township 10 North, Range 4 West, P.M.M., Lewis and Clark County, Montana, EXCEPTING THEREFROM Tract A of Certificate of Survey filed under Doc. No. 589492-T, records of Lewis and Clark County, Montana, all being known as a portion of Mt. Helena City Park

## Section 3 - General Information

Application Date: September 1, 2023

Meeting Dates: Zoning Commission – October 10, 2023  
City Commission, 1<sup>st</sup> Reading – October 30, 2023  
City Commission Public Hearing  
and 2<sup>nd</sup> Reading – November 20, 2023

Applicant: City of Helena, Parks Recreation, and Open Lands  
Attn: Douglas Smith, Director  
316 N. Park Avenue  
Helena, Montana 59623

Property Owner:	City of Helena, Parks Recreation, and Open Lands Attn: Douglas Smith, Director 316 N. Park Avenue Helena, Montana 59623
Representative:	Christopher Brink, Director Helena Community Development Department 316 N. Park Avenue Helena, Montana 59623
Legal Description:	Parcel I: Blocks 7, 8, 16, and 24 of Highland Park in Lewis and Clark County, Montana, as shown on Retracement Survey filed under Doc. No. 3339312; and, Parcel II: Blocks 17, 18, 22, and 23 of Highland Park in Lewis and Clark County, Montana, as shown on Retracement Survey filed under Doc. No. 3331784; and, The West 1/2 of the Southwest 1/4 of Section 26, Township 10 North, Range 4 West, P.M.M., Lewis and Clark County, Montana, EXCEPTING THEREFROM Tract A of Certificate of Survey filed under Doc. No. 589492-T, records of Lewis and Clark County, Montana
General location:	West and North of existing tracts of the Mt. Helena City Park located with the City Limits of Helena
Present Land Use:	Parks and Open Space
Adjacent Land Uses:	North: Developing Residential East: Residential West: Residential South: Park and Open Space
Adjacent zoning:	North: R-2/R-3 Pre-Zoned East: R-2, R-1, PUD South: PLI West: Unzoned/County
Current zoning:	Rural Residential Mixed Use (County)
Tract/Property Size:	Approximately 136.43 total acres
2019 Growth Policy Land Use Designation(s):	<b>Open Space</b> – These lands include parks and recreational areas such as golf courses and ball fields; large undeveloped areas maintained in natural vegetation; stream corridors and significant wetland areas (may include regional stormwater detention ponds), and cemeteries. Some open-space areas may be incorporated into other land use categories.

**Suburban** – Includes low-density residential uses (generally one dwelling unit on one to five acres); commercial uses that serve such nearby areas; areas located farther from Helena than the urban category; areas that may provide a transition between urbanized, denser development and rural areas; areas that may have some development constraints such as flood plain location, high ground water or close proximity to water bodies, limited access to transportation network, etc.. Suburban areas may include industrial uses.

**Urban** – Includes predominantly moderate to high density residential uses; may include public uses such as schools, churches, and open lands such as parks; and occasional commercial uses that serve the immediate area or are relatively small and low density. Within the County, it includes areas closer to the City; areas with few development constraints; areas that may be currently developed or could be redeveloped at higher densities; and may include a variety of uses including commercial and light industry.

Within Urban  
Standards Boundary: Partial

## Section 4 - Public Process

Per City Code Section 11-1-4:

- A. All territory to be annexed into the city must first be pre-zoned, and the zoning must be consistent with the designated land uses for such territory as set forth in the growth policy.
- B. Pre-zoning applications are filed with the Community Development Department and any required fees must be paid upon submission of an application.
- C. The zoning commission shall hold a public hearing and make a recommendation to the city commission.
- D. The city commission shall determine the appropriate zoning and pass an ordinance establishing the zoning, which zoning is effective upon the date of annexation. (Ord. 3097, 4-7-2008)

This review process as defined by city code allows for public comment, staff review and vetting through city departments and appointed and elected boards or committees prior to approval. As part of this process, the Community Development Department sends the application materials to applicable departments for their review and comment. This leads to a full evaluation of potential impacts and helps determine how the proposed zoning relates to the review criteria.

### Public Comment

An integral part of the review process are the conducting of public hearings and the solicitation of public comment. As of September 28, 2023, there have been no comments received regarding the

proposed subdivision and annexation. Any comments received during and after the hearing conducted by the Zoning Commission will be attached to this report and presented to the City Commission for their review and final decision.

## Section 5 – Pre-Zone Evaluation

The subject property is zoned in unincorporated Lewis and Clark County as “Rural Residential, Mixed Use. While the zone district and its boundaries have been adopted by the County Commission, development, infrastructure, and other regulations associated with the zone district are currently being drafted. These will be adopted in a future amendment. The intent of that zoning district will be to match City standards, according to Lewis and Clark County.

The applicant, the City of Helena has proposed one zoning district in keeping with the zoning of those Mt Helena City Park tracts currently in the City Limits of Helena – PLI (Public Lands and Institutions)

<p>Montana MCA Section 76-2-304(1.b), Criteria and guidelines for zoning regulations:                  (1) Zoning regulations must be (b) <i>designed to</i>:                  (i) <i>secure safety from fire and other dangers</i>;                  (ii) <i>promote public health, public safety, and the general welfare</i>; and                  (iii) <i>facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements</i>.</p> <p>Montana MCA Section 76-2-304(2.a thru e), “Purposes of Zoning” states:                  (2) <i>In the adoption of zoning regulations, the municipal governing body shall consider</i>:                  (a) <i>reasonable provision of adequate light and air</i>;                  (b) <i>the effect on motorized and non-motorized transportation systems</i>;                  (c) <i>promotion of compatible urban growth</i>;                  (d) <i>the character of the district and its peculiar suitability for particular uses</i>; and                  (e) <i>conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area</i>.</p>	
<p>The proposed pre-zone to PLI meets all the zone change requirements outlined in MCA Section 76-2-304(1.b) and (2.a thru e). This is documented below.</p>	
<p><i>Designed to (i) secure safety from fire and other dangers</i>;</p>	<p>The subject property is currently used for Recreation and Open Space and is part of the Mt. Helena City Park. When annexed, city emergency services, including fire, will be the primary responsibility of the City. This area is designated in the City of Helena Growth Policy as a moderate fire danger area. Once annexed, the parcel will receive all city services, including fire and police.</p>
<p><i>Designed to (ii) promote public health, public safety, and the general welfare; and (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other</i></p>	<p>The City, through its standards, ensures the public health and safety of its citizens through the enforcement of its Building Codes, Fire Codes, and other City regulations. Annexation of the subject tracts will bring the remaining properties which make up the Mt Helena City Park into the</p>



<i>public requirements</i>	City and under public safety services of the city.
The application shall also be reviewed through Montana MCA Section 76-2-304. Montana MCA Section 76-2-304(2.a thru e), In the adoption of zoning regulations, the municipal governing body shall consider:	
<i>(a) reasonable provision of adequate light and air.</i>	The subject property is zoned by the county as rural Residential Mixed-Use and zoning to PLI would keep the property as public recreation and open space.
<i>(b) the effect on motorized and non-motorized transportation systems;</i>	Zoning to PLI should have no additional impact to either motorized or non-motorized transportation systems. The use of the subject property will not change.
<i>(c) promotion of compatible urban growth.</i>	The future land use map designates the subject property as “Suburban”, “Urban”, and “Open Space”. The Growth Policy encourages lands designated as open space to be protected and used for public recreation
<i>(d) the character of the district and its peculiar suitability for particular uses; and</i>	The subject property is in Lewis and Clark County within the Rural Residential Mixed-Use zoning district and is also located partially within the city’s Urban Standards Boundary. City staff is recommending pre-zoning to the PLI district prior to annexation into the city in keeping with the zoning designation of the adjacent Mt Helena City Park tracts currently within the Helena City boundary.
<i>(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area</i>	The PLI District is a suitable district designation for the subject property when considering the existing land uses in the vicinity of the subject tracts.

## Section 6 - Growth Policy Analysis

The 2019 City of Helena Growth Policy represents this area as being best suited for the provision of protected parks, recreation and open space.

The growth policy defines “Open Space” as “lands which include parks and recreational areas such as golf courses and ball fields; large undeveloped areas maintained in natural vegetation; stream corridors and significant wetland areas (may include regional stormwater detention ponds), and cemeteries. Some open-space areas may be incorporated into other land use categories.” With the proposed zone district classification PLI, this property would meet that definition.

The designation of the property as PLI is also supported by the following goals and objectives of the 2019 Growth Policy:

[G.04] Provide and support Helena’s parks and recreational opportunities on- pace with growth.

[G.06] Protect and enhance the quality of Helena’s natural environment, conserving resources for the benefit of present and future generations.

[O.30] Manage provision and use of recreational facilities to protect the integrity of environmentally-sensitive areas.

[0.51] Protect and sustain irreplaceable natural features such as wetlands, stream corridors, and similar high-value areas that provide wildlife habitat, recreational opportunities, improved water quality and safety values such as flood control.

[0.54] Minimize conflicts between wildlife and human development, especially in areas abutting wildlife habitat.

[0.55] Minimize environmental degradation in areas with challenging physical and environmental characteristics, such as steep slopes, watercourses, drainage ways and wetlands.

## Section 7 - Staff Recommendation

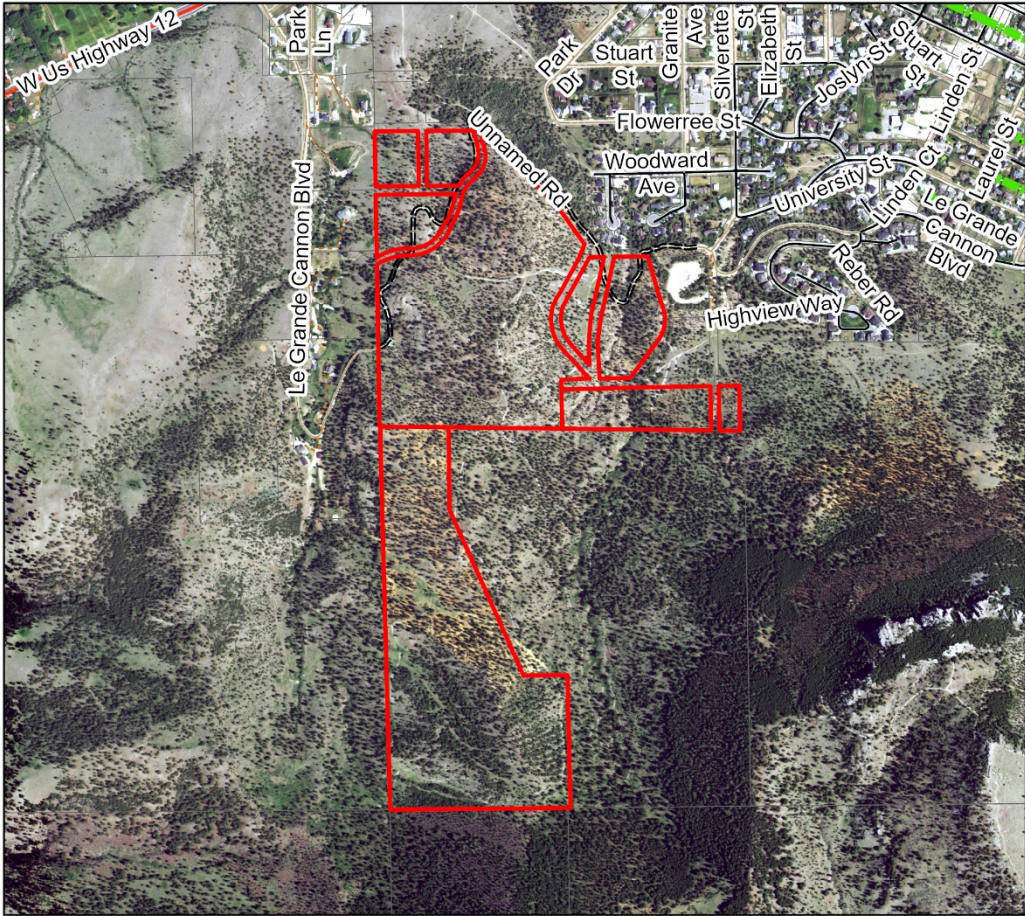
The addition of these tracts to the City of Helena and the requested zoning designation of PLI is consistent with the goals and objectives of the 2019 City of Helena Growth Policy. Those goals are intended to guide City decision making and implement a citizen guided vision for the future of Helena.

### **Staff Recommendation:**

**Approval of an ordinance pre-zoning to PLI (Public Lands and Institutions), prior to annexing into the City of Helena, property legally described as Parcel I: Blocks 7, 8, 16, and 24 of Highland Park in Lewis and Clark County, Montana, as shown on Retracement Survey filed under Doc. No. 3339312; and, Parcel II: Blocks 17, 18, 22, and 23 of Highland Park in Lewis and Clark County, Montana, as shown on Retracement Survey filed under Doc. No. 3331784; and, The West 1/2 of the Southwest 1/4 of Section 26, Township 10 North, Range 4 West, P.M.M., Lewis and Clark County, Montana, EXCEPTING THEREFROM Tract A of Certificate of Survey filed under Doc. No. 589492-T, records of Lewis and Clark County, Montana, all being known as a portion of Mt. Helena City Park.**

# Appendix A – Maps


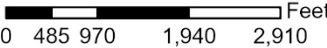
## Mt Helena Annexation Vicinity Map



- Mt Helena Annexation
- Divided 4-Lane
- Paved
- Unpaved
- Driveway
- Non-Motorized
- Alley

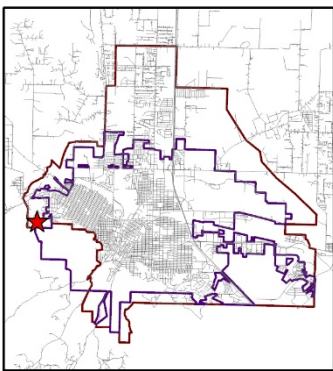


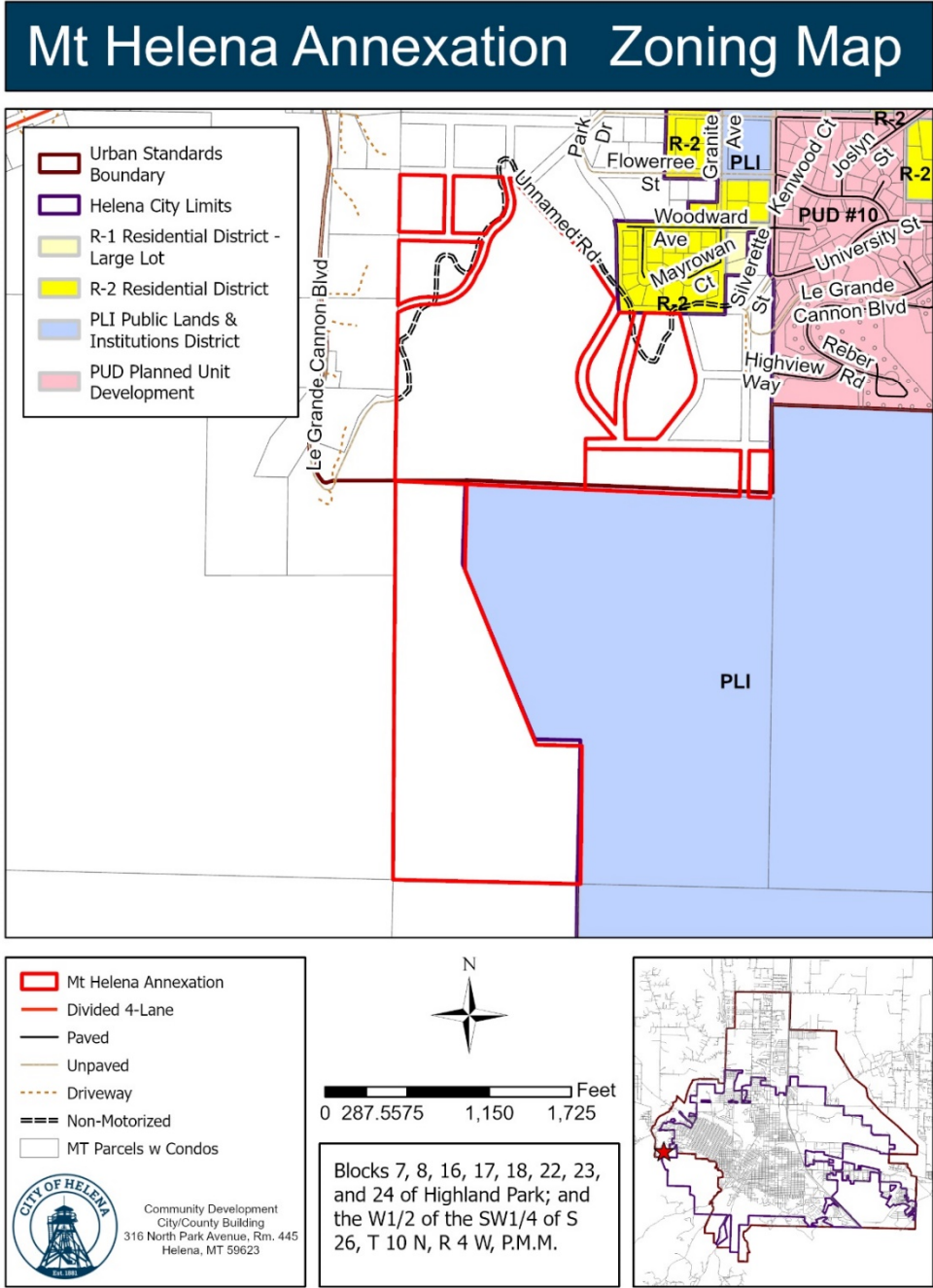
Community Development  
City/County Building  
316 North Park Avenue, Rm. 445  
Helena, MT 59623

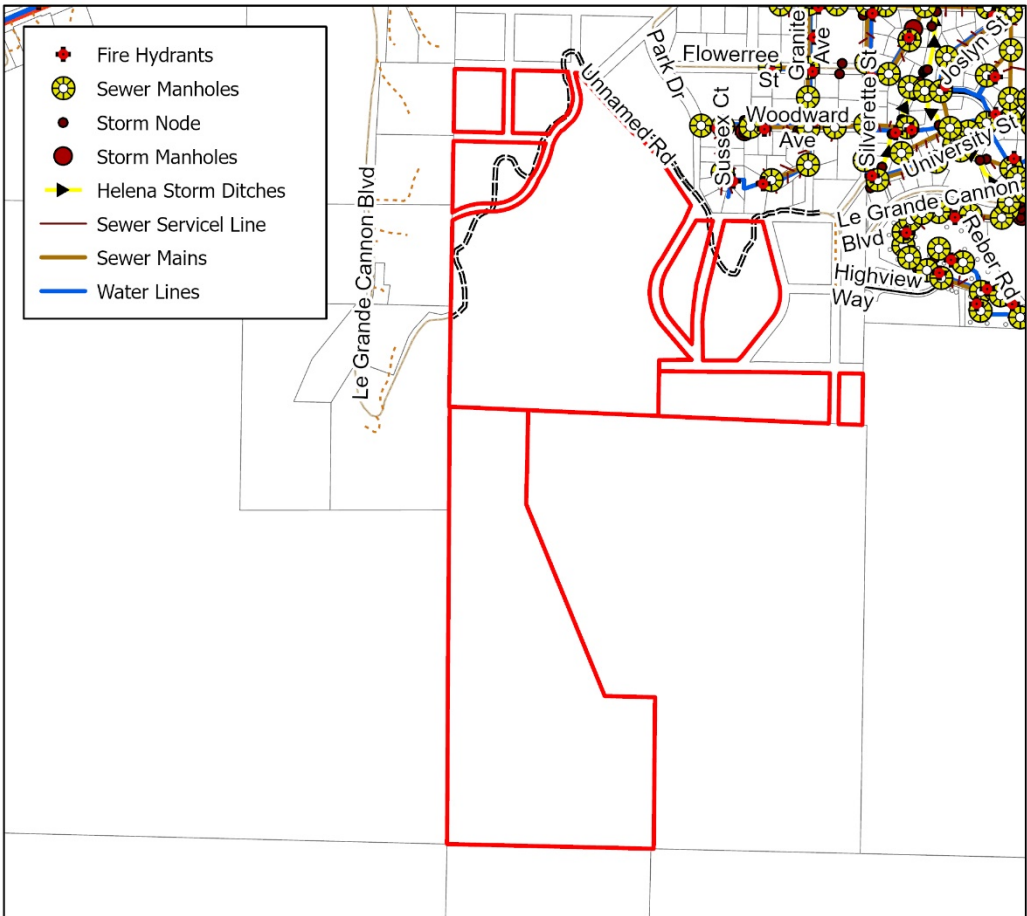
0 485 970 1,940 2,910 Feet

Blocks 7, 8, 16, 17, 18, 22, 23,  
and 24 of Highland Park; and  
the W1/2 of the SW1/4 of S  
26, T 10 N, R 4 W, P.M.M.







# Mt Helena Annexation Utility Map



- Mt Helena Annexation
- Divided 4-Lane
- Paved
- Unpaved
- Driveway
- Non-Motorized
- MT Parcels w Condos

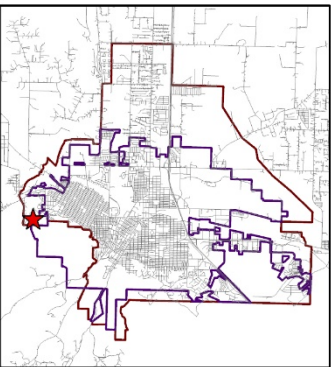


Community Development  
City/County Building  
316 North Park Avenue, Rm. 445  
Helena, MT 59623



0 287.5575 1,150 1,725 Feet

Blocks 7, 8, 16, 17, 18, 22, 23, and 24 of Highland Park; and the W1/2 of the SW1/4 of S 26, T 10 N, R 4 W, P.M.M.



## Appendix B – Comments



# PRE-ZONE APPLICATION FORM

Community Development Department, Planning Division  
316 North Park Avenue, Room 445, Helena, MT 59623  
406-447-8490; [citycommunitydevelopment@helenamt.gov](mailto:citycommunitydevelopment@helenamt.gov)

Date received:

APPLICATION FEE: \$410.00  
(PAYABLE TO THE CITY OF HELENA)  
ALL FEES ARE NON-REFUNDABLE

Per 11-1-4 City Code, all territory to be annexed into the city must first be pre-zoned, and the zoning must be consistent with the designated land uses for such territory as set forth in the growth policy.

**PROPERTY OWNER:** *Primary Contact?*

Name: City of Helena Primary Number: (406) 447-8463  
Address: 316 N. Park Ave, helena, MT 59623 Other Phone: \_\_\_\_\_  
Email: dsmith@helenamt.gov

**APPLICANT** (If different from property owner): *Primary Contact?*

Name: \_\_\_\_\_ Primary Number: \_\_\_\_\_  
Address: \_\_\_\_\_ Other Phone: \_\_\_\_\_  
Email: \_\_\_\_\_ Company: \_\_\_\_\_

**AUTHORIZED REPRESENTATIVE:** *Primary Contact?*

Name: Christopher Brink Primary Number: (406) 447-8490  
Address: 316 N. Park Avenue, Rm 445, Helena, M Other Phone: \_\_\_\_\_  
Email: cbrink@helenamt.gov Company: City of Helena

Address of the Property: \_\_\_\_\_  
Address City State Zip Code

Legal Description (Lots, Block, & Subdivision, COS #, deed reference)

See Attached

Geocode See Attached

Current County Zoning or Special Zoning District County

Adjacent zoning districts PLI, R-1, PUD, R-2 (pre-zoned), County

Provide a current deed and plat/COS with metes and bounds of the subject property

Existing use on the property Park/Open Space

Are there other related Land Use Applications being submitted?: Yes  No

Has an application for annexation been submitted?: Yes  No

Submit proof of current paid taxes

**I HEREBY CERTIFY AND ACKNOWLEDGE THE STATEMENTS IN THIS APPLICATION AND ANY ATTACHED INFORMATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Property Owner

Applicant: \_\_\_\_\_ Date: 9/28/25  
(If different from Owner)

**REVIEW CRITERIA**

(Note: A different zoning district may be recommended if it appropriately fits the review criteria)

Your application will be reviewed using Montana MCA Section 76-2-304, "Criteria and Guidelines for Zoning Regulations" stated below.

- (1) Zoning regulations must be:
  - (a) made in accordance with a growth policy; and
  - (b) designed to secure safety from fire and other dangers;
    - (ii) promote public health, public safety, and the general welfare; and
    - (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
- (2) In the adoption of zoning regulations, the municipal governing body shall consider:
  - (c) reasonable provision of adequate light and air;
  - (d) the effect on motorized and nonmotorized transportation systems;
  - (e) promotion of compatible urban growth;
  - (f) the character of the district and its peculiar suitability for particular uses; and
  - (g) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

Per Section 11-1-10 of the Helena City Code, the Zoning Commission and the City Commission will hold public hearings, to give the public an opportunity to be heard upon the matter. The Zoning Commission will make a recommendation to the City Commission who will approve or deny the requested pre-zoning.

**ZONING IS NOT EFFECTIVE UNTIL THE PROPERTY HAS BEEN ANNEXED INTO THE CITY.**



**To evaluate the requested pre-zoning with the above criteria the following must be submitted with this application. Please provide all the information requested on additional sheets. An incomplete application may delay the review of your request. Please note: "N/A" is not an acceptable answer alone and requires an explanation if used.**

- 1. Apply to the City on the appropriate forms and pay any required fees. The application must include the property owner's signature;
- 2. Describe how your proposal relates to the above zoning review criteria;
- 3. Provide a statement why the proposed zoning should be approved;
- 4. Submit a traffic impact study for a proposed zoning district that is anticipated to generate more than two hundred (200) additional vehicle trips a day;
- 5. Vicinity map of the area showing the location of the property in relation to surrounding land and zoning in the immediate area, water and wastewater mains, other utilities, and city streets and pedestrian facilities (sidewalks, trails);
- 6. Submit a statement on how the proposed zoning conforms to the Helena Growth Policy and Land Use Map. Include how the proposed zoning conforms with the area neighborhood plan if one has been adopted;
- 7. Statement indicating if the existing structures meets the proposed zoning dimensional standards requirements without the need for a variance;
- 8. Statement indicating if the existing use on the subject property meets the proposed zoning permitted uses;
- 9. Historical uses, established use patterns, and recent changes and trends in the neighborhood.

**IT IS RECOMMENDED THAT THE APPLICANT CONTACT NEIGHBORS TO INFORM THEM OF THIS PROPOSAL AND IDENTIFY ANY CONCERNS THAT THE APPLICANT MAY BE ABLE TO ADDRESS.**

**It is the policy of the city commission not to act on a proposal if the applicant/ applicant's representative is not present at the commission meeting.** City Planning Staff represents the City; staff cannot answer questions for the applicant.

Per 1-4-12 City Code, the taxes and assessments on the applicant's property, which is the subject of the proposed action, must be paid or payment of said taxes and assessments must be made a condition of final approval of said action by the City Commission, with the taxes and assessments to be paid within fourteen (14) days after final passage.



Christopher J. Brink, AICP  
Director

**Community Development Department**  
316 North Park Avenue, Room 445  
Helena, Montana 59623

Phone: 406-447-8490  
Direct: 406-447-8445  
Email: cbrink@helenamt.gov

[helenamt.gov](http://helenamt.gov)

## Mt Helena City Park Pre-Zone Narrative

**The attached information was provided by Parks, Recreation, and Open Lands staff for inclusion in the Pre-Zone application accompanying the request to Annex Contiguous Government Land into the City.**

2. Describe how your proposal relates to the above zoning review;

*The City of Helena Parks Department (City Parks) proposes PLI zoning and annexation of 136.43 acres of City open space ownership located adjacent to the northwestern portion of Mount Helena City Park. City Parks staff have determined that the proposed PLI zoning/annexation request successfully meets multiple goals and objectives outlined with Helena's 2019 Growth Policy Update including:*

- A. *Providing and supporting Helena's parks and recreational opportunities on-pace with growth.*
- B. *Protecting and enhancing the quality of Helena's natural environment, and conserving resources for the benefit of present and future generations.*
- C. *Protecting and sustaining irreplaceable natural features and similar high-value areas that provide wildlife habitat.*
- D. *Managing provision and use of recreational facilities to protect the integrity of environmentally sensitive areas.*
- E. *Minimizing conflict between wildlife and human development, especially in areas abutting wildlife habitat.*
- F. *Minimizing environmental degradation in areas with challenging physical and environmental characteristics such as steep slopes and drainage ways.*

3. Provide a statement why the proposed zoning should be approved.

*The zoning proposed by City Parks staff, PLI (Public Land Institutions) is consistent with the adjacent zoning of City owned tracts that have been assembled into an area known formally as "Mount Helena City Park".*

6. *Helena's Area Existing Land Use Map included within the 2019 City of Helena Growth Policy Update depicts the proposed zoning area as Agricultural/Low Density with approximately 79.75 acres planned for future urban use and 59.68 acres planned for future rural use. The lack of structural development within the proposed zoning/annexation area allows for a seamless transition into PLI zoning with a planned future use as public open space.*

8. Statement indicating if the existing use on the subject property meets the proposed zoning permitted uses.

*The existing use of the property, public open space, meets the uses permitted within PLI zoned properties.*

9. Historical uses, established use patterns, and recent changes and trends within the neighborhood.

*Historically, the entire 136.43 acres proposed for PLI zoning has been used as agricultural property with a recent trend of non-motorized recreational usage facilitated by public access from the westernmost closed portion of Le Grande Cannon Boulevard.*

# ORDINANCES OF THE CITY OF HELENA, MONTANA

DRAFT ORDINANCE NO.     

AN ORDINANCE PRE-ZONING PROPERTY, DESCRIBED AS:

PARCEL I: BLOCKS 7, 8, 16, AND 24 OF HIGHLAND PARK IN LEWIS AND CLARK COUNTY, MONTANA, AS SHOWN ON RETRACEMENT SURVEY FILED UNDER DOC. NO. 3339312; AND,

PARCEL II: BLOCKS 17, 18, 22, AND 23 OF HIGHLAND PARK IN LEWIS AND CLARK COUNTY, MONTANA, AS SHOWN ON RETRACEMENT SURVEY FILED UNDER DOC. NO. 3331784; AND

THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 4 WEST, P.M.M., LEWIS AND CLARK COUNTY, MONTANA, EXCEPTING THEREFROM TRACT A OF CERTIFICATE OF SURVEY FILED UNDER DOC. NO. 589492-T, RECORDS OF LEWIS AND CLARK COUNTY, MONTANA

ALL BEING KNOWN AS A PORTION OF MT HELENA CITY PARK, AS PLI (PUBLIC LANDS AND INSTITUTIONS)

WHEREAS, City of Helena City Manager Tim Burton, on behalf of the City of Helena, has requested that the City of Helena annex into the City, Parcel I: Blocks 7, 8, 16, and 24 of Highland Park in Lewis and Clark County, Montana, as shown on Retracement Survey filed under Doc. No. 3339312; and, Parcel II: Blocks 17, 18, 22, and 23 of Highland Park in Lewis and Clark County, Montana, as shown on Retracement Survey filed under Doc. No. 3331784; and, The West 1/2 of the Southwest 1/4 of Section 26, Township 10 North, Range 4 West, P.M.M., Lewis and Clark County, Montana, EXCEPTING THEREFROM Tract A of Certificate of Survey filed under Doc. No. 589492-T, records of Lewis and Clark County, Montana, all being known as a portion of Mt. Helena City Park

# ORDINANCES OF THE CITY OF HELENA, MONTANA

Ord.

(the above-described property is hereinafter collectively referred to as the "Property");

**WHEREAS**, pursuant to Helena City Code Section 11-1-4, all territory to be annexed into the City must first be pre-zoned, and the zoning be consistent with the designated land uses for such territory as set forth in the Growth Policy;

**WHEREAS**, the Property comprises a portion of Mt Helena City Park that currently lies outside the City Limits of the City of Helena;

**WHEREAS**, according to the 2019 City of Helena Growth Policy and to be consistent with the designated land uses for adjacent Mt Helena City Park property, the Property must be pre-zoned to PLI (Public Lands and Institutions);

**WHEREAS**, on **October 10, 2023**, the Helena Zoning Commission recommended **APPROVAL** of the requested pre-zoning as described above; and

**WHEREAS**, the Helena City Commission held a public hearing on the requested pre-zoning **at 6:00 p.m. on November 20, 2023**, staff recommended **APPROVAL** of this request, and in considering said pre-zoning, the Commission gave due consideration to the matters set forth in § 76-2-304, MCA.

# ORDINANCES OF THE CITY OF HELENA, MONTANA

Ord.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA:

**Section 1.** That the above-described property is hereby granted a pre-zoning designation of PLI (Public Lands and Institutions).

All being that property noted on the attached "Exhibit A" as a portion of Mt. Helena City Park.

FIRST PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS 30th DAY OF OCTOBER, 2023.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CLERK OF THE COMMISSION

FINALLY PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2023.

\_\_\_\_\_  
MAYOR

ATTEST:

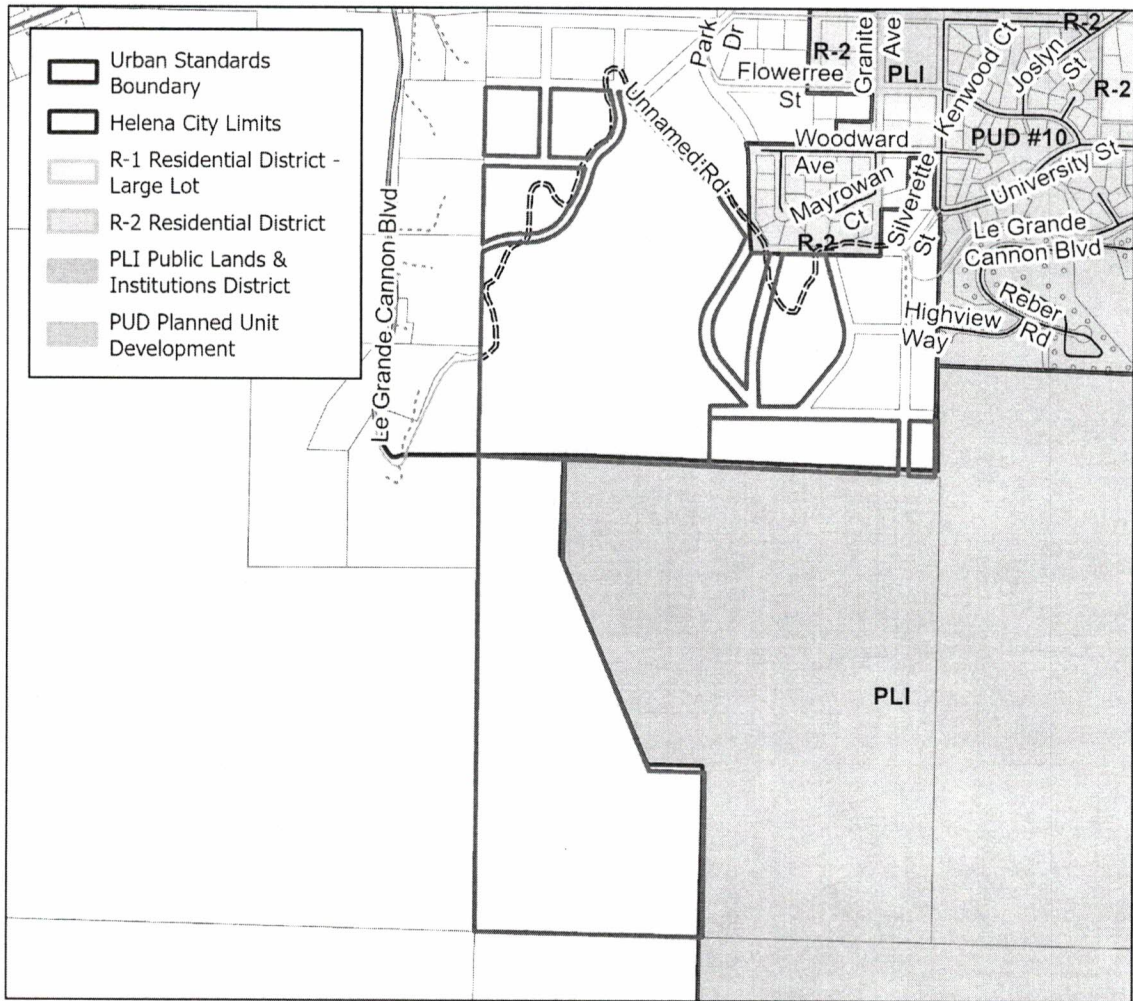
\_\_\_\_\_  
CLERK OF THE COMMISSION

# ORDINANCES OF THE CITY OF HELENA, MONTANA


Ord.

Exhibit A


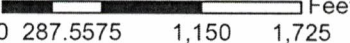
## Mt Helena Annexation Zoning Map



- Mt Helena Annexation
- Divided 4-Lane
- Paved
- Unpaved
- Driveway
- Non-Motorized
- MT Parcels w Condos

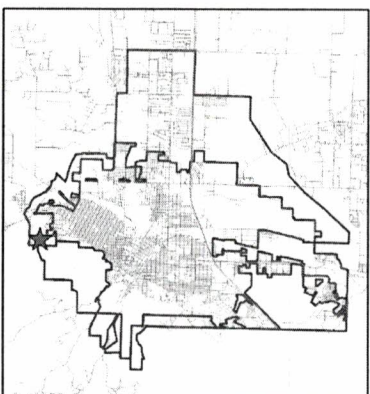


Community Development  
City/County Building  
316 North Park Avenue, Rm. 445  
Helena, MT 59623

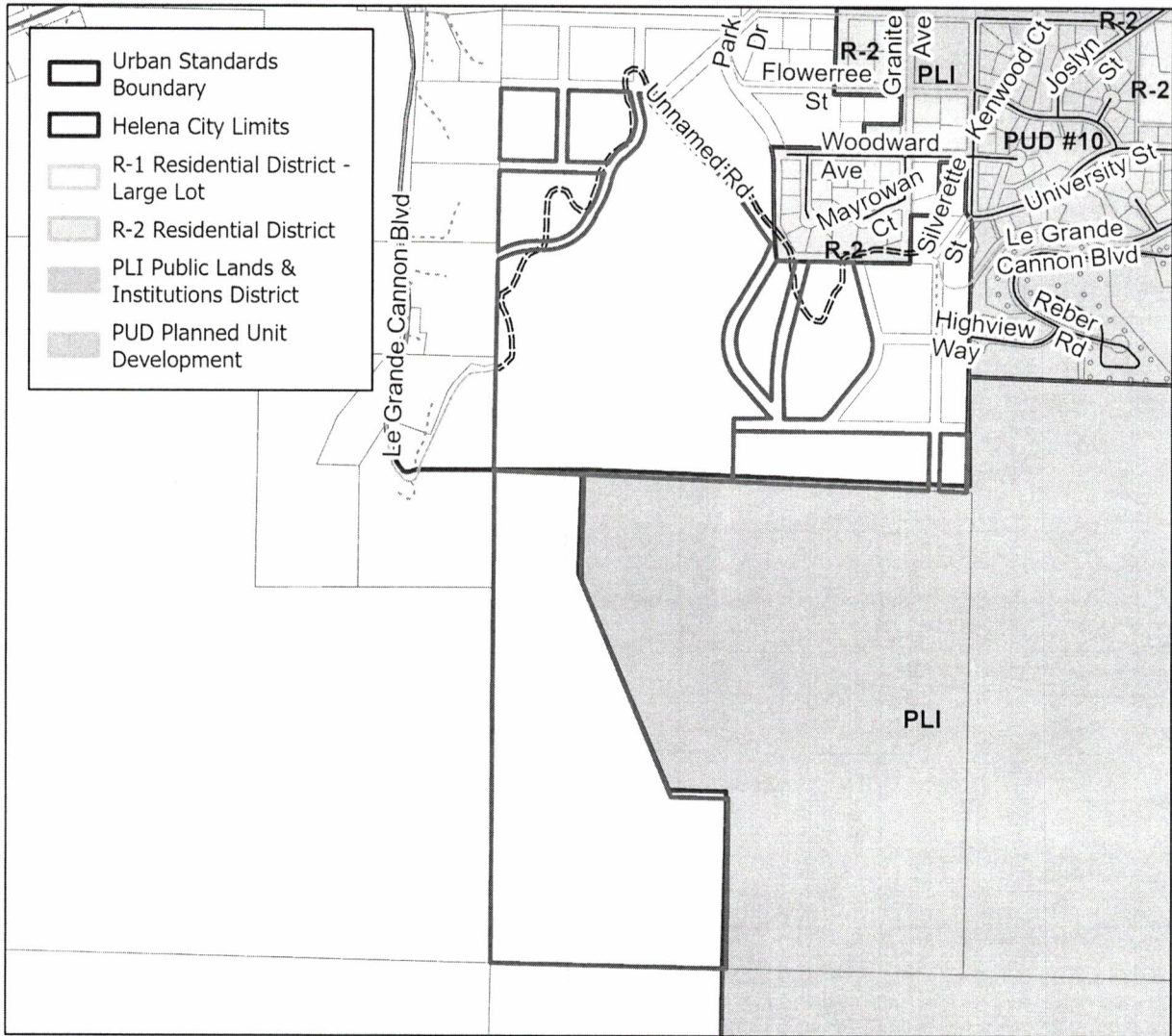



0 287.5575 1,150 1,725 Feet

Blocks 7, 8, 16, 17, 18, 22, 23,  
and 24 of Highland Park; and  
the W1/2 of the SW1/4 of S  
26, T 10 N, R 4 W, P.M.M.




# Mt Helena Annexation Zoning Map

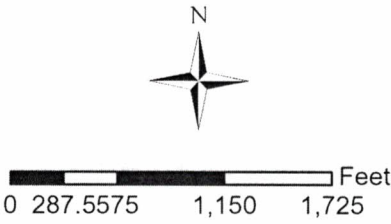


- Urban Standards Boundary
- Helena City Limits
- R-1 Residential District - Large Lot
- R-2 Residential District
- PLI Public Lands & Institutions District
- PUD Planned Unit Development

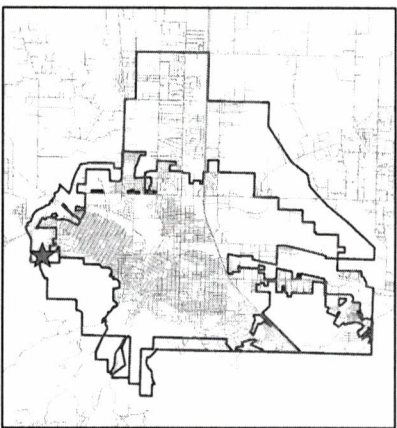
- Mt Helena Annexation
- Divided 4-Lane
- Paved
- Unpaved
- Driveway
- Non-Motorized
- MT Parcels w Condos



Community Development  
City/County Building  
316 North Park Avenue, Rm. 445  
Helena, MT 59623



Blocks 7, 8, 16, 17, 18, 22, 23, and 24 of Highland Park; and the W1/2 of the SW1/4 of S 26, T 10 N, R 4 W, P.M.M.



**After Recording Return To:**

Return to:  
HELENA ABSTRACT & TITLE CO.  
PO BOX 853  
HELENA, MT 59624-0853

HA&T Co 1976933-C

3339314 B: M55 P: 7152 DEED  
07/10/2019 04:11 PM Pages: 1 of 11 Fees: 77.00  
Paulette DeHart Clerk & Recorder, Lewis & Clark MT



**DONATION DEED**

**Prickly Pear Land Trust, Inc.**, a Montana non-profit corporation whose address is 40 W. Lawrence Street, Suite A, Helena, MT 59601, hereinafter referred to as "**Grantor**," in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby admitted, does hereby grant, bargain, sell, convey and confirm unto **The City of Helena**, a municipal corporation and political subdivision of the State of Montana, whose address is 316 North Park Avenue, Helena, MT 59623, hereinafter referred to as "**Grantee**," and to its successors and assigns, FOREVER, the real property, situated in the County of Lewis and Clark, State of Montana, described on Exhibit A attached hereto (the "**Property**").

SUBJECT TO county road rights-of-way not recorded and indexed as a conveyance in the office of the Clerk and Recorder pursuant to Title 70, Chapter 21, Montana Code Annotated (2017).

SUBJECT FURTHER TO all rights for oil, gas, hydrocarbons and minerals reserved in federal patents and state deeds, or reserved or conveyed by Grantor's predecessors in title.

SUBJECT FURTHER TO general county taxes and assessments not yet due or payable as of the date of this deed.

SUBJECT FURTHER TO all third party rights in the Property of record, existing, or visible from examination of the Property; all reservations, exceptions, covenants, conditions, and restrictions of record and in patents from the United States or the State of Montana and acts authorizing the same; and all land use, building, zoning, sanitary, and environmental restrictions.

SUBJECT FURTHER TO title to that portion of the Property, if any, lying below the mean high water mark of abutting navigable rivers.

SUBJECT FURTHER TO the matters described on Exhibit B attached hereto.

SUBJECT FURTHER TO AND RESERVING TO GRANTOR, and its successors and assigns, the perpetual servitude and/or deed restriction contained in Exhibit C attached hereto.



TOGETHER WITH, but without warranty of title, all minerals and mineral rights appurtenant to the Property, and all rights to explore for and extract such minerals, not reserved or conveyed to third parties by Grantor's predecessors in title or reserved by patents. "**Minerals**" are defined to be coal, oil, gas, and all other hydrocarbons, and all interest in all minerals, metallic and non-metallic, hard or soft, including, but not limited to gold, silver, copper, iron, lead, zinc, talc, calcium carbonate, mica, kaolin, uranium, vanadium and thorium, rare metals, rare earth, gravel and all other substances which have or may hereafter have any intrinsic value separate from the surface of the Property, in, on and under the Property. In addition, Grantor conveys to Grantee all other substances on the Property including sand, bentonite, clay, rock of a unique character, landscape rock, artifacts, animal bone and remains, paleontological (fossil) resources, and other man-made and naturally occurring elements, compounds and substances, in, on, or under the Property. Grantor warrants that Grantor has not severed or otherwise conveyed an interest in any Minerals and Mineral rights appurtenant to the Property to any third party.

FURTHER TOGETHER WITH solar, wind, and/or geothermal energy rights appurtenant to the Property and owned by Grantor. Grantor warrants that Grantor has not conveyed an interest in any solar, wind, and/or geothermal energy rights appurtenant to the Property to any third party.

FURTHER TOGETHER WITH, but without warranty as to quantity, quality, priority or availability of water, all water and water rights, and rights in ditches, canals and laterals and rights of way appurtenant to or used in conjunction with the Property. Grantor warrants that Grantor has not conveyed an interest in any water and water rights appurtenant to the Property to any third party.

FURTHER TOGETHER WITH all timber standing and down and rights, if any, with regard to all timber standing and down on the Property. Grantor warrants that Grantor has not conveyed title to any timber standing or down or rights in timber standing and down on the Property to any third party.

FURTHER TOGETHER WITH all easements and rights of way appurtenant to and utilized in conjunction with the Property.

FURTHER TOGETHER WITH all fixtures, fences, gates and any and all improvements and fixtures located on the Property.

FURTHER TOGETHER WITH all and singular the hereinbefore described premises, together with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, all and singular, the above described Property unto the said Grantee and to its successors and assigns forever. Grantor, for itself and its successors and assigns, does hereby covenant with Grantee, its successors and assigns, to warrant and defend the title to the Property hereby conveyed on the express terms of this Donation Deed, against the claim of every person whatsoever, claiming by, through or under the said Grantor. Grantor, for itself and its successors and assigns, expressly limits the covenants of this Donation Deed to those herein expressed, and warrants and covenants to Grantee only that prior to the execution of this



**ACCEPTANCE BY CITY OF HELENA**

The City of Helena hereby approves and accepts the Donation Deed.

THE CITY OF HELENA, a municipal corporation  
and political subdivision of the State of Montana

By:   
Ana Cortez, City Manager

Dated: 7/10/19

STATE OF MONTANA     )  
  : ss.  
County of Lewis and Clark    )

This instrument was acknowledged before me on behalf of the City of Helena, a municipal corporation and political subdivision of the State of Montana, by Ana Cortez, the City Manager, on the 10<sup>th</sup> day of July, 2019.

Notary Signature:   
Notary Public for the State of Montana

(NOTARIAL SEAL)

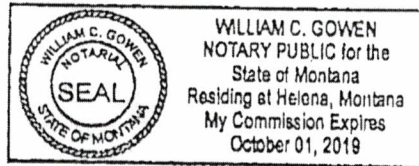


Exhibit A

Legal Description of the Property

Parcel I: Blocks 7, 8, 16, and 24 of Highland Park in Lewis and Clark County, Montana, as shown on the Retracement Survey filed under Doc. No. 3339312.

Parcel II: Blocks 17, 18, 22, and 23 of Highland Park in Lewis and Clark County, Montana, as shown on the Retracement Survey filed under Doc. No. 3331784.

[End of Exhibit A]

Exhibit B

Permitted Exceptions

- 1.-10. Intentionally Deleted.
11. RESOLUTION naming and/or re-naming streets and/or roads, recorded in Book 54 Misc., page 483.
12. RIGHT OF WAY EASEMENT to Helena Water Works Co., recorded in Book 58 Deeds, page 572.  
  
EASEMENT by and between William Whyte and Margaret Whyte, husband and wife, Grantors, and the City of Helena, recorded in Book 273 Deeds, page 601.
13. RIGHT OF WAY EASEMENT to Helena Water Works Co., recorded in Book 58 Deeds, page 574.
14. RESOLUTION 1994-202, for the seasonal closure to motorized vehicles of a portion of Le Grande Cannon Boulevard, recorded Jan. 17, 1995 in M Book 16 of Records, page 4490.
15. RESOLUTION 1995-87, for the temporary closure to motorized vehicles of a portion of Le Grande Cannon Boulevard, recorded July 26, 1995 in M Book 17 of Records, page 62.
16. RIGHT OF WAY for LeGrande Cannon Boulevard referred to in Deed from Sarah J. Platt, a widow, to Piatt & Heath Co, recorded in Book 75 Deeds, page 632.
17. Subject to all terms, conditions, and provisions contained in Judgment dated May 9, 1979, Cause No. 42377.
18. Petition to abandon and/or discontinue a county road, being a portion of Le Grande Cannon Boulevard, also known as Hot Springs Drive, recorded Dec. 22, 2006 in M Book 35 of Records, page 7250.
19. Subject to all items as shown on the Original Plat of Highland Park and on plat filed under Doc. No. 3331784 and 3339312 and including but not limited to all terms, provisions, conditions, and restrictions of the Dept. of Environmental Quality, as set forth on the attachments, if any, to said plat.
20. Subject to all items set forth in the Personal Representatives Deed recorded 7-10-2019 in M Book 55 of Records, page 7151.

[End of Exhibit B]

Exhibit C

Reservation of Servitude

The Property is conveyed to Grantee subject to the following deed restriction and/or reservation of servitude (the “**Servitude**”):

1. Reservation of Servitude. Pursuant to Mont. Code Ann. § 70-17-102(7) (2017), Grantor hereby reserves a Servitude on, over, and under the Property.
  - a. **Beneficiaries.** The rights and benefits of this Servitude shall be held by Grantor and its successors and assigns.
  - b. **Duration.** The servitude rights created in this Servitude are perpetual.
  - c. **Conservation Values.** This Servitude is reserved by Grantor to conserve open-space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to the Property (the “**Conservation Values**”).
  - d. **Purposes of Servitude.** The purposes of this Servitude are as follows:
    - i. To assure that the Conservation Values will be maintained in perpetuity and to prevent any use of, or activity on, the Property that will significantly impair those Conservation Values;
    - ii. To prohibit construction or development of structures on the Property except those expressly permitted by this Servitude; and
    - iii. To prohibit subdivision of the Property into multiple parcels or conveyance of only a portion of the Property to third parties except as expressly permitted by this Servitude.
  - e. **Binding Effect; Runs with Title.** This Servitude shall run with and burden title to the Property in perpetuity and shall bind Grantee and all future owners and tenants of the Property.
  - f. **Assignment.** Grantor may transfer or assign its interest in this Servitude, provided that any such assignment or transfer must be made to a “qualified private organization,” within the meaning of Mont. Code Ann. § 76-6-104(5). Any such qualified private organization must accept the assignment and agree in the assignment instrument to enforce in perpetuity the Servitude.
2. Use of the Property.
  - a. **Open Space.** The Property shall be utilized and maintained as public open space land accessible by the public without any construction or development of

structures other than for improvements related to its public open space status including but not limited to public restrooms, walking trails, trailhead parking lots, picnic areas, and other similar improvements typically found in public open space areas; and/or agricultural improvements described in Section 2.b of this Servitude.

- b. **Agricultural.** The Property may be used to conduct farming, ranching and other agricultural activities, including raising, managing, and selling livestock and planting, raising, harvesting, and selling agricultural crops (collectively, “**Agricultural Use**”), provided that the Agricultural Use remains consistent with the open space use of the Property and does not substantially adversely affect the Conservation Values. Non-residential structures or improvements used for agricultural purposes, including but not limited to barns, shelters, sheds, livestock corrals, loafing sheds, fences, and hay storage areas, may be constructed on the Property.
  - c. **Easements; boundary line adjustments.** Grantee or its successors in title may grant easements across the Property for ingress, egress, and utilities to adjacent or nearby parcels; or enter into boundary line adjustments, provided that Grantee obtains the advance written consent of Grantor and provided further that such easements or boundary line adjustments do not substantially adversely affect the Conservation Values.
3. Prohibited Uses of the Property. The following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are hereby deemed to be inconsistent with the purposes of this Servitude and are expressly prohibited: commercial feed lots or animal processing plants; game, fur, or fish farms; retail sales businesses; commercial recreation facilities; the removal or extraction of any mineral, including oil, gas, hydrocarbons, sand, and/or gravel; and any dumping or other disposal of non-compostable refuse.
  4. Recognition of Grantor, William Whyte, and the William Whyte family. This Servitude reserves to Grantor, and its successors and assigns, the right at Grantor’s discretion and Grantor’s expense to do any or all of the following:
    - a. Place, maintain, repair, and replace signage or monumentation on the Property recognizing the roles of Grantor, William Whyte, and/or the family of William Whyte in conserving the Property as open space property. Grantee shall have the right, which shall not be unreasonably withheld, to approve the siting and design of any such signage or monumentation; and
    - b. Name the park or open space area(s) within the Property. Grantee shall have the right, which shall not be unreasonably withheld, to approve the name(s) selected by Grantor.

5. Breach; Remedies.

- a. If the Property ceases being used for public open space purposes as defined herein in the future, and/or any person takes any action which if successful would have the effect of converting the Property from public open space land to another use, Grantor or its successors and assigns shall be entitled to injunctive relief, including specific performance, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, together with its costs and such reasonable attorneys fees as the court having jurisdiction over the matter shall award, if the court determines that the Servitude was or would be breached.
- b. Prior to filing any court action related to a breach of this Servitude, Grantor or its successors and assigns shall use reasonable efforts to (1) give the Grantee or its successors and assigns thirty (30) days written notice of their intent to take any such measures; and (2) if the City of Helena is the owner, within the written notice, extend an offer to meet with City officials to discuss the Grantor's concerns within the 30-day notice period; provided, however, that no such notice and/or meeting shall be required if Grantor or its successors and assigns has reason to believe that the Property's conversion from public open space land to another use is or may be imminent.

6. Cooperative Agreement.

- a. The Property was acquired by Grantor with assistance from the United States Army (the "**Army**") pursuant to a special military project cooperative agreement pursuant to 10 USC § 2684a (the "**Cooperative Agreement**") between Grantor and the National Guard Bureau on behalf of Fort William H. Harrison. In the Cooperative Agreement Grantor agreed that Grantor and its successors and assigns shall hold and maintain the Property consistent with the terms and conditions set forth in the Cooperative Agreement.
- b. Grantee may not convey any interest in the Property without the prior written approval of the Army; provided however, with the prior approval of the Army, Grantee may convey the Property subject to the Servitude.
- c. The Army shall have the right to monitor and enforce the Servitude if Grantor or its successors or assigns fails to protect the Property in accordance with the terms of the Servitude.
- d. If Grantee or its successors or assigns permit the Property to be used in a manner inconsistent with this Servitude and/or the 2684a Cooperative Agreement, and Grantor or its successors or assigns fail to protect the Property in accordance with the terms of the Servitude, Grantee or its successors or assigns shall transfer fee interest in the Property to the Army upon the request of the Secretary of the



Army, in accordance with and under the conditions specified in 10 USC § 2684a(d)(5).

- e. The interests of the Army in the Property are limited to those interests set forth in the Servitude.
7. Notices. All notices, requests, demands, letters, waivers and other communications required or permitted to be given under this Servitude shall be deemed to have been duly given if (a) delivered personally, (b) mailed, certified or registered mail, return receipt requested, with postage prepaid, (c) sent by next-day or overnight mail or delivery directed to a party at the address set forth below, or to such other address as a party may indicate by written notice to the other parties. All such notices, requests, demands, letters, waivers and other communications shall be deemed to have been received (i) if by personal delivery, on the day after such delivery, (ii) if by certified or registered mail, on the third business day after the mailing thereof, or (iii) if by next-day or overnight mail or delivery, on the day delivered.

If to Grantor:

Prickly Pear Land Trust, Inc.  
Attn: Mary Hollow, Executive Director  
40 W. Lawrence Street, Suite A  
Helena, MT 59601

[Grantor is responsible for updating this address by giving written notice to Grantee of any changes.]

If to Grantee:

[City of Helena]  
[Address]

[Grantee is responsible for updating this address by giving written notice to Grantor of any changes.]

8. Miscellaneous Provisions.

- a. If any provision of this Servitude or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Servitude and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.
- b. Time is of the essence of this Servitude.
- c. The laws of the State of Montana shall govern the interpretation and enforcement of this Servitude, without giving effect to choice of law principles.

- d. This Servitude is granted and conveyed pursuant to Mont. Code Ann. § 70-17-102(7), and creates a servitude that will encumber title to the Property for the duration specified herein.

[End of Exhibit C]

**After Recording Return To:**

Thomas J. Bourguignon

Maclay Law Firm

P.O. Box 9197

Missoula, MT 59807-9197 *cutl*

*HA&TCo # 2077963-C*

Return to:

HELENA ABSTRACT & TITLE CO.

PO BOX 853

HELENA, MT 59624-0853

**DONATION DEED**

**Prickly Pear Land Trust, Inc.**, a Montana non-profit corporation whose address is 40 W. Lawrence Street, Suite A, Helena, MT 59601, hereinafter referred to as "**Grantor**," as a gift, does hereby grant, bargain, give, convey and confirm unto **The City of Helena**, a municipal corporation and political subdivision of the State of Montana, whose address is 316 N. Park Ave, Helena, MT 59623, hereinafter referred to as "**Grantee**," and to its successors and assigns, FOREVER, the real property, situated in the County of Lewis and Clark, State of Montana, described on Exhibit A attached hereto (the "**Property**").

SUBJECT TO county road rights-of-way not recorded and indexed as a conveyance in the office of the Clerk and Recorder pursuant to Title 70, Chapter 21, Montana Code Annotated (2019).

SUBJECT FURTHER TO all rights for oil, gas, hydrocarbons and minerals reserved in federal patents and state deeds, or reserved or conveyed by Grantor's predecessors in title.

SUBJECT FURTHER TO general county taxes and assessments not yet due or payable as of the date of this deed.

SUBJECT FURTHER TO all third party rights in the Property of record, existing, or visible from examination of the Property; all reservations, exceptions, covenants, conditions, and restrictions of record and in patents from the United States or the State of Montana and acts authorizing the same; and all land use, building, zoning, sanitary, and environmental restrictions.

SUBJECT FURTHER TO all items shown on Certificate of Survey filed under Doc. No. 589492-T.

SUBJECT FURTHER TO AND RESERVING TO GRANTOR, and its successors and assigns, the perpetual servitude and/or deed restriction contained in Exhibit B attached hereto.

TOGETHER WITH, but without warranty of title, all minerals and mineral rights appurtenant to the Property, and all rights to explore for and extract such minerals, not reserved or conveyed to third parties by Grantor's predecessors in title or reserved by patents. "**Minerals**" are defined to be coal, oil, gas, and all other hydrocarbons, and all interest in all minerals, metallic and non-



metallic, hard or soft, including, but not limited to gold, silver, copper, iron, lead, zinc, talc, calcium carbonate, mica, kaolin, uranium, vanadium and thorium, rare metals, rare earth, gravel and all other substances which have or may hereafter have any intrinsic value separate from the surface of the Property, in, on and under the Property. In addition, Grantor conveys to Grantee, without warranty of title, all other substances on the Property including sand, bentonite, clay, rock of a unique character, landscape rock, artifacts, animal bone and remains, paleontological (fossil) resources, and other man-made and naturally occurring elements, compounds and substances, in, on, or under the Property. Grantor warrants that Grantor has not severed or otherwise conveyed an interest in any Minerals and Mineral rights appurtenant to the Property to any third party.

FURTHER TOGETHER WITH solar, wind, and/or geothermal energy rights appurtenant to the Property and owned by Grantor. Grantor warrants that Grantor has not conveyed an interest in any solar, wind, and/or geothermal energy rights appurtenant to the Property to any third party.

FURTHER TOGETHER WITH, but without warranty as to quantity, quality, priority or availability of water, all water and water rights, and rights in ditches, canals and laterals and rights of way appurtenant to or used in conjunction with the Property. Grantor warrants that Grantor has not conveyed an interest in any water and water rights appurtenant to the Property to any third party.

FURTHER TOGETHER WITH all timber standing and down and rights, if any, with regard to all timber standing and down on the Property. Grantor warrants that Grantor has not conveyed title to any timber standing or down or rights in timber standing and down on the Property to any third party.

FURTHER TOGETHER WITH all easements and rights of way appurtenant to and utilized in conjunction with the Property, including but not limited to all of Grantor's interest in the Granted Easement shown on the Warranty Deed from Paul A. Graham and Rebecca B. Graham to Grantor as recorded on 9-30-2020, 2020 in M Book 57, Page 8916, records of Lewis and Clark County, Montana.

FURTHER TOGETHER WITH all fixtures, fences, gates and any and all improvements and fixtures located on the Property.

FURTHER TOGETHER WITH all and singular the hereinbefore described premises, together with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

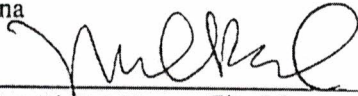
TO HAVE AND TO HOLD, all and singular, the above described Property unto the said Grantee and to its successors and assigns forever. Grantor, for itself and its successors and assigns, does hereby covenant with Grantee, its successors and assigns, to warrant and defend the title to the Property hereby conveyed on the express terms of this Donation Deed, against the claim of every person whatsoever, claiming by, through or under the said Grantor. Grantor, for itself and its successors and assigns, expressly limits the covenants of this Donation Deed to those herein expressed, and warrants and covenants to Grantee only that prior to the execution of this



ACCEPTANCE BY CITY OF HELENA

The City of Helena hereby approves and accepts the Donation Deed.

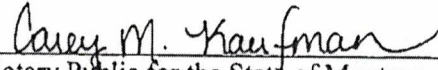
THE CITY OF HELENA, a municipal corporation and political subdivision of the State of Montana

By:   
MELINDA REED, City Manager

Dated: 09/29/20

STATE OF MONTANA     )  
   : ss.  
County of Lewis and Clark     )

This instrument was acknowledged before me on behalf of the City of Helena, a municipal corporation and political subdivision of the State of Montana, by Melinda Reed, the City Manager, on the 29<sup>th</sup> day of September, 2020.

Notary Signature:   
Notary Public for the State of Montana

(NOTARIAL SEAL)

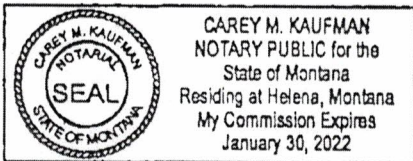


Exhibit A to Donation Deed

Legal Description of the Property

The W1/2SW1/4 of Section 26, Township 10 North, Range 4 West, P.M.M., Lewis and Clark County, Montana, EXCEPTING THEREFROM Tract A of Certificate of Survey filed under Doc. No. 589492-T, records of Lewis and Clark County, Montana.

[End of Exhibit A]

Exhibit B to Donation Deed

Reservation of Servitude

The Property is conveyed to Grantee subject to the following deed restriction and/or reservation of servitude (the “**Servitude**”):

1. Reservation of Servitude. Pursuant to Mont. Code Ann. § 70-17-102(7) (2019), Grantor hereby reserves a Servitude on, over, and under the Property.
  - a. **Beneficiaries.** The rights and benefits of this Servitude shall be held by Grantor and its successors and assigns.
  - b. **Duration.** The servitude rights created in this Servitude are perpetual.
  - c. **Conservation Values.** This Servitude is reserved by Grantor to conserve open-space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to the Property (the “**Conservation Values**”).
  - d. **Purposes of Servitude.** The purposes of this Servitude are as follows:
    - i. To assure that the Conservation Values will be maintained in perpetuity and to prevent any use of, or activity on, the Property that will significantly impair those Conservation Values;
    - ii. To prohibit construction or development of structures on the Property except those expressly permitted by this Servitude; and
    - iii. To prohibit subdivision of the Property into multiple parcels or conveyance of only a portion of the Property to third parties except as expressly permitted by this Servitude.
  - e. **Binding Effect; Runs with Title.** This Servitude shall run with and burden title to the Property in perpetuity and shall bind Grantee, its successors and assigns, and all future owners and tenants of the Property.
  - f. **Assignment.** Grantor may transfer or assign its interest in this Servitude, provided that any such assignment or transfer must be made to a “qualified private organization,” within the meaning of Mont. Code Ann. § 76-6-104(5). Any such qualified private organization must accept the assignment and agree in the assignment instrument to enforce in perpetuity the Servitude.
2. Use of the Property.
  - a. **Open Space.** The Property shall be utilized and maintained as public open-space land accessible by the public without any construction or development of



structures other than improvements related to its public open-space status including but not limited to public restrooms, walking trails, trailhead parking lots, picnic areas, and other similar improvements typically found in public open-space areas; and/or agricultural improvements described in Section 2.b of this Servitude.

- b. **Agricultural.** Subject to the provisions of Section 3 of this Servitude, the Property may be used to conduct farming, ranching and other agricultural activities, including raising, managing, and selling livestock and planting, raising, harvesting, and selling agricultural crops (collectively, "**Agricultural Use**"), provided that the Agricultural Use remains consistent with the open-space use of the Property and does not substantially adversely affect the Conservation Values. Non-residential structures or improvements used for agricultural purposes, including but not limited to barns, shelters, sheds, livestock corrals, loafing sheds, fences, and hay storage areas, may be constructed on the Property.
- c. **Easements.** Grantee or its successors in title may grant easements across the Property for ingress, egress, and utilities to adjacent or nearby parcels, provided that such easements do not substantially adversely affect the Conservation Values.
- d. **Boundary line adjustments.** Grantee or its successors in title may enter into boundary line adjustments, provided that Grantee obtains the advance written consent of Grantor and provided further that such easements or boundary line adjustments do not substantially adversely affect the Conservation Values. Notwithstanding any other provision of this Servitude, Grantee shall have the right in its sole discretion enter into a boundary line adjustment as follows:

Grantee shall have the right to complete a certificate of survey for a boundary line adjustment (the "**Survey**") with neighboring lands currently owned by Paul A. Graham and Rebecca B. Graham (collectively, "**Graham**"). The Survey contemplated by this paragraph may relocate common boundaries and eliminate the boundary between the Property conveyed in this Donation Deed and adjacent land also owned by Grantee. Any Survey or boundary line adjustment made pursuant to this paragraph shall not result in any diminution of the acreage of Grantee's ownership of the Property conveyed in this Donation Deed. In every event this Servitude shall continue to encumber the Property.

3. **Prohibited Uses of the Property.** The following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are hereby deemed to be inconsistent with the purposes of this Servitude and are expressly prohibited: [construction or use of structures for use as residential dwelling units]; commercial feed lots or animal processing plants; game, fur, or fish farms; retail sales businesses; commercial recreation facilities; the removal or extraction of any mineral, including oil, gas, hydrocarbons, sand, and/or gravel; and any dumping or other disposal of non-compostable refuse.

4. Recognition of Grantor, Prickly Pear Land Trust, Inc. This Servitude reserves to Grantor, and its successors and assigns, the right at Grantor's discretion and Grantor's expense to do any or all of the following:
  - a. Place, maintain, repair, and replace signage or monumentation on the Property recognizing the role of Grantor, Prickly Pear Land Trust, Inc. in conserving the Property as open-space property. Grantee shall have the right, which shall not be unreasonably withheld, to approve the siting and design of any such signage or monumentation; and
  - b. Name the park or open-space area(s) within the Property. Grantee shall have the right, which shall not be unreasonably withheld, to approve the name(s) selected by Grantor.
  
5. Breach; Remedies.
  - a. If the Property ceases being used for public open-space purposes as defined herein in the future, and/or any person takes any action which if successful would have the effect of converting the Property from public open-space land to another use, or if there is any other breach of the terms of this Servitude, Grantor or its successors and assigns shall be entitled to injunctive relief, including specific performance, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, together with its costs and such reasonable attorneys fees as the court having jurisdiction over the matter shall award, if the court determines that the Servitude was or would be breached.
  - b. Prior to filing any court action related to a breach of this Servitude, Grantor or its successors and assigns shall use reasonable efforts to (1) give the Grantee or its successors and assigns thirty (30) days written notice of their intent to take any such measures; and (2) if the City of Helena is the owner of the Property, within the written notice, extend an offer to meet with City officials to discuss the Grantor's concerns within the 30-day notice period; provided, however, that no such notice and/or meeting shall be required if Grantor or its successors and assigns has reason to believe that the Property's conversion from public open-space land to another use is or may be imminent.
  
6. Cooperative Agreement.
  - a. The Property was acquired by Grantor with assistance from the United States Army (the "Army") pursuant to a special military project cooperative agreement under 10 USC § 2684a (the "**Cooperative Agreement**") between Grantor and the National Guard Bureau on behalf of Fort William H. Harrison. In the Cooperative Agreement Grantor agreed that Grantor and its successors and assigns shall hold and maintain the Property consistent with the terms and conditions set forth in the Cooperative Agreement.

- b. Grantee may not convey any interest in the Property without the prior written approval of the Army; provided however, with the prior approval of the Army, Grantee may convey the Property subject to the Servitude.
  - c. The Army shall have the right to monitor and enforce the Servitude if Grantor or its successors or assigns fails to protect the Property in accordance with the terms of the Servitude.
  - d. If Grantee or its successors or assigns permit the Property to be used in a manner inconsistent with this Servitude and/or the Cooperative Agreement, and Grantor or its successors or assigns fail to protect the Property in accordance with the terms of the Servitude, Grantee or its successors or assigns shall transfer fee interest in the Property to the Army upon the request of the Secretary of the Army, in accordance with and under the conditions specified in 10 USC § 2684a(d)(5).
  - e. The interests of the Army in the Property are limited to those interests set forth in the Servitude.
7. Notices. All notices, requests, demands, letters, waivers and other communications required or permitted to be given under this Servitude shall be deemed to have been duly given if (a) delivered personally, (b) mailed, certified or registered mail, return receipt requested, with postage prepaid, (c) sent by next-day or overnight mail or delivery directed to a party at the address set forth below, or to such other address as a party may indicate by written notice to the other parties. All such notices, requests, demands, letters, waivers and other communications shall be deemed to have been received (i) if by personal delivery, on the day after such delivery, (ii) if by certified or registered mail, on the third business day after the mailing thereof, or (iii) if by next-day or overnight mail or delivery, on the day delivered.

If to Grantor:

Prickly Pear Land Trust, Inc.  
Attn: Mary Hollow, Executive Director  
40 W. Lawrence Street, Suite A  
Helena, MT 59601

[Grantor is responsible for updating this address by giving written notice to Grantee of any changes.]

If to Grantee:

City of Helena  
316 N. Park Ave  
Helena, MT 59623

[Grantee is responsible for updating this address by giving written notice to Grantor of any changes.]

8. Miscellaneous Provisions.

- a. If any provision of this Servitude or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Servitude and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.
- b. Time is of the essence of this Servitude.
- c. The laws of the State of Montana shall govern the interpretation and enforcement of this Servitude, without giving effect to choice of law principles.
- d. This Servitude is granted and conveyed pursuant to Mont. Code Ann. § 70-17-102(7), and creates a servitude that will encumber title to the Property for the duration specified herein.

[End of Exhibit B]

# ORDINANCES OF THE CITY OF HELENA, MONTANA

## DRAFT ORDINANCE NO.

AN ORDINANCE PRE-ZONING PROPERTY, DESCRIBED AS:

PARCEL I: BLOCKS 7, 8, 16, AND 24 OF HIGHLAND PARK IN LEWIS AND CLARK COUNTY, MONTANA, AS SHOWN ON RETRACEMENT SURVEY FILED UNDER DOC. NO. 3339312; AND,

PARCEL II: BLOCKS 17, 18, 22, AND 23 OF HIGHLAND PARK IN LEWIS AND CLARK COUNTY, MONTANA, AS SHOWN ON RETRACEMENT SURVEY FILED UNDER DOC. NO. 3331784; AND

THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 4 WEST, P.M.M., LEWIS AND CLARK COUNTY, MONTANA, EXCEPTING THEREFROM TRACT A OF CERTIFICATE OF SURVEY FILED UNDER DOC. NO. 589492-T, RECORDS OF LEWIS AND CLARK COUNTY, MONTANA

ALL BEING KNOWN AS A PORTION OF MT HELENA CITY PARK, AS PLI (PUBLIC LANDS AND INSTITUTIONS)

WHEREAS, City of Helena City Manager Tim Burton, on behalf of the City of Helena, has requested that the City of Helena annex into the City, Parcel I: Blocks 7, 8, 16, and 24 of Highland Park in Lewis and Clark County, Montana, as shown on Retracement Survey filed under Doc. No. 3339312; and, Parcel II: Blocks 17, 18, 22, and 23 of Highland Park in Lewis and Clark County, Montana, as shown on Retracement Survey filed under Doc. No. 3331784; and, The West 1/2 of the Southwest 1/4 of Section 26, Township 10 North, Range 4 West, P.M.M., Lewis and Clark County, Montana, EXCEPTING THEREFROM Tract A of Certificate of Survey filed under Doc. No. 589492-T, records of Lewis and Clark County, Montana, all being known as a portion of Mt. Helena City Park

# ORDINANCES OF THE CITY OF HELENA, MONTANA

Ord.

(the above-described property is hereinafter collectively referred to as the "Property");

**WHEREAS**, pursuant to Helena City Code Section 11-1-4, all territory to be annexed into the City must first be pre-zoned, and the zoning be consistent with the designated land uses for such territory as set forth in the Growth Policy;

**WHEREAS**, the Property comprises a portion of Mt Helena City Park that currently lies outside the City Limits of the City of Helena;

**WHEREAS**, according to the 2019 City of Helena Growth Policy and to be consistent with the designated land uses for adjacent Mt Helena City Park property, the Property must be pre-zoned to PLI (Public Lands and Institutions);

**WHEREAS**, on **October 10, 2023**, the Helena Zoning Commission recommended **APPROVAL** of the requested pre-zoning as described above; and

**WHEREAS**, the Helena City Commission held a public hearing on the requested pre-zoning **at 6:00 p.m. on November 20, 2023**, staff recommended **APPROVAL** of this request, and in considering said pre-zoning, the Commission gave due consideration to the matters set forth in § 76-2-304, MCA.

# ORDINANCES OF THE CITY OF HELENA, MONTANA

Ord.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA:

**Section 1.** That the above-described property is hereby granted a pre-zoning designation of PLI (Public Lands and Institutions).

All being that property noted on the attached "Exhibit A" as a portion of Mt. Helena City Park.

FIRST PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS 30th DAY OF OCTOBER, 2023.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CLERK OF THE COMMISSION

FINALLY PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2023.

\_\_\_\_\_  
MAYOR

ATTEST:

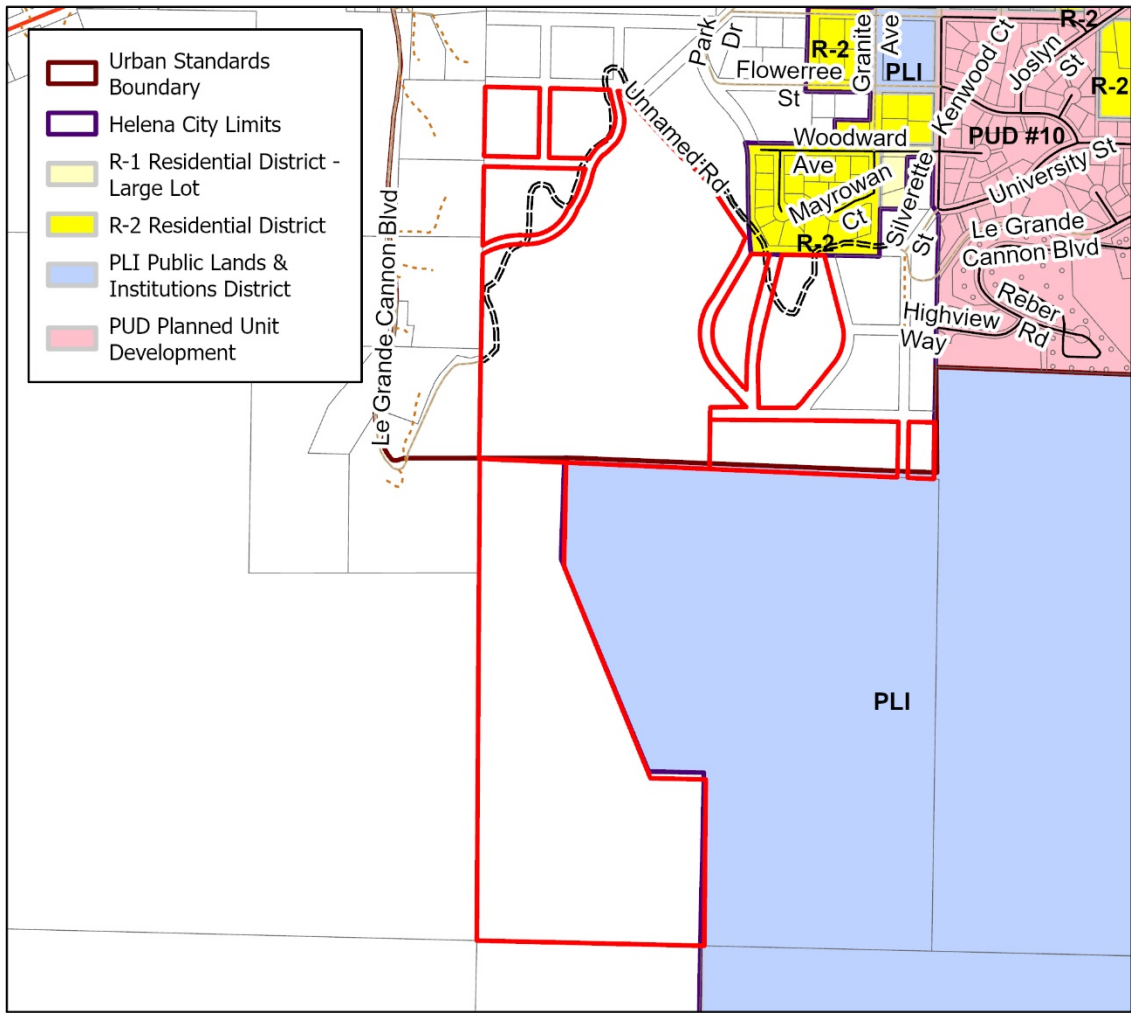
\_\_\_\_\_  
CLERK OF THE COMMISSION

# ORDINANCES OF THE CITY OF HELENA, MONTANA

Ord.


Exhibit A

## Mt Helena Annexation Zoning Map

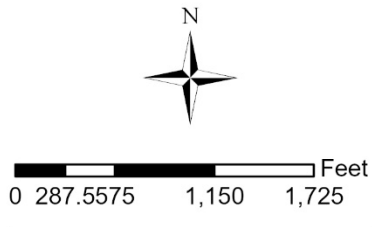


- Urban Standards Boundary
- Helena City Limits
- R-1 Residential District - Large Lot
- R-2 Residential District
- PLI Public Lands & Institutions District
- PUD Planned Unit Development

- Mt Helena Annexation
- Divided 4-Lane
- Paved
- Unpaved
- Driveway
- Non-Motorized
- MT Parcels w Condos



Community Development  
City/County Building  
316 North Park Avenue, Rm. 445  
Helena, MT 59623



Blocks 7, 8, 16, 17, 18, 22, 23, and 24 of Highland Park; and the W1/2 of the SW1/4 of S 26, T 10 N, R 4 W, P.M.M.

