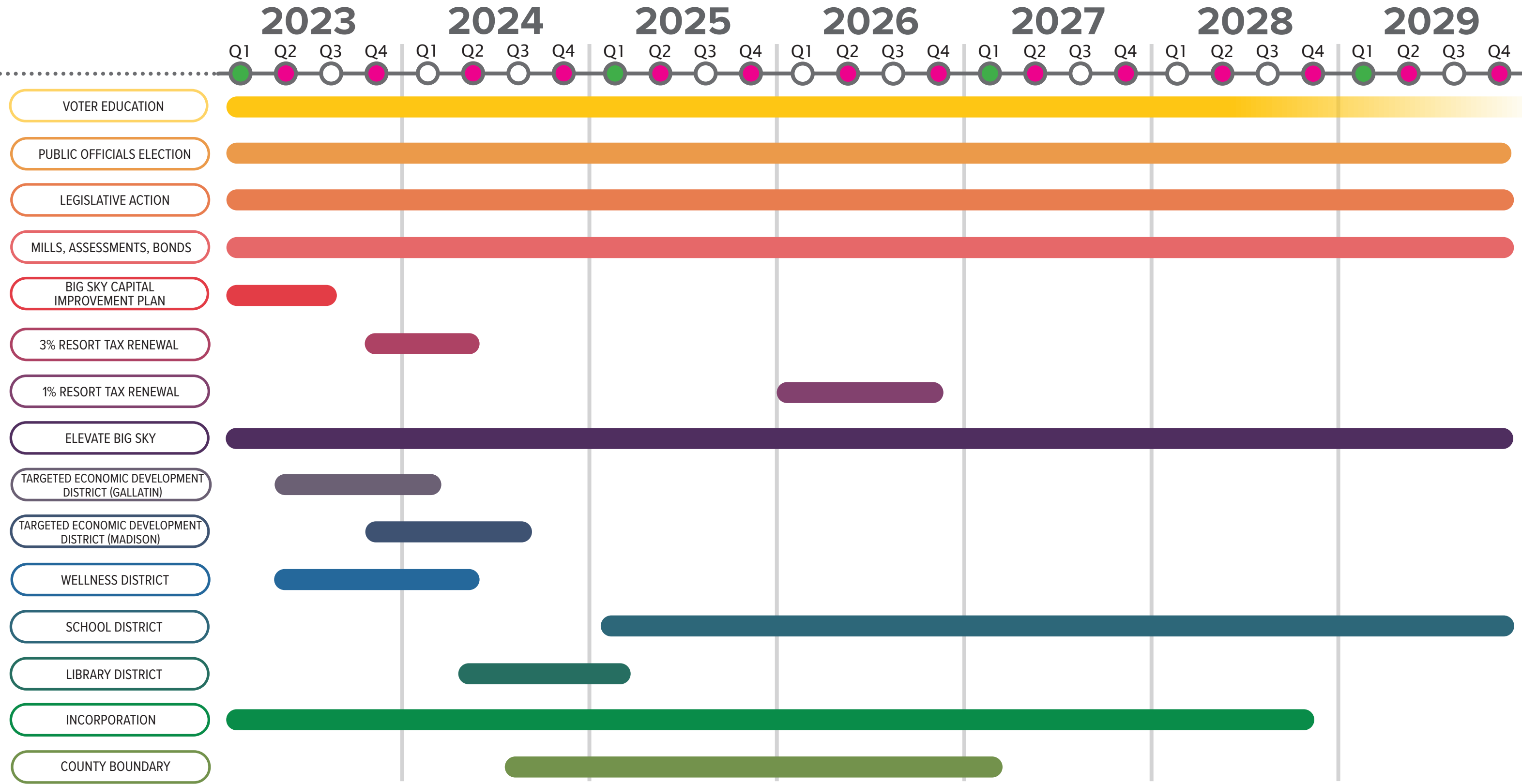




Infrastructure Investment, Funding, & Voter Representation Roadmap



Q1 = January - March
 Q2 = April - June
 Q3 = July - September
 Q4 = October - December

 Legislative Session

 Ballot Issue Votes*
**Does not reflect special elections*

Big Sky Roadmap

Infrastructure Investment, Funding & Voter Representation

Goals:

1. Align available public funds (Resort Tax and Property Tax) with community infrastructure investment.
2. Ensure property tax equity and access to publicly funded government services.
3. Align voter representation with governance over services provided in our own community.
4. Leverage philanthropy and other funding sources for strategic investment in alignment with public funds.
5. Educate voters to inform and promote civic engagement.

Community Challenges:

Voter Representation

County Commission: Big Sky is split by Gallatin and Madison Counties. Big Sky is unincorporated, therefore some “governance” is under the authority of the commissioners from each county. Due to the low number of year-round residents and registered voters, Big Sky does not have the votes to elect a commissioner to either Gallatin or Madison Counties. [Approximately 3200 voters in District 3 of MadCo/500 in Big Sky (15% of the votes)].

Taxing Districts out of Big Sky Service Area: The Madison County portion of Big Sky is included in the Ennis School District, Madison Valley Hospital District, and the Madison Valley Library District. Due to the low number of registered voters, Big Sky cannot get adequate representation to these boards. In addition, the Districts provide little to no services to our Community while serving no voting influence in the governance of districts that do provide services. For example, students residing in the Madison County portion physically can not attend Ennis Schools. As a result, a parent residing in the Madison County portion of Big Sky can not even vote on a representative to the School District their child attends.

Property Taxes

Big Sky pays a disproportionate share of taxes to Madison and Gallatin Counties including taxing Districts versus services received. In addition, certain taxing districts (Library, Madison Valley Hospital and Ennis School District) collect significant revenue from property taxpayers from Big Sky which have no access to their services and have zero impact. In 2021, the Big Sky portion of Madison County in 2021 remitted property taxes to Madison County Entities:

Madison Valley Library District	\$0.4M
Madison Valley Hospital	\$1.7M
Ennis School District	\$2.6M

The Big Sky area values cause the taxing districts in Madison County to levy extremely low mills relative to other taxing jurisdictions (e.g. Ennis SD- 16 Mills; Big Sky SD- 159 mills). As a result, any change in taxing jurisdiction will likely result in higher taxes being paid by properties in Madison County portion of Big Sky.

Consolidated Government – Big Sky is unincorporated. Therefore, many government services fall under the authority of State, County, and Special Purpose District governance. Commissioners of each County or one of several Districts provide services. This can lead to inconsistent delivery and inefficient management. A grassroots effort is exploring the “Pros and Cons” of municipal structure.

Potential Solutions:

Align Taxing Districts with Big Sky Service Area

School Districts:

- Big Sky has 2 school Districts (Ennis and Big Sky)
- Need to understand where the Big Sky kids live in Madison County
 - 26 Total kids that reside in the Ennis School District and attend Big Sky School District
- Align property tax revenue with student burdens.
- Chart path for parents to vote for School Board Members where their kids attend.

Hospital

- Big Sky has one Hospital District that supports Madison Valley Hospital
- Big Sky residents do not access Madison Valley Hospital due to the physical barrier. Big Sky Medical Center is the local hospital.
- Form Big Sky “Wellness District”
 - “Wellness District” could be an appointed or elected board that receives funds then distributes to applicants
 - BSMC could apply for funds from
 - Mental Health and Substance Abuse could apply for funds from
- Align property tax revenue with service burdens in Big Sky
 - Generates property tax revenue that can be used as local funding for BSMC as well as Mental Health
 - Allows for Big Sky residents to elect board and have a say on how the \$ is spent

Library

- Big Sky has one Library District that supports Madison Valley Library District
- Form a Big Sky Library District that supports the Friends of the Library.
- Generates property tax revenue for a library who provides services to Big Sky
- Allows for Big Sky residents have a say on how the \$ is spent

Targeted Economic Development District(s) (TEDD)

- Big Sky currently has no TEDD’s
- Potential to do them in GalCo and MadCo
- Utilizes Tax Increment Financing (TIF) which utilizes property taxes from future growth to solve existing and impeding infrastructure deficiencies
- Routes future property taxes towards deficiencies in infrastructure
- Notable Infrastructure Deficiencies will be outlined in Capital Improvement Plan
 - TEDDs are NOT allowed in incorporated areas – need to sequence properly

Elevate Big Sky

- Committee was formed to expand philanthropic and public fund alignment around community priorities
- Pilot program for call for housing requests is underway
- Maximizing philanthropic potential should continue

Municipality

- Further understanding of government services including impacts on existing service providers is needed but, in some cases, a municipal government would grant additional powers to address typical municipal services (e.g. water, sewer, fire, law enforcement).
- Need a clear path forward to form Resort Community (municipal Resort Tax).
- Current population densities indicate a small geographic subset of community limiting the larger property tax base of Big Sky.
- New property tax – does not reduce taxes to the Counties or existing taxing districts.
- Creates local zoning authority in addition to established Gallatin County Zoning District.

County Boundaries

- *IF* the above efforts are unsuccessful, Big Sky could explore amending existing County Boundaries or creation of a new County
- Could have significant negative impact on County budgets.
- Boundary re-alignment is very difficult politically but could potentially resolve all if not part of taxing and voter problems.
- Potential legislative changes can lower the hurdles, but the State Constitution requires voter approval.

Next Steps

1. Develop a multi-year strategy – see draft chart below
2. Outline legal steps with memo – see attached
3. Identify Legislative Action for 2025 session
4. Develop coalition of leaders/supporters for initiatives

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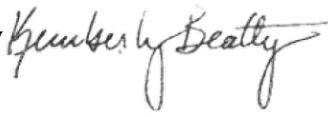
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MEMORANDUM

TO: Daniel Bierschwale

FROM: Kimberly A. Beatty 
Hallee Frandsen

DATE: April 5, 2023

RE: Infrastructure Investment, Funding, and Voter Representation Topics

The Big Sky Resort Area District (“BSRAD” or “District”) has experienced significant growth in the past several years. As such, it presently faces a variety of infrastructure investment, funding and voter representation topics that should be explored and discussed including: what public offices are up for election and when; when will the Capital Improvement Plan be complete and what will it recommend; what is the term of the District and when are the 3% resort tax and the 1% infrastructure tax up for renewal; what does the District do and what are Special Districts; should a city should be incorporated within the District because of the District’s growth; whether a county boundary change to bring all areas of the District under a single county’s jurisdiction may help provide better service and government access to the growing District; what funding sources other than the 3% resort tax and 1% infrastructure tax are

available or should be considered within the District; and what legislative changes might be needed to address some of the issues raised by the population growth within the District.

You have asked us to prepare an initial memo, addressing some of these topics. With this memo, we have attempted to generally follow the outline contained in the Infrastructure Investment, Funding, and Voter Representation Roadmap (“Roadmap”) you provided and have tried to group topics to broadly align with some of those items. The purpose of this memo is not to guide a particular course of action, but rather to be read in conjunction with the Roadmap and to begin exploring several of the broad topics which are presently on the minds of many within the District. As such, this memo will provide a general explanation of some of these issues, as well as the impacts on BSRAD should any of these options be taken by the requisite voters.

Topics Addressed

While this memo attempts to generally follow the Roadmap, there are several topics listed in the Roadmap which are not specifically addressed in this memo. These include: Public Officials Elections, the Capital Improvement Plan, Mills/Assessments/Bonds, Targeted Economic Development Districts (TEDDs), and Legislative Action. The rest of the topics are generally covered in the following Sections:

- Section I Resort Area District Term, Renewals and Authority (pages 3 - 7 below)
- Section II Special Districts: General discussion, School District, Wellness District, and Library District (pages 8 - 17 below)
- Section III Incorporation Topics (pages 18 - 30 below)
- Section IV County Boundary Topics (pages 31 - 35 below)

SECTION I: Resort Area District Term, Renewals, and Authority

1. May a Resort Area District have a perpetual term, or is it limited to a term of specified years?

MCA § 7-6-1541(1)(a) states that Resort Area Districts may have “perpetual succession”. MCA § 7-6-1541(2) provides for the ability of the qualified electorate to extend the term of a Resort Area District that does not have “perpetual succession.” In 1997 when the legislature first adopted statutes for Resort Area Districts, it did not include MCA § 7-6-1541(2). Therefore, the statutes back then read simply that Resort Area Districts may have “perpetual succession.” Because it is permissive, and not mandatory to have “perpetual succession”, some Districts (like BSRAD) were formed for specified time periods instead of with “perpetual succession.” In 2005 the legislature added MCA § 7-6-1541(2) to specifically allow Resort Area Districts that do not have “perpetual succession” (but rather were created for a specified period of time) to extend the term of the Resort Area District. This begs the question of what, exactly, does “perpetual succession” mean, and whether a Resort Area District that was created for specific term of years can be converted to having “perpetual succession” instead.

The term “perpetual succession” is not specifically defined within Resort Area District statutes, but Black’s Law Dictionary defines it as: “that continuous existence which enables a corporation to manage its affairs, and hold property without the necessity of perpetual conveyances, for the purpose of transmitting it. By reason of this quality, this ideal and artificial person remains, in its legal entity and personality, the same, though frequent changes may be made of its members.” Also, “perpetual” is defined by Black’s Law Dictionary as: “never ceasing; continuous; enduring; lasting; unlimited in respect of time; continuing without

intermission or interval.” In 2016, the Montana Supreme Court adopted a national definition for the term, noting that municipalities can enjoy a higher degree of permanency and a greater degree of stability as there is no dissolution or division of assets. *See City of Missoula v. Mountain Water Co.*, 2016 MT 183, 384 Mont. 193, 378 P.3d 1113 (adopting *Duck River Elec. Membership Corp. v. City of Manchester*, 529 S.W.2d 202 (1975)).

We have also reviewed the legislative hearing transcripts and testimony provided for the original legislation in 1997 and the 2005 amendments to see if there was any specific discussion surrounding the “term” of Resort Area Districts. There was no specific discussion concerning whether a Resort Area District’s term could be “perpetual” or whether it must be for a designated period of years. There was acknowledgement from some giving testimony, that a Resort Area District’s term could be “perpetual”, but that it would be beneficial for a Resort Area District to at least have a term of years no shorter than the length of a typical bond repayment schedule, which is 20 years; and as a result, we speculate that is why this District’s initial term was for a period of 20 years rather than designated as “perpetual.” However, we have confirmed there are no statutes (and never were any statutes) that limit the term of a Resort Area District to 20 years, or to any other particular number of years.

Given the above noted definitions, caselaw, and legislative history, we believe the plain meaning of the statute is that the term of a Resort Area District may be either perpetual, or it may be for a specified period of time – whichever the voters decide. Likewise, there is nothing in the statutes that prohibits a Resort Area District that was originally formed for a specified period of time, from converting to “perpetual succession” as long as the voters agree to such change.

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2. What is BSRAD's term?

As noted above, this District was originally formed with a 20-year term. That term was later extended and is presently set to expire in 2032. Votes to extend a term may be taken no more than once each year and cannot be taken earlier than 50% through any designated term. MCA § 7-6-1541(2)(b). Since this District's current term is more than 50% over, the question of whether to extend the term at all, and if so, for what period of time (conversion to a perpetual term or extension for another term of specified years) can now be placed to the electorate at any time. Therefore, the next ballot related to an extension of BSRAD's term may request the term be extended for another 20-year period (or even some other limited time period), or it may request BSRAD be granted "perpetual succession." It would be advisable for BSRAD to call for an election on its term prior to the expiration of the existing term in 2032, that way, if an initial vote fails, the question can be presented again to the electorate the following y.

3. When does BSRAD's 3% Resort Tax expire?

The 3% resort tax is a tax for a specified term of years, which term expires in 2032. As a result, the BSRAD Board may not issue debt service payment obligations beyond 2032. The 3% resort tax may be extended beyond 2032 (for another term of specified years or for a "perpetual" term) if the qualified electorate of the District chooses to do so.

4. When does BSRAD's 1% Infrastructure Tax expire?

The 1% infrastructure tax will expire and terminate when the specified infrastructure debts and project costs are paid, unless BSRAD's Board submits and the qualified electors approve another levy for additional infrastructure debts or projects. MCA § 7-6-1504(4)(d).

5. What is a Resort Area District Authorized to do/what is the authority of its Board?

A Resort Area District has the general authority to do all acts necessary to exercise its powers, as given to it by the electorate when the Resort Area District was created. This includes having perpetual succession or succession for only a specified period of years (as noted above); having the ability to sue and to be sued in courts of competent jurisdiction; acquiring real and personal property necessary to the full exercise of its powers; making contracts, employing labor, and taking other acts necessary for the full exercise of its powers; and issuing and repaying bonds. See generally, MCA § 7-6-1541.

A Resort Area District, through its governing Board, may also appropriate and expend revenue from an authorized Resort Tax and/or Infrastructure Tax for any activity, undertaking, or administrative service authorized in the resolution/ballot creating the District and adopting the Resort Tax. See generally, MCA § 7-6-1542(1)(a). It may adopt administrative ordinances necessary to administer, collect, and spend the Resort Tax and issue certain bonds under certain conditions. See generally, MCA § 7-6-1542(1)(b), (c); see also MCA § 7-6-1542(2) – (4). It may submit to a vote of the qualified electorate whether to extend the Resort Tax and/or to impose the additional Infrastructure Tax. See generally, MCA § 7-6-1541(2); § 7-6-1542(1)(d).

A Resort Area District must comply with certain bonding limitations on its use of Resort Tax revenues and may not commit cumulative annual debt service payments that exceed 70% of the revenue raised from the infrastructure resort tax. And debt service payments may not be issued for a term longer than the remaining duration of the term of the Resort Area District. See generally, MCA § 7-6-1542(4) – (6).

Because BSRAD is a Resort Area District for a specified term of years, expiring in 2032, it may not issue debt service payment obligations beyond 2032. However, should the qualified electorate determine it appropriate to change BSRAD's term to perpetual or to extend its term for a period of years beyond 2032, then BSRAD may issue bonds (and incur debt service obligations) beyond 2032. Because BSRAD's current term is more than 50% over, BSRAD may at any time submit to the electorate the question of whether to extend the term of the Resort Tax and/or to change the duration of BSRAD to "perpetual succession."

SECTION II: Special Districts

6. What are Special Districts, and what role do they play in providing services to a community?

Special Districts are generally authorized under Title 7, Chapter 11, Part 10 of the Montana Code. A “Special District” is a unit of local government that is authorized by law to perform a single function or a limited number of functions. MCA § 7-11-1002(3)(a). They may include, but are not limited to, districts for cemeteries, museums, parks, fairs, solid waste, local improvements, mosquito control, multijurisdictional, roads, rodent control, television, and districts created for any public or governmental purpose not specifically prohibited by law. MCA § 7-11-1002(3)(b). However, the term does not include a variety of other special districts (categorized in this memo as “Other Districts”, including those for business improvement, conservation, water and sewer, planning and zoning, grazing, hospital, irrigation, library, parking, rural improvement, special improvement, lighting and rural fire, and urban transportation which have separate statutory authority from “special districts.” MCA § 7-11-1002(3)(c). Special Districts are created by the governing body by resolution, referendum, or petition of inhabitants of a special district following public hearings on the matter. MCA § 7-11-1003 and 1007. Once established, the governing body may also establish assessments or fees. MCA§ 7-11-1013.

Certain Other Districts already exist within the BSRAD as described below. However, the below discussion is intended only to be a high-level overview, and additional research and detail may be needed to really analyze these Other Districts and how they operate within the BSRAD and how they may be altered to better suit the needs of BSRAD residents. We are

happy to provide similar information for any Other Districts within BSRAD not addressed below upon request.

A. Hospital or Wellness Districts: Can a hospital or wellness district cross-county boundaries? Can residents in one county withdraw from a current hospital or wellness district and join another?

Creation: Generally, Montana statutes authorize the creation of hospital districts, which shall have the power to supply hospital facilities and services and health care facilities and services to the residents of the district. MCA § 7-34-2101. The first step in creating a new hospital district is “a petition signed by not less than 30% of the qualified electors of the proposed hospital district who are taxpayers upon property within the proposed district and whose names appear on the last-completed assessment roll for state and county taxes.” MCA § 7-34-2103. The petition is filed with the county clerk and recorder, who in turn certifies the requisite signatures. MCA § 7-34-2105. The petition is then sent to the County Commissioners, who will in turn hold a hearing on whether to create the district. MCA § 7-34-2106 - 2108, and 2110. The County Commissioners will then present the issue to the qualified electors residing within the boundaries of the proposed district for a vote. MCA § 7-34-2109 and 2113.

The boundaries of a hospital district “may contain the entire territory embraced within a county or any portion or subdivision thereof.” MCA § 7-34-2111, MCA. The statutes are silent on whether the hospital district may cross county boundaries. As such, much like with a municipality that will cross county boundaries, the creation of a proposed hospital district crossing county boundaries would likely require duplicate processes in each county. If one county rejected the creation of the district, then the district would fail. As such, it may be more

appropriate to either create two separate districts (one in each county) who then work together through an interlocal agreement, or to form a district in one county first, and then have that district annex the territory that sits across the county boundary.

As described below, a hospital district's boundaries may also be altered after the district is created; land may be annexed into or withdrawn from a hospital district, and a hospital district may be dissolved.

Annexation: The Montana code allows the boundaries of a hospital district “may be altered and outlying districts may be annexed from territory contiguous thereto.” MCA § 7-34-2151. To annex land into a hospital district, Montana statutes require “A petition signed by 10% or more of the freeholders within the territory proposed to be annexed or by a majority of such freeholders if there are less than 25 residing within the area proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of county commissioners of the county in which said public hospital district is situated.” MCA § 7-34-2152. It does not appear to be an impediment to annexation for the residents petitioning for annexation to reside in a different county as long as they reside in an area that is contiguous to the existing hospital district. Further, there are no statutes that allow the county in which the residents live (if different than the county in which the hospital district is located) to play any role in the question of annexation. The County Commissioners in the county in which the district is located must hold a hearing on the annexation petition, and they have the power to: (1) grant said petition either in whole or in part; (2) alter the boundaries of said public hospital district; and (3) annex all or such portion of said area or territory described in the petition. MCA § 7-34-2153 - 2154. If annexation is approved, “The annexed territory shall

become and be a part of such public hospital district on the date fixed in the order of annexation and shall be subject to the taxes authorized by this part, including taxes for any preexisting indebtedness, together with the preexisting area of said district; and such taxes shall be uniform for the whole area and territory in the district as enlarged.” MCA § 7-34-2155.

A vote of those residing in the territory does not appear to be required. If the territory to be annexed is already within the different hospital district’s boundaries, it must be withdrawn from the first district before it can be annexed into the second district.

Withdrawal: The Montana statutes allow for a withdrawal of property from an existing hospital district: “Any portion of a public hospital district may be withdrawn therefrom ... upon receipt of a petition signed by 51% or more of the taxpayers residing in and owning property within the area desired to be withdrawn from any public hospital district, on the grounds that such area will not be benefited by remaining in said district.” MCA § 7-34-2156. The petition to withdraw is submitted to the County Commissioners, who will notice and hold a public hearing. MCA § 7-34-2157. The decision to permit or reject the withdrawal is made by the County Commissioners, though that decision is appealable to the District Court and ultimately to the Montana Supreme Court. MCA § 7-34-2158. Even if the property is successfully withdrawn, it shall still remain subject to taxation in that County for any bonded indebtedness of the hospital district existing as of the date of the withdrawal. See § 7-34-2160, MCA.

Dissolution: A hospital district may be dissolved no sooner than 5 years after its creation, upon a petition to the County Commissioners signed by at least 51% of the owners of property lying within such district as shown by the last-completed assessment roll. MCA § 7-34-2161. Following receipt of the petition, the County Commissioners must notice and hold a public hearing on whether to dissolve the district. MCA § 7-34-2162. The County

Commissioners may dissolve a district if they find (1) the petition to be sufficient; (2) the district is not indebted in any amount beyond funds immediately available to extinguish all of its debts and obligations; and (3) there is good reason for the dissolution. MCA § 7-34-2163.

Fees, Bonds and Taxes. A hospital district has the authority to set fees, issue bonds, borrow money, and levy taxes. See MCA § 7-34-2122, 2131, 2133, 2137, and 2138.

B. Library Districts: Can two library districts be consolidated? Can territory within one library district withdraw from that district and move to a different library district?

A public library district may contain the entire territory of a county, the territory of part of a county, or territory in more than one county.” It may also include incorporated municipalities. However, the territory within a public library district must contain a taxable value of at least \$5,000,000. MCA § 22-1-701. A public library district’s trustees may establish a property tax mill levy for the operation of the district. MCA § 22-1-707(2)(e) and 708. The maximum property tax mill levy authorized for the operation of a public library district may be changed by following a specific petition and election process. See MCA § 22-1-709.

Proceedings for (1) the creation of a public library district , or (2) the enlargement of a public library district, or (3) the conversion of a public library into a public library district are initiated by (a) a petition not less than 15% of the qualified electors who reside within the proposed district or in the area proposed to be added to an existing district or (b) a resolution of intent adopted by the county governing body calling for the creation of the district. The petition must include the boundaries of the district, a map of the district, the proposed maximum property tax mill levy that could be levied on property owners within the district for the operation of the district, and the number of trustees for the district (either 5 or 7). If the

territory of the district is in more than one county, petitions must be gathered in each county and presented to each county's governing body. The governing body of the county (or counties) must then notice and hold a public hearing. Following a hearing, the governing body determines whether to move forward with the creation of the district, and if so, it will set the boundaries, the maximum mill levy and the number of trustees, and then call for an election on whether to create the district. The election may be by mail. MCA § 22-1-702. Only qualifying within the boundaries of the proposed district may vote. MCA § 22-1-703.

Territory within one existing public library district may be consolidated into a contiguous public library district upon the adoption of a resolution, following a public hearing, by the board of trustees of each district. MCA § 22-1-705(3). If all or part of the territory served by a public library is included within the boundaries of a public library district, the governing that established the public library shall then hold a hearing on whether the public library territory should be included in the library district and consolidated into that district. The governing body shall hold a public hearing and then made a decision whether or not to consolidate. If the decision is no, then the public library district's boundaries shall be modified. MCA § 22-1-705.

A public library district may be dissolved after an election on the question of the dissolving district. The process of dissolving the district may be initiated by a petition of 15% of the electorate of the public library district, or by a resolution of intent to dissolve the district adopted by the board of trustees or by the county governing body in which the territory of the public library district is located. Once a requisite petition is received, the question of whether to dissolve is submitted to the electorate of the dissolving public library district for a vote, or a public hearing called by the county governing body. Following a public hearing, the county

governing body may pose the question to the electorate to either dissolve the district or alter the district's boundaries. A simple majority of those voting on the question in each of the two territories (the one wanting to withdraw and the existing territory) is needed. MCA § 22-1-710.

Interestingly, the Montana code also specifically allows the creation of a multijurisdictional service district that may provide library services. See MCA § 7-11-1102(2)(c). Library services offered through a multijurisdictional service district library must comply with the "free library" statutes found at MCA § 22-1-305 – 317. (Multijurisdictional service districts can also be established for recreation programs, road/street/highway maintenance; jails; dog control programs; ambulance services; dispatch services; protection of human health and environment issues; health services; and maintenance or provision of public infrastructure facilities. MCA § 7-11-1102.)

C. School Districts: Can school district boundaries be altered and what is the process?

The authority to alter school district boundaries is legislative in nature and rests entirely within the power of the legislature. *In re Petition to Transfer Territory from High Sch. Dist. No. 6*, 2000 MT 342, P11, 303 Mont. 204, 15 P.3d 447 (citing *Read v. Stephens*, 121 Mont. 508, 512, 193 P.2d 626, 628 (1948)). The legislature granted the power to transfer territory from one school district to another to local county superintendents which may make such decisions based on certain criteria.

The first criteria is that the two districts must be contiguous. Second, approval must be granted from both County Superintendents: one for the withdrawal of school district territory from one district; and the second for the annexation of territory into the district. Third,

approvals must also be obtained from the superintendents and the school board trustees of each of the schools involved.

When considering whether to approve the petition, the county superintendent considers the **best and collective interest** of the students in both the receiving and transferring districts to determine if the transfer would negatively impact the ability of the districts to serve those students. A strong argument can be made that when children in one district cannot physically reach the schools in their district because of transportation blocks, then withdrawal from one district and annexation into another district is warranted.

An elementary district or a high school district may not be created and elementary district boundaries may not be changed between the first day of January and the fourth Monday of August of any calendar year. MCA § 20-6-202 and 314.

The process for transferring territory from one school district to another is made by petition: (i) petition is signed by 60% of the registered electors qualified to vote at general elections in the territory proposed for transfer; (ii) the territory to be transferred must be contiguous to the district to which it is to be attached, includes taxable property, and has school age children living in it; (iii) the territory to be transferred cannot be located within 3 miles, over the shortest practicable route, of an operating school in the district from which it is to be transferred; and (iv) the board of trustees of the school district that would receive the territory must also approve the proposed transfer by a resolution adopted by a majority of the members of the board of trustees at a meeting from which proper notice was given. MCA § 20-6-105(1)(a). Further, “a petition to transfer territory to or from a K-12 district may not be presented to a county superintendent unless both school boards and the county superintendents have agreed in writing.” MCA § 20-6-105(1)(b).

The petition seeking a transfer of territory must be delivered to the county superintendent and must: (a) provide a legal description of the territory that is requested to be transferred and a description of the district to which the territory is to be transferred; (b) state the reasons why the transfer is requested; and (c) state the number of school-age children residing in the territory. MCA § 20-6-105(3). If both the trustees of the receiving and transferring school districts have approved the proposed territory transfer in writing, the county superintendent **shall** grant the transfer.” MCA § 20-6-105(4).

However, the county superintendent shall also conduct a hearing as scheduled, and any resident, taxpayer, or representative of the receiving or transferring district must, upon request, be heard. At the hearing, the petitioners have the initial burden of presenting evidence on the proposed transfer’s effect on: (a) the educational opportunity for the students in the receiving and transferring districts, including but not limited to: (i) class size; (ii) ability to maintain demographic diversity; (iii) local control; (iv) parental involvement; and (v) the capability of the receiving district to provide educational services; (b) student transportation, including but not limited to: (i) safety; (ii) cost; and (iii) travel time of students; (c) the economic viability of the proposed new districts, including but not limited to: (i) the existence of a significant burden on the taxpayers of the district from which the territory will be transferred; (ii) the significance of any loss in state funding for the students in both the receiving and transferring districts; (iii) the viability of the future bonding capacity of the receiving and transferring districts, including but not limited to the ability of the receiving district and transferring district to meet minimum bonding requirements; (iv) the ability of the receiving district and the transferring district to maintain sufficient reserves; and (v) the cumulative effects of other transfers of territory out of the district in the previous 8 years on the taxable value of the district from which the territory is

to be transferred. In cases where the cumulative effect of other transfers of territory out of the district in the previous 8 years is equal to or greater than 25% of the district's taxable value, the following additional factors must be considered and weighed in the decision: (A) the district's rate of passage of discretionary levies placed before the voters over the previous 8 years; (B) the district's reduction or elimination of instructional staff or programs over the previous 8 years; and (C) any increase in district taxes over the previous 8 years and the likely increase in district taxes if the transfer is granted." MCA § 20-6-105(6).

"If based on a preponderance of the evidence, the county superintendent determines that the evidence on the effects described in subsection (6) supports a conclusion that a transfer of the territory is in the best and collective interest of the students in the receiving and transferring districts and does not negatively impact the ability of the districts to serve those students, the county superintendent **shall** grant the transfer. If the county superintendent determines that, based on a preponderance of the evidence presented at the hearing, a transfer of the territory is not in the best and collective interest of students in the receiving and transferring districts and will negatively impact the ability of the districts to serve those students, the county superintendent shall deny the territory transfer." MCA § 20-6-105(8).

A petition seeking to transfer territory out of or into a K-12 district must propose the transfer or territory for **both** elementary and high school purposes. MCA § 20-6-105(11). A petition cannot propose the transfer of one age of student without seeking the transfer of all.

SECTION III: Incorporation Topics

7. What is the impact to BSRAD should a municipality be incorporated within the boundaries of the District?

A discussion generally of “resort areas,” “resort area districts” and “resort communities” is needed to understand what impacts the incorporation of a city may have on BSRAD.

By statutory definition, a “resort area” is at the time of its creation (1) an unincorporated, contiguous area, (2) with a population of fewer than 2500 people, (3) in which area the majority of the economy is based on tourism, and (4) which area has been designated by the Montana Department of Commerce as a “Resort Area” and established as such by the county commission. See generally, MCA § 7-6-1501(7). A Resort Area is administered by county commissioners. See generally, MCA § 7-6-1509. Gallatin and Madison Counties designated the Big Sky Resort Area in 1992.

A “resort area district” is a Resort Area which the qualified electors have also elected to designate a District. See generally, MCA § 7-6-1501(8). A Resort Area District is administered by an elected Board. See generally, MCA § 7-6-1541 – 1542.

A “resort community” is (1) an incorporated municipality (2) with a population at the time of its designation of less than 5,500 people. See MCA § 7-6-1501(9). A Resort Community is administered by the governing body of the municipality. See generally MCA § 7-6-1502 and 1505.

A Resort Area District, a Resort Area, or a Resort Community may impose, collect and spend a resort tax if such tax has first been approved by a majority of the qualified electors within the Resort Area District, Resort Area, or Resort Community. Once approved by the requisite vote, a resort tax in a Resort Area District is administered by the District’s Board; a

resort tax in a Resort Area is administered by the County Commissioners of the Resort Area; and a resort tax in a Resort Community is administered by the governing body of the Resort Community (the governing body of the municipality). See MCA § 7-6-1505.

In Big Sky, a Resort Area was properly designated and created in 1992, and the resort tax was also first authorized in that same year and had a scheduled termination date of 2012. In 1998, the Big Sky Resort Area District was formed by requisite vote of the qualified electors in both Gallatin and Madison Counties and administration of BSRAD and administration of its Resort Tax passed from the County Commissioners to the BSRAD Board. In 2006, the BSRAD electorate extended the Resort Tax term from 2012 through 2032. The decision to extend the term to impose, collect and spend the resort tax must be renewed by the voters by 2032, or pursuant to statute, the authorization for the tax will expire. See generally, MCA § 7-6-1441(2)(b).

The authority of a Resort Area District's Board is also set forth in the Montana Code, which includes the authority to appropriate and expend revenue from the resort tax and/or the infrastructure tax for any activity, undertaking or administrative service authorized in the resolution creating the Resort Area District or in authorizing the infrastructure tax, and to adopt administrative ordinances necessary to aid in the collection, reporting, remitting, or expending such taxes. See § MCA 7-6-1541 and 1542.

A Resort Area District may be dissolved upon a petition to do so and a requisite vote of the qualified electors. See MCA § 7-6-1548 - 1550. However, there are no statutes that provide for the dissolution of the underlying Resort Area, even if the Resort Area District is dissolved. In 2009, the Montana Attorney General issued an opinion which specifically found that if a Resort Area District is dissolved, the underlying designated Resort Area does not dissolve. All

that changes is the governing body for the area: the BSRAD Board would no longer administer the Resort Area District or the resort or infrastructure taxes; instead, those duties would fall to the County Commissioners (here, to Gallatin and Madison Counties). *See*, 53 Mont AG Opinion 1, dated April 7, 2009, ¶¶6 - ¶9.

As a result of this statutory scheme, once a Resort Area is designated, it cannot be dissolved. If that Resort Area also becomes a Resort Area District, all that changes is the governing body (from the County Commissioners to a District Board). A resort tax may be imposed and collected by either the Resort Area or Resort Area District following the appropriate vote, and the resort tax will continue to be imposed and collected until the qualified electors decline to renew it. Likewise, an infrastructure tax may also be imposed and collected by either the Resort Area or Resort Area District following the appropriate vote and will continue to be imposed and collected until the purpose for which it was imposed has been satisfied. Thereafter, the infrastructure tax is terminated, unless the qualified electorate vote to approve a new infrastructure tax. Here, BSRAD, can be dissolved, but once dissolved it will return to a Resort Area administered by the County Commissioners and the taxes will continue to be imposed and collected until they are not renewed or the infrastructure purpose has been satisfied. The Resort Area remains in perpetuity and cannot be dissolved.

The same Montana Attorney General opinion noted above also states that a municipality can be incorporated within the boundaries of a Resort Area District. *See*, 53 Mont AG Opinion 1, dated April 7, 2009, ¶4. But the incorporation of a municipality within a Resort Area District will not impact the boundaries of or business of the Resort Area District. As such, the expenditure of the Resort Tax within the Resort Area District falls to the sole discretion of the

Resort Area District Board, and not to the municipality's governing body. *See*, 53 Mont AG Opinion 1, dated April 7, 2009, ¶7 and ¶8.

Beyond these issues described above, however, the incorporation of a city within the BSRAD's boundaries may raise a host of other questions that are worth exploring at the appropriate time, but which are not addressed in this memo including:

- If BSRAD funds any portion of the municipality's operations or projects, but the resort tax is not renewed, what happens to the municipality's ability to operate?
- Can one individual be elected to sit on both the BSRAD Board and hold city office?
- What impact will a municipality have, if any, on other existing taxing districts in the greater Big Sky area, such as a transportation district, a library district, a hospital district, a parks and recreation district, a school district, a fire district, water and sewer districts, zoning districts?
- What are the costs for incorporation and for operations of the municipality and how will they be funded: including police force, fire, ambulance, and emergency services, jails, court systems, city offices?
- What impact will liquor licensing laws have in a municipality established within a resort area district?

8. What services must a municipality provide?

Generally, a city or town council has the "power to make and pass all bylaws, ordinances, orders, and resolutions not repugnant to the constitution of the United States or the state of Montana or to the provisions of this title, necessary for the government or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for

carrying into effect the provisions of this title.” See MCA § 7-5-4101. The city or town council also has the specific power of condemnation (MCA § 7-5-4106) and is authorized to create special districts (MCA § 7-11-1003), and multijurisdictional service districts (MCA § 7-11-1102). A municipality may also create weed control districts, provide utility services, transportation services, housing districts, parks and recreational facilities, regulate certain businesses and mandate certain licensing requirements, regulate and protect domestic animals, provide for emergency and protective services, establish and maintain detention centers, and provide ambulance service. See generally, MCA Title 7, Chapters 5-35. This list is not intended to be an exhaustive list, but illustrative only.

Some required services will be dependent upon the size of the municipality. Classifications of municipalities are found in MCA § 7-1-4111 and are generally as follows: (a) First class cities have a population of more than 10,000; (b) second class cities have a population of between 5,000 and 10,000; (c) third class cities have a population of between 1,000 and 5,000; and (d) towns have a population of between 300 and 1,000. For purposes of this memo, we will assume any municipality created in the Big Sky will be classified as a third-class city¹.

All municipalities will have perpetual succession. See MCA § 7-1-4102. All must have a post office or contract postal unit. See MCA § 7-2-4101(2)(b). All municipalities are required to have a police department. MCA § 7-32-4101. All municipalities are required to provide fire protection, but a third-class city may provide it through contract, through consolidation with

¹ This memo does not address issues related to the size of a city or any per capita or density requirements under the current statutes. It is possible that to have an effectively sized city in the Big Sky area, some of these statutory requirements may need to be amended by the State Legislature.

another fire protection provider, or through inclusion in a rural fire district. MCA § 7-33-4101(1) and 2(c).

All new municipalities must have certain officers. See MCA § 7-2-4107. A third-class city must have a mayor, a city judge, and two city council members for each city ward. See MCA § 7-4-4102(1). The city judge may be filled by appointment of the governing body, or by vote of the electorate, or the governing body may request that the justice of the peace or city judge of another jurisdiction serve as the city judge. See MCA § 7-4-4102(3). A third-class city mayor, with the advice of the city council, may also appoint a city attorney, a city clerk, city assessor, city treasure, chief of police or other officers deemed necessary to administer the city government duties. See MCA § 7-4-4102(4). If a third-class city does not have its own city attorney, it may contract with the county attorney (using an interlocal agreement) to provide legal services for the city. MCA § 7-4-4606.

9. Are there any special considerations related to zoning, or changes to existing zoning, which a newly formed municipality may wish to make following its incorporation?

This is a fact intensive question, and broad question, which may produce different answers based on the actual facts presented. Therefore, this answer will strive to provide a very high-level and general discussion, with the understanding that any zoning question would need to be further researched once the scope of the zoning, or the scope of the change in zoning, and the affected properties is specifically identified.

While a municipality has the ability to engage in certain zoning (see MCA § 76-2-301), so too does a County (see, MCA 7§ 6-2-201). A municipality may have a more limited zoning authority than does a county. *Compare*, MCA § 76-2-301 et seq. to MCA § 76-2-201 et seq. In addition, if a property owner is engaged in a use on his or her property consistent with existing

zoning requirements, but then the zoning changes which would impact, alter or eliminate that use, the landowner may nonetheless be permitted to continue to engage in that use despite the change in zoning. See MCA § 76-2-105 and 208. Specifically, MCA § 76-2-208 states: “Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued although such use does not conform to the provisions of such resolution.”

The Montana Supreme Court has had the occasion to address these statutes and the changes in zoning in several cases. See, e.g. *Egan Sough Community v. Flathead County*, 222 MT 57, 506 P.3d, 996 (2022), *Russell v. Flathead County*, 2003 MT 8, 67 P.3d 182 (2003). The Court has held that when considering whether a use engaged in at the time of the zoning change may continue as a permissible non-conforming use, the use of the property immediately before the zoning change must be examined. *Russell v. Flathead County*, at ¶ 38 (holding current owner’s use of the property differed significantly enough from the prior owner’s use to preclude the current owner from the benefit of the permissible non-confirming use statutes enjoyed by the previous owner). The Court also held that MCA § 76-2-208 “contemplates continuation of the status quo. ... mean[ing] simply that a pre-existing use may be maintained.” *Id.* at ¶ 42. However, if following a zoning change, the pre-existing use is changed or expanded beyond what was permitted at the time the new zoning was enacted, such change in use will not be permissible. See, generally, *Egan Sough Community*, ¶¶ 22-28 (holding use that was lawful when zoning was implemented may continue but a change or expansion of that use beyond what the permits held at the time of the zoning change specifically authorized may not).

Therefore, while a newly formed municipality may be able to change certain zoning within the city, landowners who had been engaged in a use permitted prior to the zoning change, may be permitted to continue that use after the zoning change in certain circumstances.

10. Can a municipality, formed within a Resort Area District but which does not have identical boundaries to the Resort Area District, be designated as a Resort Community? If so, can it also impose a new, separate Resort Tax from the one imposed by the surrounding Resort Area District?

As noted above, a municipality can be formed within the boundaries of a Resort Area District. That municipality can have the same boundaries as the Resort Area District but may also have boundaries that differ from those of the Resort Area District.

Whether a municipality could be incorporated within a Resort Area District and also be designated as a Resort Community within the Resort Area District, is neither addressed in statute nor in the above referenced Attorney General Opinion. Further, whether a Resort Community designated within a Resort Area District, could then impose its own Resort Tax in addition to the Resort Tax already imposed by the surrounding Resort Area District, is not addressed in statute or in the above referenced Attorney General opinion. In fact, then-Attorney General Steve Bullock specifically declined to answer those questions, as he believed them to be purely hypothetical at the time posed. He did note that the Legislature provided no guidance for that complex situation in the statutes. He also noted that a municipality can also raise revenues through property taxes; and therefore he did not want to speculate whether a Resort Community inside a Resort Area District that already has a Resort Tax, would need or want to impose a second Resort Tax in addition to the first Resort Tax plus any property taxes already charged by the municipality. *See* 53 Mont AG Opinion 1, dated April 7, 2009, ¶10.

Moreover, it should be noted that in 2019, when the Montana Legislature authorized the imposition of the 1% Infrastructure Tax, it placed certain limitations on Resort Communities with respect to that tax. A Resort Community (wherever it is located) with a population of more than 5,500 people, is prohibited from imposing the 1% Infrastructure Tax even if the qualified electorate wants such a tax. See MCA § 7-6-1503(1)(b)(ii). A Resort Area District does not have these same limitations, and upon approval of the qualified electorate, can impose both the 3% Resort Tax plus the 1% Infrastructure Tax. See generally, MCA § 7-6-1503(1)(a) and (b).

11. Will the creation of a municipality impact the collection of county taxes?

Following the formation of a municipality, the County will continue to levy, collect and spend taxes from property within the municipality until the municipality imposes and collects its own levy for maintenance of the property for which the county mill is imposed. See MCA § 15-18-420. Once the municipality provides services and County services are no longer required, then there might be a decrease in county mill levies charged within the municipality. But, without more information, we cannot provide definitive guidance as it will depend on the type of service offered by the municipality, and whether that service so offered would in turn eliminate or change a service previously provided by the County. Therefore, residents of the municipality may see a “tax shift” (from county taxes to city taxes) for certain services, but perhaps not a reduction or elimination of taxes. Also, it should be noted that there is no process for a rebate or refund of any portion of taxes previously collected by the County to the taxpayer or to the municipality.

12. Can municipal boundaries cross county boundaries?

We found nothing in Montana statutes that specifically prevents incorporation of a city across county boundaries; and indeed there is now a Montana Attorney General opinion holding

that municipalities are permitted to annex property across county boundaries as noted in response to the next question in this memo. (See 51 Atty Gen Opinion No. 18, issued September 21, 2006.) The key statute for municipal incorporation is MCA § 7-2-4101, which states: “Whenever the inhabitants of any part of a county desire to organize as a city or town, the inhabitants may apply by petition ... to the board of county commissioners of the county in which the proposed area is situated.” This section does not prohibit cross-county boundary cities. However, such a proposed city would be required to petition each set of county Commissioners and elections would be required in each county. See MCA § 7-2-4104. Registered electors residing in each territory in each county would be required to approve. If electors in one county approved, but electors in the other county rejected the proposal, then the proposed cross-boundary city would fail. Because there is Attorney General authority for city annexation cross-county boundaries, it may be more feasible to create the municipality in one county, and then in a subsequent petition and election, annex the desired property in the adjacent county after the city is incorporated in the first county, rather than to conduct simultaneous city incorporation elections in two counties.

13. Can a municipality, formed in one county annex property in an adjacent county into the municipality?

Yes. In September 2006, then Attorney General Mike McGrath (now, Chief Justice of the Montana Supreme Court) determined that a municipality located in one county may annex property in a neighboring county without seeking or getting approval from that neighboring county. See 51 Atty Gen Opinion No. 18, issued September 21, 2006. The Attorney General determined “the role established by the legislature for county government in the creation of a new municipality is a procedural one, not a substantive one.” Montana’s statutes “do not give

the county government any authority to approve or deny the petition for incorporation.”

Further, he found the municipal annexation provisions “do not extend authority to county governments to approve or deny a proposed annexation.” See 51 Atty Gen Opinion No. 18, page 2.

Specifically, the Attorney General concluded “the permission of the county in which a municipality was originally incorporated is not required before a municipality may annex additional territory within that county.” He also concluded that in the absence of specific statutes to the contrary, “the neighboring county’s approval is not required” even if the annexation crosses over county boundaries. *Id.* However, such annexation into a city will not alter the existing county boundaries or impair powers statutorily granted to each county government. *Id.* Therefore, the City of Helena (located within Lewis and Clark County) was permitted to annex into the City properly located in adjacent Jefferson County. However, the county boundaries remained unchanged, and certain City of Helena residents would remain residents of Jefferson County, and certain City of Helena residents would remain residents of Lewis and Clark County.

Concluding that cross-county annexation is permitted by Montana law and is not depended upon county approval, the Attorney General noted:

“The annexation provisions, particularly thoughts found in part 47, express the legislature’s desire to ensure sound urban development and an acknowledgement that municipalities are created ‘for the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purpose or in areas undergoing such development, and future annexations must consider these principals.’ Mont. Code Ann. § 7-2-4703(2). The legislature’s ultimate objective was to create standards for annexation in order to ensure the high quality of services needed for public health, safety and welfare. Mont. Code Ann. § 7-2-4703(3). ... Had the legislature intended to require county approval for municipal annexation, it would

have reflected its intent in statute. However, there is nothing in the plain language of the relevant statutes that indicates the legislature intended to require county approval for municipal annexation.”

See 51 Atty Gen Opinion No. 18, page 2-3. The legislature has not yet seen fit to change the statutory language in the 17 years since this opinion was issued, and there are no Montana Supreme Court decisions to the contrary.

14. If the residents desire greater governmental representation but do not want to incorporate, is it possible to alter the number of County Commissioners of a county to ensure better representation for District residents?

The number of commissioners can be altered as approved by the voters. Counties must have a minimum of three Commissioners, though may have more. MCA § 7-3-223. The size is determined when the form of government is first adopted by the voters, but may be changed by altering the existing form of government to permit additional commissioners. MCA § 7-3-123. (Changing the number of commissioners occurred as recently as 2016 when a Ravalli County Study Commission recommended reducing the number of commissioners in that County from 5 to 3. That recommendation was passed and adopted by the Ravalli County electors in a 2016 election.)

There are three primary methods for getting the question of whether to change the number of Commissioners (which is technically called the alteration of the form of county government) on the ballot:

- By petition (MCA § 7-3-123 and 7-3-149(1)(a)). To alter by Petition, there must be a petition containing signatures for 15% of the electors of that government unit. The petition must contain certain notices and satisfy certain process requirements. MCA § 7-3-125, 141 through 148.

- By adoption of a local government ordinance pursuant to MCA §7-3-103;
- By recommendation from a Study Commission pursuant to MCA § 7-3-192. (MCA § 7-3-149(1)(c)). A study commission can only be created by a vote of the county electorate. MCA § 7-3-173. The question of a Study Commission can appear on the ballot through (a) the electors by petition (15% signature threshold); (b) vote of the existing county commission; (c) automatically every 10 years. Mont. Const. Art. XI, § 9(2) and MCA § 7-3-173. The study commission can recommend a change in the form of government which would then appear on the ballot to be voted on by the electors. MCA § 7-3-171 through 193.

SECTION IV: County Boundary Topics

15. May County boundaries be adjusted for public safety purposes?

Yes, existing county boundaries may also be altered for reasons of improving public safety. See MCA § 7-2-2801. In this case, the petition must be signed by “at least 25 or a majority of” those who own real property in the area that is proposed to become part of the adjoining county for public safety reasons, whichever number is” and must be submitted to the county clerks of the adjoining counties for which the boundary changes are proposed. The County Commissioners in each affected adjoining county shall provide notice of the proposed change and shall hold a public hearing in the area proposed to be moved from one county to another. After the public hearing, the boards of county commissioners shall either accept, reject, or amend the boundary as proposed in the petition. MCA § 7-2-2803(1). Both county commission boards must agree on the action to be taken in response to the petition. If they cannot agree, the petitions cannot initiate a new petition requesting a boundary change for a one-year period. MCA § 7-2-2803(3). The two adjoining counties must then enter into an interlocal agreement related to the action taken. MCA § 7-2-2803(2). Once an interlocal agreement is executed, a public hearing in the territory to be moved will be held related to the costs for moving the territory and complying with the interlocal agreement. And following this public hearing, an election will be held for the purpose of determining whether or not to change the boundaries of the adjoining counties. MCA § 7-2-2804(1).

All registered electors of each of the adjoining counties are entitled to vote. MCA § 7-2-2804(2). If more than 50% of the votes cast in each adjoining county approve the proposed boundary change, then the boundary shall be changed as of January 1 of the year that begins at least 13 months after the date of the election. MCA § 7-2-2806. However, relocation of the

county boundaries for public safety purposes will not affect school district boundaries or the operation of a school district. MCA § 7-2-2809.

16. Can one county annex property into it from an adjacent county?

In the same Attorney General Opinion noted in response to question number 14 above, the Attorney General specifically noted: “Absent specific statutory language to the contrary, it logically follows that the neighboring county’s approval is not required if the annexation crosses over county boundaries to annex territory in a neighboring county.” While that opinion specifically addressed the ability of a city in one county to annex property located in an adjacent county without the approval of the adjacent county’s government, the quoted language is not limited to city annexations, and instead describes county annexations as well. There are no statutes prohibiting one county from annexing territory from another county. However, in that instance, MCA § 7-2-2201(2) would apply, and since the result of the annexation would be to enlarge one existing county with territory from another, a new county would be formed. Therefore, compliance with Title 7, Part 2, Chapter 22 would be required.

17. Can a wholly new county be formed from two existing counties?²

Yes, it is possible to create a wholly new county from portions of one or more existing counties. MCA § 7-2-2201(1). In addition, one existing county, may increase its size by the addition of territory taken from one or more other counties, which will create one new county of

² This memo does not address the likelihood of success of any of the required votes described below, or whether any county boundary change that requires a vote of an entire county’s population to agree is a realistic possibility. Because any such vote would require citizens to agree that property which currently contributes to its tax base be allowed to leave in favor of joining a separate tax base, the likelihood of such an affirmative vote is subject to question. Legislative change may be necessary to feasibly accomplish the results, despite that the statutes currently allow for certain changes to county boundaries.

enlarged size. MCA § 7-2-2201(2). Any new county must contain property of at least \$10,000,000, and the creation of the new county must not result in a reduction in property value of any county to less than \$12,000,000. MCA § 7-2-2202(1) and (2). A new county must be not less than 250 square miles of surveyed land. MCA § 7-2-2202(5). The creation of any new county may not result in any existing county being reduced in size to fewer than 500 square miles of surveyed land, and no territory may be taken from one county and added to another unless its surveyed size is greater than 49 square miles. MCA § 7-2-2202(3) and (4).

When a new county is proposed with territory from one county, a petition to create the new county must be presented to the county commissioners from the existing county, and it must be signed by at least 50% of the registered electors of the proposed new county. MCA § 7-2-2205(1) and (2)(a).

If a new county is proposed with territory from more than one county, then the petition is presented to the county commissioners of the county from which the largest area of territory will be taken. However, the petition must be signed by 50% of the registered electors in each territory to be taken from each county. MCA § 7-2-2205(1), (2)(b), and (2)(c).

MCA § 7-2-2215 describes when and where an election will be held for the purpose of determining whether the territory proposed to be taken from the county is to be established and organized into a new or enlarged county, for the election of officers, and for the location of a county seat. This statute is not the model of clarity, and the location(s) of elections depends on how the county will be created.

If a new county is created by separating territory from only one county to create the new county (for example, a portion of Gallatin County is carved off from its existing county to create the new county), then the petition to create the new county must be presented to the Gallatin

County Commissioners, and it must be signed by at least 50% of the registered electors in the territory that will form the new county. However, all registered electors in Gallatin County are entitled to vote.

If a new county is created by taking territory from two counties to create the new county (for example, a portion of Gallatin County is carved off from its existing county and a portion of Madison County is carved off from its existing county, with the combination creating the new county), then the petition is presented to the county commissioners of the county from which the largest area of territory will be taken. However, the petition must be signed by 50% of the registered electors in each territory to be taken from each county. MCA § 7-2-2205(1), (2)(b), and (2)(c). MCA § 7-2-2215 is not clear as to whether elections must be held in each county, or only in the county from which the largest territory will be taken. In whichever county holds the election, all registered electors are entitled to vote.

If a new county is created by taking territory from one county to enlarge another existing county (for example, a portion of Madison County is taken in order to enlarge Gallatin County), then then the petition is presented to the county commissioners of the county from which the largest area of territory will be taken but elections may be required in both counties.

Finally, it should be noted that the Montana code also describes how tax liabilities will be allocated to counties following a change of county boundaries. MCA § 7-2-2102(1) states: “Every county which shall be enlarged or created from the territory taken from any other county or counties shall: (a) be liable for a pro rata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken; and (b) be entitled to a pro rata proportion of the assets of the county or counties from which such territory is

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taken.” MCA § 7-2-2102(1). The share of liabilities and assets shall be determined as provided by [7-2-2204](#) and [7-2-2244](#) through [7-2-2246](#).” MCA §7-2-2102(2).