

Testimony supporting HB 285, "... revised definitions related to guest ranches: clarifying what constitutes a seasonal establishment and a small establishment..."

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My role here today is to provide you with a case history of why HB 285 is necessary. Our small guest ranch in Lolo (Dunrovin) was the subject of 3 years of ruinous litigation by the County of Missoula which claimed that we were not actually a guest ranch because we were too small under the statutory definition of a "small" guest ranch. This litigation was brought by a particularly overzealous Deputy County Attorney named James McCubbin and was supported by all 3 of the County Commissioners at that time. We were taken to court twice with preliminary injunctions demanding that we close. The first time for being a "subdivision for lease or rent" which is an issue the 2013 legislature addressed by passing SB 324 (99:0 in the House and 46:6 in the Senate) and the second time for being too small to be a "small" guest ranch. At no time did either the Deputy County Attorney James McCubbin the County Commissioners state what public interest was at state in trying to shut us down.

The litigation brought against us threatened us with fines of \$2,500/day (that's \$900,000/year) for remaining open because we weren't actually a guest ranch because we were too small to qualify. For the 3 years we fought the county on this we couldn't make advance reservations as we didn't know we'd be able to remain open; this alone is ruinous to any tourist-based operation. Judge Ed McLean last year ruled in our favor and chastised Missoula County for its "harassment" of us. Unless HB 285 is passed, small guest ranch and most guide outfitter facilities are vulnerable to similar efforts by misguided county employees to drive them out of business on the basis that they are too small to classify as a guest ranch or guide-outfitter facility.

I provide committee members with a copy of the litigation brought against us for being too small to be "small". You can see there is no other basis than the definition of "small" in this litigation. I will also provide a few copies of Judge McLean's decision in our favor for the record and consultation by any committee members interested. Finally, I provide a few copies of all the testimony presented on HB 559 (2011 legislature, testimony on 3/7/2011) on this issue in the Senate Public Health, Welfare & Safety Committee.

HB 559 which was adopted by 2011 legislature established the regulatory framework for "small" and "seasonal" guest ranches. Unfortunately, HB 559 inadvertently dropped language exempting guest ranches and guide-outfitter facilities that were smaller than "small" from regulations that applied to "small" guest ranches. As you can see from page 4 of the litigation brought against us, the following change was made HB 559 that created this problem:

(2) A guest ranch or an outfitting and guide facility that ~~does not meet~~ meets the definitions in 50-51-102 ~~and that provides accommodations to fewer than nine people during each day of operation~~ is not required to obtain a license under subsection (1).

DPHHS (email from Melissa Tuemmler) recognized that this was an oversight in HB 559. All of the testimony on HB 559 from DPHHS (Jim Murphy) and from the Association of MT Public Health Officers (Jim Carlton) was on the upper limit for a "small" guest ranch, there was no testimony whatsoever about issues with the lower limit of "9". In response to a question from Sen. Gillian, Mr. Murphy of DPHHS said (see page 4 of the transcript provided at 32:52 minutes into the hearing):

*"...I think it is important to note that the current law says that if you are a small establishment and small is defined as fewer than 9 guests each day, you're not even subject to these rules. These rules would apply to larger places that are serving over that number....The people that you've heard from here [operators of small guest ranches], most of them this rule would not even apply to. "*

Similarly in response to a question from Sen. Caffero, Mr. Carlson of the MT Association of Sanitarians (time 27:49) acknowledged that they were unaware of any sanitation issues associated with food service on guest ranches in Montana. He said their only concern was with large operations that might operate as *de-facto* restaurants and named "a very large guest ranch in Missoula County" as an example of this concern [this was a reference to Paws Up ranch]. With amendments from the Governor, HB 559 passed 91:8 in the House and 47:2 in the Senate.

The tourist industry is the second most important industry for Montana. One component of the tourist industry is guest ranches which attracts visitors wanting to experience components of ranch life including horseback riding and other components of ranch life in Montana's beautiful backcountry. Most guest ranches are working ranches that take in a small number of clients who engage in these components of ranch life and eat around the ranchers table with the ranch owners. Others are larger operations like dude ranches which have large numbers of clients and food service facilities appropriate for serving many client visitors. Another component of the tourist industry is the guide-outfitter industry. Although I don't have statistics, it is my belief that almost all guide-outfitters accommodate fewer than 9 clients/day on average during their seasons. Title 50-51-(2) 101 MCA recognizes:

*"...that there is a wide disparity in the types of establishments especially in the size, the time of year at which the establishments operate, and the small establishments with few employees and a limited operating season to conform to the same standards to which larger establishments are required to conform. These factors must be considered, especially in the operation of small or seasonal businesses that are such an important part of Montana's tourism business."*

Unless HB 285 passes, very small guest ranches and guide-outfitter facilities could potentially be shut down because they serve too few clients under the existing definition. This is exactly the opposite of the legislative intent in HB 559 (2011 legislature) and previous legislatures (e.g, SB 439 from the 1999 legislature).

Senate Public Health, Welfare & Safety Committee hearing on HB 559 (John Esp sponsor) in the 2011 legislature on 3/7/11 **UNDERLINING AND BOLD EMPHASIS ADDED.**

Discussion on HB 559 (42:16 long) on this recording (there is another recording that involves MT implementation of the National Health care law that is somewhat longer and if you are in that one, it isn't the correct recording.

**Proponents:**

0:55 Paige Dringman, sweet grass Co. Involved in this part of the code since 1997. Guest ranches were going to be regulated as hotels and motels...in 1997 came to the legislature to say it makes no sense for guest ranches to be regulated as hotels/motel not on public sewer or water...may accommodate only very few people, run the gamut from very small to larger facilities...those facilities that accommodate over 40 are regulated now as hotels/motels under the 1997 law...if they have a restaurant are regulated that way if you can call up and make a reservation to eat...we're not talking about any of these...talking about facilities that make take a handful of people...the 1997 legislation never came up with rules for guest ranches...some clarifications in 1999 on how to clarify the average number of guests....the department of public health last summer said they were going to fire up the negotiated rule making process again...The department of public health said no...there have been no problems[with guest ranches]....guide outfitting/guest ranches many of them have never been licensed for public accommodation purposes....there have been no problems...the marketplace will regulate these businesses...they serve people out of their kitchens and owners eat the same food as their guests...if there's not a problem, don't create unnecessary regulations...give them voluntary guidelines....

7:25...Jean Johnson, MT outfitters and guides Assoc....20 years experience. Direct your attention to the burdens these small businesses already operate under....(provides handout)...these deal with outfitters....these operated at 40-80% occupancy.

9:37 ...Ron Garrett owner guest ranch S. Big Timber, President MT Dude Ranchers Assoc.

10:35....Ernie Barker...owner guide outfitting business...15 years....on rule making committee with Paige

12:12....Linda Miller, operates Elkhorn Ranch South of Bozeman, owner and operator started 1922, family business.

12:42....Patty Wirth, Rocking Z guest ranch 20 miles north of Helena, guest ranch is their entire livelihood way to keep the ranch in the family...now can bring in people from all over the world now have 2 guests from Australia and England and has to go home and make them dinner.

Judy Faw from Big Timber.

**Opponents: [NOTE THE CHANGES RECOMMENDED WERE MADE SO THESE BECAME SUPPORTERS]**

14:57...Jim Carlton Supervisor sanitarian in Missoula here now representing the Association of MT Public Health Officers which is the professional association of registered sanitarians in Montana.

"I have to say that I agree with most of what has been said here as long as the emphasis is on small. However, oppose HB 559 as drafted but believe that compromise language can be found that satisfies concerns over food and water safety and provides the flexibility needed in a ranch situation. The current language determines the level of licensing based on average numbers but peak numbers are critical to determining risk in a food service setting. It is not practical from a regulatory standpoint to figure out if a facility has to be licensed using an average number of guests nor is it particularly important. This provision, which already exists in law, has made guest ranch licensing very difficult to apply and HB 559 does nothing to improve that. With current regulatory language, in a ranch that would accept guests all year could have 8,700 visitor days without being licensed or regulated. It would be possible for a guest ranch to serve greater than 25,000 meals at 3 meals/day over a year and not be licensed. [ 17:00] Public Health is about managing risks and larger facilities and larger numbers mean higher risks and that's particularly true in the food service industry when you're moving from a residential type food service setting to a commercial one. The critical public health issues here are food service and water supply. When high numbers of people are fed things like spaghetti or hot and cold casseroles or soups, it requires commercial equipment to heat cold and cool foods safely. For example, it takes several days for a 5 gallon bucket of split pea soup placed in a residential refrigerator to cool to temperatures that won't support bacterial growth. If there are just a few salmonella or staph bacteria in that food when it goes into cooling, there will be enough to make everyone very very sick after several hours or possibly a day or two after it's served. This isn't the case when you're just serving a family or a small number of people small volumes of food because residential refrigerators and cooling are designed to handle that bulk of food. But those big cooling units with circulating air and shallow metal pans that are meant to allow the food to get to get rid of its heat for example in a refrigerator that allows heated food to get down below 40 degrees quickly so that bacteria don't grow and people can stay safe and healthy. Sanitarians are trained to understand these issues and assure that proper equipment is used for large food events. The point here of course is that serving family sized meals is different than serving large numbers of people. We understand the argument of why small guest ranches should be exempt from public health regulation and to a great extent we agree. Guests are essentially invited into a home and allowed to take part in a ranching experience. Once the guest portion of an operational ranch however gets large enough the public health concerns become large enough to become more pronounced.

**[19:40] We support making changes to this legislation that make it clear that small guest ranches are and should be exempt from public health regulations. We would suggest that you amend the definitions of establishment and outfitting and guide facilities so that guest ranches and outfitting facilities with 24 or fewer guests per day are not regulated.** To strike the requirement that the Department [should also] to establish guidelines for small guest ranches would also be fine but to retain language for creating rules specific to guest ranches serving 25 or more people on any particular day is need for the reasons I've described. I've been doing this for 37 years as a licensed sanitarian. I personally and it is the policy of our Department to not regulate anyone that we don't have to. But again, risk issues come into play when we're talking about food service. In fact we lose money for every license that is issued in Missoula County and every other county in the state because about 50% of local food inspection costs are supported by local tax dollars. **We don't want to regulate low risk facilities.** We are passionate however about public health. It is our job to put practices and equipment into place that protect the public and the public that's consuming food and water. In my years I've seen many

outbreaks involved with food service dealing with large numbers of people. People where there's groups of 25 or more people eating and in some cases eating in unregulated environments. I've seen salmonella outbreaks that have sent many people to the hospital. Staph food poisoning which is something that is something a few of us have gone through but is nothing you ever want to experience more than once. Food virus and infections, hemolytic E-coli and we hadan outbreak in Missoula not involved in a guest ranch but, again, it's not the guest ranch it's the number of people in the facilities preparing food we're looking at from a public health risk standpoint. That particular event sent a baby out of state for intensive care and a number of other people to the hospital. And we've also had Hepatitis A outbreaks which are of people orally transmitted virus that makes people very very sick and in fact I had a friend who was a prosecutor at the county attorney's office die from Hepatitis A. The point here is that public health is a preventative practice. We don't want to have to wait until something happens at one of these facilities to do something. **And we believe that the breakpoint for requiring license in reasonable regulations dealing with serving large number of people be applied is at 25 people.** We've made a huge difference in all our lives by applying public health laws. Most legislators eat many meals a week in facilities licensed and inspected to meet safe food standards. How facilities that serve many people are equipped and operated insures that people can carry out their lives without any significant probability of having to go to the hospital due to food poisoning or a food-borne outbreak of an infectious disease. [24:20] Food may have pathogens in it and if not properly cooked, served, or stored can cause debilitating food-borne disease. There are over 8,000 facilities in Montana that are licensed either as food service establishments or bed and breakfasts that are inspected and rules are applied to them for the purposes of public safety. So this is not a requirement that is insurmountable. It is a requirement that is necessary to protect the public health. We urge you to support amendments to HB 559 that would serve the needs of ranches and provide for reasonable public health protections. Thank you. I should mention that Jim Murphy from DPHSS is here as an informational person." [25:22].

McKey Anderson, Montana Food Distributors. Wants to echo the comments just made. In its current form would have to oppose passage of the current legislation although they feel it can be amended along current guidelines to meet food safety to provide for public safety.

#### Informational witnesses:

24:45 Jim Murphy with the Department of Public Health and Human Services. Has been involved with many of the people in the room with the negotiated food service process.

#### QUESTIONS:

Sen. Caffero question for Jim Carlson. "Have you had any complaints on this issue did a consumer bring it to your attention...how did this come about?"

27:49. Carlson: "We carefully look at the laws that are being changed to be sure we are doing what is necessary to protect public health. **No we haven't had a complaint about guest ranches however we have had issues with a very large large quest ranch in Missoula County that until they were licensed as a overnight accommodation so that they could take reservations without prior reservations as required by quest ranches and**

have people come and eat without participating in quest ranch activities and literally had hundreds and hundreds of visitors in a very kitchen without being regulated so we've had concerns about the possibility that we'd have these problems. And again, it's the fundamental purpose of an environmental health division that ....protect people before problems occur."

Sen. Lewis. Question to the food distributor guy Mr. Anderson. What dog does your organization have in this fight?

Mr. Anderson: If there's a complaint, one of our members probably sold the food to that facility so our members would be subject to these investigations...normally shows that was involved in the food preparation.

Sen. Lewis: How often does this happen...how often do you have to get involved?

Anderson: Fortunately, not a frequent situation. But perhaps 4-5/year.

Sen. Gillian: For Murphy. What are the proposed regulations like? Based on procedures, based on equipment or what?

Murphy: Safe drinking water, adequate sewer, food safety concerns (food handling, refrigeration and storage) are our areas where we have responsibilities.

Sen. Gillian: Would require a lot of extensive equipment to comply with the regulations [proposed]?

32:52. Murphy: *"No, in most cases this does not require a lot of expensive equipment it does precisely what you say, is food being kept at the standard temperatures if you have a large operation you may need a larger refrigerator for instance. **But I think it is important to note that the current law says that if you are a small establishment, and small is defined as fewer than 9 guests each day, you're not even subject to these rules. These rules would apply to larger places that are serving over that number.** I think, and you can correct me if I'm wrong, but the people we've been working with on this group generally fall below that threshold. The people that you've heard from here, most of them this rule would not even apply to. So I don't think they would have any expense or any change and the vast majority of cases out there as guest ranches."*

Sen. Gillian. How about bed and breakfasts?

Murphy: They are subject to similar regulations, yes.

Sen. Gillian: To Paige Dringman. In your operation do you have out-of state visitors?

Dringman: Yes

Sen. Gillian. Do they ever ask you about the accommodations, the meal preparation?

Dringman: No. Most of our guests can see our kitchen and dining facilities. Operating since 1965 and have had no issues or concerns from guests.

Sen. Gillian: Would they typically see your food preparation facilities go into the kitchen?

They could. The kitchen is in the house, build for a family of 13...mostly they are out riding...they could stick their heads in and ask what's for dinner.

Sen. Gillian: Customary to test wells each year?

Dringman: Can't speak for other ranchers, we have tested our water, don't have it tested regularly however.

Sen. Gillian: Question for sponsor. I was looking at this definition of "small" and I see how it was calculated, 24 on an average day and I was wondering if you were open to the potential amendment that has been suggested by the gentleman, the Sanitarian.

Rep. Esp. The definitions that you see have been there for a long longtime and I think they were appropriate then and I think they are appropriate now.

Sen. McCuro. Question for McKey Anderson. You said there are 4-5 complaints/year. Are these complaints about these specific places guest ranches and outfitting and guide facilities or are these overall?

Anderson: That would be overall and they range all the way from tainted product to actually potential organisms.

Sen. McCuro. So have you had complaints specific to these guest ranches and guide outfitting facilities under the definition in this bill?

[38:21] Anderson: *"With respect to that issue we did have a complaint that involved a large party that was held at a facility such as this and obviously any time you start working with large numbers of people you have an increased risk and exposure and you have more requirements for food handling to be in a safe zone. The health service laws and the sanitation laws are very specific to these larger groups and we feel that it is a standard that is made necessary through the overall experience of the US population.*

39:40 Closing by Rep. Esp. All this can be handled in voluntary guidelines. "What we are asking here is a reasonable approach for small establishments." There is no compelling case that has been made here today. "Government can't eliminate risk but it can make it awful hard to make a living." "Regulations are subject to the wide variety of interpretations of sanitarians across the state and county sanitarians can implement those rules and enforce them in a whole lot of different ways and some are

more strict and some are more onerous than others. I submit to you that voluntary guidelines will never be over-zealously implemented".

COPY

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By \_\_\_\_\_ Deputy

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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

MISSOULA COUNTY

Plaintiff,

v.

STERLING D. MILLER, SUZANNE M.  
MILLER, and DUNROVIN RANCH AND  
RESEARCH, L.L.C.

Defendants.

Cause No. DV-12-649

Department No. 1  
Hon. Ed McLean

REPLY BRIEF IN SUPPORT  
OF MOTION TO ENFORCE  
SETTLEMENT  
AGREEMENT

The status of this case is that it has been fully settled pursuant to the parties' Settlement Agreement that resulted from a settlement conference held March 22, 2013. The current motion seeks merely to comply with and implement the terms of the parties' Settlement Agreement. In particular, in paragraph 6 of the Settlement Agreement, the parties expressly anticipated that they may disagree as to whether Defendants' business meets the

1 statutory definition of a "guest ranch" and called for the parties to  
2 "promptly" bring the matter to the Court for its decision if/when that dispute  
3 developed. The Settlement Agreement further expressly requires  
4 Defendants to immediately cease any operations requiring licensing for an  
5 accommodations/food service establishment if/when it is determined that  
6 they are not exempt from licensing requirements as a "guest ranch."

7 Defendants respond by urging the Court to disregard the terms of the  
8 parties' Settlement Agreement and the plain meaning of applicable  
9 statutes. Defendants also attempt to claim attorney's fees under a statute  
10 that only allows such an award under very limited circumstances to a  
11 prevailing party. The Settlement Agreement controls, and does not allow  
12 for an award of attorney's fees. Moreover, Defendants cannot be  
13 considered to be a prevailing party because the parties have already  
14 settled this case, and the County cannot be considered to be acting in bad  
15 faith by complying with the requirements of the Settlement Agreement.  
16 Defendants' claim for attorney's fees must be denied.

17  
18 **A. Defendants' business does not fall within the statutory definition**  
19 **of "guest ranch" and is not exempt from establishment licensing**  
20 **requirements.**

21 Defendants' response brief relies heavily upon their interpretation of  
22 legislative intent, while failing to address the actual language of the  
23 statutes at issue. As noted in the County's opening brief, the issue of  
24 whether Defendants' business is exempt from establishment licensing  
25 depends upon whether they meet the definition of "guest ranch," as defined  
26 at M.C.A. §50-51-102(5). Defendants do not contend otherwise.

27 Furthermore, the parties agree that Dunrovin meets the first three  
28

1 subsections of the definition of "guest ranch," so the issue boils down to  
2 whether Dunrovin qualifies as a "small establishment." M.C.A. §50-51-  
3 102(5)(d).

4 "Small establishment" is defined at M.C.A. §50-51-102(11), which  
5 provides:

6  
7 (11) "Small establishment" means a guest ranch or an outfitting  
8 and guide facility offering accommodations to between 9 and  
9 24 people on average a day. The average number of people a  
10 day is determined by dividing the total number of guests  
11 accommodated during the year by the total number of days that  
12 the establishment was open for the purpose of accommodating  
13 guests as a guest ranch or outfitting and guide facility during  
14 the year.

15 Defendants assert that they meet the "small establishment" definition  
16 by making a maximum of nine sleeping spaces available to the public  
17 (when all double beds are occupied by two persons) (Defendants' brief,  
18 p.9). However, Defendants disregard and fail to apply the specific  
19 language of M.C.A. §50-51-102(11) governing how the average number of  
20 people must be calculated. Defendants do not dispute that the figures they  
21 have provided establish that under the formula mandated by M.C.A. §50-  
22 51-102(11), they only offer sleeping accommodations to approximately 2.5  
23 people a day. Accordingly, it is clear from the data produced by  
24 Defendants that they do not meet the definition of "small establishment,"  
25 and therefore do not meet the definition of "guest ranch."

26 While Defendants rely heavily upon their interpretation of the intent of  
27 the 2011 Montana Legislature, they fail to establish any ambiguity in the  
28 statutory language to justify any discussion of legislative intent. Legislative

1 intent is not properly considered in the interpretation of a statute unless the  
2 statutory language is unclear. M.C.A. §1-2-101; *State v. Madsen*, 2013 MT  
3 281, ¶8 (Mont. Sept. 26, 2013).

4 Defendants further fail to address the fact that the Montana  
5 Legislature affirmatively deleted language which had previously exempted  
6 establishments smaller than those addressed as “small establishments.” It  
7 is undisputed that HB 559 (2011) deleted the language which previously  
8 exempted these very small establishments, through the following  
9 amendment of M.C.A. §50-51-201(2):

10  
11 (2) A guest ranch or an outfitting and guide facility that ~~does not~~  
12 ~~meet~~ meets the definitions in 50-51-102 and that provides  
13 accommodations to fewer than nine people during each day of  
14 operation is not required to obtain a license under subsection  
15 (1).

16 The undisputed facts and unambiguous language of the applicable  
17 statutes make it clear that Dunrovin is not a “small establishment” and is  
18 thus not a “guest ranch,” so it is not exempt from accommodations and  
19 food service establishment licensing requirements.

20  
21 **B. The County’s motion is appropriate, and was required by the**  
22 **terms of the parties’ Settlement Agreement.**

23 The parties entered into a Settlement Agreement negotiated at a  
24 settlement conference in March, 2013. Settlement agreements are  
25 contracts, subject to the provisions of contract law. *Kluser v. PPL Mont.,*  
26 *LLC*, 2012 MT 321, 368 Mont. 101, 293 P.3d 817, ¶31 (Mont. 2012).

1 Defendants do not challenge or dispute the validity of the Settlement  
2 Agreement. Nonetheless, they argue that the County's actions taken in  
3 compliance with the Settlement Agreement somehow constitute acts of  
4 "bad faith." Defendants' arguments in this regard are essentially collateral  
5 attacks on the Settlement Agreement without any legal or factual basis,  
6 and should be disregarded.

7 Defendants argue that the County's motion is untimely and that they  
8 should be awarded attorney's fees. However, Defendants fail to  
9 acknowledge that a "prompt" motion was mandated by the terms of the  
10 parties' Settlement Agreement. In particular, the Settlement Agreement  
11 includes the following requirement:

12  
13 *"If the parties disagree upon whether Dunrovin meets the definition of*  
14 *a guest ranch, then they shall promptly seek a determination from the*  
15 *district court."*

16 [italics in original]

17  
18 This provision was deemed so important by the parties that this language  
19 was italicized in the Settlement Agreement. Defendants acknowledge in  
20 their brief that they demanded a determination of whether they meet the  
21 definition of "guest ranch" at an earlier date than had been contemplated in  
22 the Settlement Agreement (Defendant's brief, p.3; see also Defendants'  
23 correspondence attached as Exhibit 1 to the County's opening brief). The  
24 County complied with the Defendants' demand. Then, once it was  
25 established that the parties disagreed as to whether Dunrovin meets the  
26 definition of "guest ranch," the Settlement Agreement required that "*they*  
27 *shall promptly seek a determination from the district court*" [emphasis in  
28

1 original]. The County's motion is not untimely; rather, it simply complies  
2 with the requirement of the parties' Settlement Agreement that a motion  
3 must be filed "promptly."

4 Defendants further assert that they are entitled to operate as a "guest  
5 ranch" until March 2014, regardless of whether or not they meet the legal  
6 definition of a "guest ranch." The County acknowledges that the  
7 Settlement Agreement contemplated treating Defendants' business as  
8 being a "guest ranch" until March 2014. As stated in paragraph 6 of the  
9 Settlement Agreement, this time line was set due to inadequacy of  
10 Defendants' records at the time of the Settlement Agreement, and to  
11 enable Defendants to compile data to support a determination of whether  
12 they are, or are not, a "guest ranch." The only reason a determination is  
13 being made sooner is because the Defendants demanded that the date for  
14 doing so be moved up, and provided records to make that determination  
15 on an expedited basis. See Defendant's brief, p.3; and Defendants'  
16 correspondence attached as Exhibit 1 to the County's opening brief. If the  
17 Court determines that Dunrovin is not a "guest ranch," then Montana law,  
18 as well as the plain language of the Settlement Agreement, will prohibit  
19 continued operation of any accommodations and/or food service  
20 establishment business without meeting licensing requirements. Neither  
21 the parties nor the Court have the ability to eliminate or exempt Defendants  
22 from these statutory requirements if/when a determination is made that  
23 they are not a "guest ranch."

24 Defendants also argue that they should have been given additional  
25 notice prior to the County's filing of a request for injunctive relief.  
26 Paragraph 14 of the Settlement Agreement allows for enforcement of its  
27 terms through injunctive relief:  
28

1  
2 14. If the Millers do not satisfy the terms and deadlines set forth in  
3 this Agreement, Missoula County may apply to the Court to lift the  
4 stay and seek injunctive relief and/or any applicable fines or  
5 penalties on 10 days written notice to the Court.

6 [emphasis added]

7  
8 Defendants do not allege that the County has failed to provide 10 days  
9 written notice to the Court, as specified in the parties' Settlement  
10 Agreement. Defendants imply that they should have received additional  
11 notice, but do not cite to any provision of the Settlement Agreement or law  
12 requiring additional notice. Defendants do not allege that they have had  
13 inadequate time to respond to the County's motion, nor do they allege any  
14 prejudice or harm of any kind. The County's compliance with the terms of  
15 the parties' Settlement Agreement certainly does not support Defendants'  
16 contentions that the County is acting in bad faith.

17 Finally, Defendants request an award of attorney's fees per M.C.A.  
18 §25-10-711. However, the Settlement Agreement controls, and does not  
19 allow for an award of attorney's fees to either party. *Kluser*. The only  
20 provision of the Settlement Agreement regarding attorney's fees states that  
21 "each party to bear its own costs and attorney's fees." Settlement  
22 Agreement, ¶15.

23 Furthermore, M.C.A. §25-10-711 only allows for an award of  
24 attorney's fees to a party who prevails in the litigation. Defendants herein  
25 cannot be considered to have prevailed, because they settled the case  
26 with the County. The Settlement Agreement also makes it clear that  
27 Defendants acknowledged multiple violations of Montana law and local  
28

1 regulations, and agreed to come into compliance with legal requirements.  
2 Defendants are not prevailing parties, so M.C.A. §25-10-711 does not  
3 allow for any award of attorney's fees in this case.

4 Moreover, the County cannot be found to have acted in bad faith for  
5 complying with the terms of the parties' Settlement Agreement.

6 Defendants acknowledge that under M.C.A. §25-10-711, even if they were  
7 a prevailing party (which they are not), attorney's fees may only be  
8 awarded to the Defendants if the court finds that the County's position  
9 "was frivolous or pursued in bad faith." Defendants further acknowledge  
10 that such an award can only be granted if the County's position is "outside  
11 the bounds of legitimate argument on a substantial issue on which there is  
12 a bona fide difference of opinion." Defendants' brief, p.11, citing *Western*  
13 *Tradition P'ship v. AG of Mont.*, 2012 MT 271, 367 Mont. 112, 291 P.3d  
14 545 (Mont. 2012).

15 Notably, the case cited by Defendants confirms that attorney's fees  
16 are available only on a very limited basis under M.C.A. §25-10-711. The  
17 Montana Supreme Court in *Western Tradition P'ship* affirmed the denial of  
18 attorney's fees by the district court. Even though the plaintiff therein  
19 prevailed (which Defendants herein have not), it was held that the Attorney  
20 General had not made frivolous arguments nor acted in bad faith. The  
21 Court noted that the case occurred "in a time of shifting legal landscapes,  
22 the contours of which still have not finally been defined." *Western Tradition*  
23 *P'ship* ¶20. Similar circumstances exist here, where the statutes at issue  
24 were amended in 2011, and there are no reported cases interpreting the  
25 changes in the law.

26 Missoula County has supported its motion with extensive analysis  
27 and citations to the plain language of multiple statutes. The County's  
28

1 motion cannot be a surprise to Defendants, as the dispute at issue herein  
2 was specifically anticipated in the parties' Settlement Agreement, which  
3 also specifically required the parties to "promptly" submit this matter to the  
4 Court when it became clear that a dispute existed. The County is merely  
5 complying with the requirements of the Settlement Agreement and seeking  
6 to fulfill its obligation to enforce public health and safety licensing  
7 requirements established by the Montana Legislature. A failure of the  
8 County to address known violations of public health and safety laws would  
9 both adversely affect the public health and safety, and expose the County  
10 to liability in the event of any personal injury arising out of any sanitation  
11 issues that might have been avoided through appropriate licensing.

12 The County has acted in compliance with the Settlement Agreement.  
13 The Settlement Agreement does not allow for an award of attorney's fees.  
14 Defendants are not prevailing parties in this case, which the parties settled.  
15 The County has not acted in bad faith by complying with the terms of the  
16 Settlement Agreement. The County's arguments are based on the plain  
17 meaning of Montana statutes and are not frivolous. Accordingly, attorney's  
18 fees may not be awarded to Defendants even if the Court denies the  
19 County's motion.

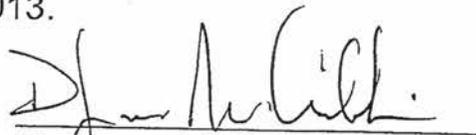
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21  
22 **WHEREFORE**, Missoula County requests an Order of the Court granting  
23 the following relief:

- 24 1. Ordering and concluding that Dunrovin Ranch is not exempt from  
25 licensing requirements per M.C.A. §50-51-103(3) and/or §50-51-  
26 201(2), because Dunrovin Ranch is not a "guest ranch" as defined at  
27 M.C.A. §50-51-102(5); determining that Dunrovin does not satisfy the  
28

1 definition of "guest ranch" because it is not a "small establishment"  
2 as required by M.C.A. §50-51-102(5)(d); and determining that  
3 Dunrovin does not meet the definition of "small establishment" as  
4 defined at M.C.A. §50-51-102(11), because it does not offer sufficient  
5 accommodations – which term must be interpreted as overnight  
6 sleeping accommodations.

- 7 2. Ordering that Defendants are enjoined from conducting any further  
8 business providing accommodations and/or involving food  
9 preparation unless/until Defendants have obtained appropriate  
10 licenses for such business.  
11 3. Ordering that Defendants' request for attorney's fees is denied.

12  
13  
14 Dated this 2<sup>ND</sup> day of December, 2013.

15   
16 D. James McCubbin  
17 Deputy County Attorney  
18

19  
20  
21 CERTIFICATE OF SERVICE

22 I hereby certify that on the 2<sup>nd</sup> day of December, 2013, I  
23 caused true and correct copies of the foregoing document, with any  
24 attachment(s), to be served by U.S. mail or otherwise by the method(s)  
25 specified below, to:

26 Colleen M. Dowdall  
27 Worden Thane P.C.  
28 Via Courthouse Box



1 Ed McLean, District Judge  
2 Department No. 1  
3 Fourth Judicial District  
4 Missoula County Courthouse  
5 Missoula, Montana 59802  
6 Telephone: (406) 258-4771

FILED FEB 28 2014

SHIRLEY E. FAUST, CLERK  
By Dawn Lehman  
Deputy

7 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

8 MISSOULA COUNTY,

) Dept. 1

9 Plaintiff,

) Cause No. DV-12-649

10 -vs-

) **OPINION AND ORDER re:**  
) Missoula County's Motion to  
) Enforce Settlement Agreement

11 STERLING D. MILLER, SUZANNE M.  
12 MILLER, and DUNROVIN RANCH  
13 AND RESEARCH, L.L.C.,

14 Defendants.

15 Pending before the Court is Missoula County's Motion to Enforce  
16 Settlement Agreement (Ct.Doc.45) wherein the County seeks an immediate  
17 injunction ordering the Defendants to cease doing business until Defendants  
18 have obtained all of the necessary accommodation and food service licenses  
19 required under Montana law governing "Hotels, Motels and Roominghouses."  
20 MCA § 50-51-101 *et seq.* If Dunrovin Ranch does not qualify as an exempt  
21 "small guest ranch" under these provisions, Dunrovin Ranch will be licensed  
22 and regulated as if it is a large commercial food service, motel, hotel, or  
23 rooming house and at minimum will be required to build a commercial kitchen,  
24  
25  
26

OPINION AND ORDER re; Missoula County's Motion  
to Enforce Settlement Agreement

Page 1

1 in addition to being subject to all the same licensing fees and administrative  
2 oversight and regulations that apply to large food service and overnight tourist  
3 lodging establishments.

4 The Court sees no compelling need on the part of the County to shut  
5 down the Defendants' business pending resolution of the substantive issue  
6 regarding whether Dunrovin Ranch is exempt from establishment licensing  
7 requirements and administrative regulations under the statutory exemption for  
8 "guest ranches," and the County's Motion to Enforce Settlement Agreement  
9 (Ct.Doc.45) is **DENIED** to the extent the County seeks an immediate  
10 injunction under paragraph 6 of the March 27, 2013 Settlement Agreement  
11 between the parties pending resolution of the issue of Dunrovin Ranch's  
12 status as an exempt guest ranch.  
13  
14  
15

16 The parties agree that guest ranches averaging 9 to 24 guests per day  
17 are exempt from licensing and regulation requirements pursuant to MCA §  
18 50-51-102, § 50-51-201, and § 50-51-103(3). The parties cannot agree that  
19 guest ranches averaging less than 9 guests per day are exempt from the  
20 same licensing and regulation requirements governing large food service and  
21 overnight tourist establishments averaging more than 24 guests per day. The  
22 licensing statute at issue when the County and the Defendants first began a  
23 battle in 2010 to resolve water and sewer regulations, building permits, and  
24  
25  
26

business license requirements provided:

1                   **MCA § 50-51-201(1) License required.** (1) Except as provided  
2 in subsection (2), a person engaged in the business of conducting or  
3 operating an establishment shall annually procure a license issued by  
4 the department [Department of Public Health and Human Services].

5                   (2) A **guest ranch** or an outfitting and guide facility that does not  
6 meet the definitions in 50-51-102 and that provides accommodations to  
7 fewer than nine people during each day of operation is not required to  
8 obtain a license under subsection (1).

9                   In 2011, the Montana Legislature modified subsection (2) of the statute  
10 to read:

11                   (2) A **guest ranch** or an outfitting and guide facility that meets  
12 the definitions in 50-51-102 is not required to obtain a license under  
13 subsection (1).

14                   The term "guest ranch" is defined at MCA § 50-51-102(5), which provides:

15                   (5) "Guest ranch" means a facility that:

16                   (a) uses one or more permanent structures, one or more of  
17 which have running water, sewage disposal, and a kitchen;

18                   (b) **furnishes sleeping accommodations on advance**  
19 **reservations** for a minimum stay; \*

20                   (c) **provides recreational activities** that include but are not  
21 limited to hunting, horseback riding, fishing, hiking, biking,  
22 snowmobiling, or a working cattle ranch experience to its **guests**  
23 **and day visitors**; and

24                   (d) is a **small establishment** or a seasonal establishment.

25                   \* notice that the word used is "furnishes" not "occupied."  
26

1 Missoula County agrees that Dunrovin Ranch meets the first three  
2 subsections of the definition of a "guest ranch," but does not agree that  
3 Dunrovin Ranch meets subsection (d). The County takes this position based  
4 on the statutory definition of "small establishment" at MCA § 50-51-102(11)  
5 (2011), which provides:

6  
7 (11) "Small establishment" means a **guest ranch** or an outfitting and  
8 guide facility **offering accommodations to between 9 and 24 people**  
9 **on average a day**. The average number of people a day is determined  
10 by dividing the total number of guests accommodated during the year  
11 by the total number of days that the establishment was open for the  
12 **purpose of accommodating guests as a guest ranch** or outfitting  
13 and guide facility during the year. (\* Note that the word "sleeping"  
14 accommodations is not found in this definition.)

15 The Department of Public Health and Human Services further defined  
16 "establishment," "food service establishment," and "sleeping accommodation"  
17 at Admin. R. Mont. (ARM) 37.111.101 which provides:

18 (4) "Establishment" means a **facility providing sleeping**  
19 **accommodations** to the public, such as hotel, motel, tourist home, or  
20 rooming house, including boarding house, hostel, or vacation rental.  
21 For the purpose of this Sub-Chapter, establishment **does not include a**  
22 "bed and breakfast," "**guest ranch**," or "outfitting and guide facility."

23 . . . .  
24 (7)(a) "Food service establishment" . . . . (b) **does not include:**

25 . . . .  
26 (iv) an establishment, as defined in 50-51-102, that serves food  
only to its **registered guests and day visitors**.

(13) "Sleeping accommodation" means the provision of sleeping

1 quarters where the linen service or housekeeping service are provided  
2 by management or by the guests under the direct supervision of  
3 management . . .

4 If Dunrovin Ranch meets the definition of a "small establishment" under  
5 this last subsection of MCA § 50-51-102(5)(d), the Ranch is exempt from  
6 establishment licensing requirements and administrative regulations under  
7 MCA § 50-51-103(3) which provides:

8 (3) The department may not adopt rules governing guest ranches  
9 and outfitting and guide facilities that meet the definitions in 50-51-102  
10 but may adopt voluntary guidelines for these facilities. The guidelines  
11 **must take into consideration the size, type, location, and seasonal**  
12 **operations** of an establishment and **may include only guidelines to:**

- 13 (a) address that the establishment has safe drinking water and  
14 an adequate water supply;  
15 (b) ensure an adequate and sanitary sewage system and  
16 ensure adequate and sanitary refuse collection and disposal;  
17 and  
18 (c) address food safety concerns, such as adequate storage,  
19 refrigeration, and food handling.

20 The County takes the position that the only thing that matters in  
21 determining whether Dunrovin Ranch is a small exempt guest ranch is  
22 whether Dunrovin has enough overnight guests throughout the year to satisfy  
23 the criteria that the guest ranch is offering sleeping accommodations to  
24 between 9 and 24 people on average a day. The County reasons that  
25 because Dunrovin Ranch only furnishes sleeping accommodations for 9, and  
26 because it is not possible for Dunrovin Ranch to actually fill those 9 spots

1 every night of the year, Dunrovin Ranch does not fit the definition of a "guest  
2 ranch" under MCA § 50-51-102(5), making Dunrovin Ranch subject to the  
3 same licensing requirements and administrative regulations as large guest  
4 ranches, and hotels, motels and rooming houses.

5 The State summarizes its legal position by stating in its brief:

6  
7 Thus, although Dunrovin may have been exempt from establishment  
8 licensing requirements prior to 2011, the changes to the law [i.e. the  
9 fourth criteria in 50-51-201(5)(d)] in 2011 clearly and unambiguously  
10 eliminated the exemption that may have previously applied to Dunrovin.

11 Dunrovin Ranch is not exempt from licensing requirements per M.C.A. §  
12 50-51-103(3) and/or 50-51-201(2), because Dunrovin is not a "guest  
13 ranch" because it is not a "small establishment" as required by M.C.A. §  
14 50-51-102(5)(d). Dunrovin does not meet the definition of "small  
15 establishment" as defined in M.C.A. § 50-51-102(11), because it does  
16 not offer sufficient accommodations – **which term must be interpreted  
17 as overnight accommodations.**

18 The County claims the statutory definitions leading to its conclusion that  
19 Dunrovin Ranch is not a "guest ranch" are clear and unambiguous, and that  
20 the word "accommodation" can only mean "overnight guests" for the purpose  
21 of determining whether Dunrovin Ranch has enough guests to qualify as a  
22 "guest ranch," i.e. daily average of 9 to 24 overnight guests, and therefore,  
23 this Court cannot look to Legislative intent to determine whether Dunrovin  
24 Ranch is a "guest ranch."

25 This Court disagrees. The very fact that the County has taken such a  
26

1 narrow definition of "accommodate" to mean only sleeping spots to support its  
2 position that Dunrovin Ranch should be treated as a "bed and breakfast" or a  
3 "Hotel/Motel/Inn" leads to a bizarre result and makes no sense whatsoever,  
4 particularly given the Legislature's purpose statement set forth in MCA § 50-  
5 51-101(2). In effect, the County is saying that Dunrovin Ranch is too small to  
6 qualify as a small guest ranch, and therefore, it must be treated the same as  
7 large consumer food service and overnight tourist sleeping establishments.  
8

9 However, the various statutory definitions set forth herein above says to  
10 this Court that the 2011 Legislature intends the counting of "day visitors"  
11 within the calculations in determining daily averages because for the first time  
12 the term "day visitors" appears in relevant statutes. To hold otherwise denies  
13 the very nature and purpose of "guest ranch" activities, as overnight sleeping  
14 accommodations make up only a minor percentage of recreational activities  
15 offered by guest ranches to their guests, and can include guest apartments,  
16 guest bedrooms in a primary residence, and overnight sleep outs on the trail.  
17

18 In fact, the Court does not need to look to legislative history for guidance, as  
19 the Legislature explained its intent at MCA § 50-51-101(2), stating:  
20

21 (2) The legislature recognizes that there is a wide disparity in the  
22 type of establishments, especially in the size, the time of year at which  
23 the establishments operate, and the ability of small establishments with  
24 few employees and a limited operating season to conform to the same  
25 standards to which larger establishments are required to conform.  
26

1 These factors must be considered, especially in the operation of small  
2 or seasonal businesses that are such an important part of Montana's  
3 tourism business. For these reasons, the legislature believes that  
4 department actions must be tailored to properly and reasonably  
5 address differences in the size, location, purpose, and time of year of  
6 operation of certain small or seasonal establishments. The legislature  
7 believes that guidelines to assist these small and seasonal  
8 establishments with addressing basic health standards are appropriate,  
9 rather than regulations. The guidelines should be voluntary and  
10 address the basic health standards and should not detract from the  
11 **rustic, out-of-doors experience** offered by many guest ranches and  
12 outfitter and guide facilities and desired by many tourists. The  
13 legislature is also aware that most of these small and seasonal  
14 establishments such as **guest ranches** and outfitting and guide  
15 facilities have not been subject to department regulation. While  
16 voluntary guidance from the department on basic public health  
17 concerns may benefit these establishments, **regulation is not**  
18 **warranted.**

19 This provision clearly places a duty on the part of the Department of  
20 Health and Human Services, as well as the County, to take positive steps to  
21 encourage and facilitate the development and success of Montana's small  
22 guest ranches. Missoula County has done nothing to accommodate the  
23 success of this small guest ranch, and in fact has harassed this business  
24 since 2010 and continues to do so by insisting on a very narrow interpretation  
25 of the word "accommodate" to only mean "sleeping" spaces (in Dunrovin's  
26 case 4 double beds and 1 single bed). If that is the case, then the Court's  
use of the phrase "accommodate the success of" in the Court's previous  
sentence is a grammatical error according to the County.

1 There is no doubt there is a problem with the Legislature's 2011  
2 amendment of MCA § 50-51-102(5) defining "small establishment" as  
3 "offering accommodations to between 9 and 24 people on average a day" if  
4 the definition of average "accommodations" is limited to sleeping spots. The  
5 amended statute became silent as to the status of less than 9 people on  
6 average a day. This was clearly a legislative oversight on the part of the  
7 Legislative during the amendment process because the Legislature failed to  
8 account for guest ranches offering accommodations, sleeping or otherwise,  
9 for less than 9 people on average a day. Nevertheless, the County's  
10 insistence that "day visitors" do not count violates the County's duty under  
11 MCA § 50-51-101(2) to promote and encourage small Montana tourist  
12 businesses, and in particular, small guest ranches. Furthermore, the  
13 County's insistence that the Legislature must have intended to count only  
14 "sleeping" accommodations, and not recreational tourist accommodations, in  
15 the calculation to determine what is and what is not a "guest ranch," leaves  
16 small guest ranches with less than 9 average guests per day to the mercy of  
17 licensing requirements and administrative regulations governing large  
18 establishments such as hotels, motels, and commercial food services, which  
19 defeats and destroys the very purpose of the Legislature's intent to exempt  
20 small guest ranches like Dunrovin Ranch as expressed under MCA § 50-51-  
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101(2).

1  
2 Moreover, recreational ranch activities in the form of providing an  
3 authentic **rustic, out-of-doors experience** by supplying riding horses, day  
4 and overnight riding gear, day and overnight horse packing and hunting trips,  
5 hiking, fishing and biking gear, snowmobiling, food baskets for day and  
6 overnight pack trips, and working cattle ranch experiences, as listed in the  
7 third criteria set forth in MCA § 50-51-102(5)(c) defining "guest ranch," cannot  
8 be reasonably discounted for purposes of determining average number of  
9 guests, as providing such expensive and time-intensive recreational guest  
10 "accommodations" available to both overnight guests and day visitors are the  
11 very expectation and nature of what it means to be a "guest ranch,"  
12 regardless of whether a particular guest is staying in a large overnight tourist  
13 establishment, staying with locals, or is merely a local enthusiast who wants  
14 to partake of an authentic **rustic, out-of-doors experience** at a guest ranch.  
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19 In addition to the legislative purpose statement set forth at MCA § 50-  
20 51-101(2), Missoula County Sanitarian Jim Carlson testified before the 2011  
21 legislative committee on HB 259 in support of exempting all guest ranches of  
22 less than 25 people a day on average from public health regulations. Mr.  
23 Carlson further testified that "we don't want to regulate low risk facilities, . . .  
24 and no we haven't had a complaint about guest ranches. . ." These  
25  
26

1 comments show that the Missoula County Health Department's original  
2 position is not consistent with the County's current determination to put  
3 Dunrovin Ranch out of business by unfairly treating it as a large commercial  
4 food service and tourist sleeping establishment.

5 Dunrovin Ranch has requested an award of attorneys' fees under MCA  
6 § 25-10-711 based on the allegation that the County's action against it was  
7 frivolous and pursued in bad faith. The County merely responds that it was  
8 the County's duty to impose licensing and regulation requirements on  
9 Dunrovin Ranch even though the result would be admittedly "peculiar,"  
10 "bizarre," "silly" and "would not make sense." In light of the Legislature's  
11 directive in MCA § 50-51-101(2) to help and not hinder the operation of small  
12 businesses, and in particular, small guest ranches, the County's interpretation  
13 of meanings of "guest ranch," "small establishment," and "accommodation"  
14 was an abuse of administrative discretion on the part of the Missoula County  
15 Health Department, and warrants an award of attorney's fees in favor of the  
16 Defendants in this case.  
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21 The Court is equally concerned by the alleged misrepresentations to the  
22 media by the deputy county attorney that the Dunrovin Ranch posed a danger  
23 to the Bitterroot River without proof and records to back it up and that the  
24 Dunrovin Ranch was being shut down and/or could no longer take seasonal  
25  
26

1 reservations while the County was insisting the Ranch install a sewer system  
2 that it now appears may have been much larger than necessary for a "small"  
3 "exempt" "guest ranch" under the legislator's purpose statement at MCA § 50-  
4 51-101(2), and in particular under MCA § 50-51-103(3) which provides:

5 (3) The department **may not adopt rules governing guest ranches**  
6 **and outfitting and guide facilities that meet the definitions in 50-51-102**  
7 **but may adopt voluntary guidelines for these facilities. The guidelines**  
8 **must take into consideration the size, type, location, and seasonal**  
9 **operations of an establishment and may include only guidelines to:**

- 10 (a) address that the establishment has safe drinking water and  
11 an adequate water supply;  
12 (b) ensure an adequate and sanitary sewage system and  
13 ensure adequate and sanitary refuse collection and disposal;  
14 and  
15 (c) address food safety concerns, such as adequate storage,  
16 refrigeration, and food handling.

17 The County has clearly over regulated and over managed this small guest  
18 ranch, in direct opposition to the public policy adopted by the Legislature to  
19 facilitate the development and success of small guest ranches in Montana.

### 20 FINDINGS OF FACT AND CONCLUSIONS OF LAW

21 Based on the foregoing analysis, the Court sets out the following  
22 findings of fact and conclusions of law:

- 23 (1) Dunrovin Ranch does not meet the statutory definition and criteria of a  
24 Bed and Breakfast, a large commercial food service establishment, a  
25 large guest ranch, or a hotel, motel or rooming house which would  
26

1 subject Dunrovin Ranch to the same licensing requirements and  
2 administrative regulations governing large guest ranches (more than 25  
3 daily guests on average per year), hotels, motels or rooming houses;

4 (2) The Montana Legislature's failure to expressly provide for the exempt  
5 status of "guest ranches," who have smaller than 9 guests on average a  
6 day, can only be explained as a legislative oversight, which if interpreted  
7 as the County urges, would result in an unfair, nonsensical, and bizarre  
8 burden on Montana's smallest guest ranches, which would presumably put  
9 most of them if not all of them out of business;  
10  
11

12 (3) In defining "small establishment," the word "accommodation" is not  
13 expressly limited to "sleeping accommodations" for the purpose of  
14 determining how many guests Dunrovin Ranch serves on average a day;  
15

16 (4) Recreational activities offered by guest ranches to their overnight and  
17 day guests in the form of providing authentic **rustic, out-of-doors**  
18 **experiences** by supplying riding horses, day and overnight riding gear,  
19 day and overnight horse packing and hunting trips, hiking, fishing and  
20 biking gear, snowmobiling, food baskets for day and overnight trips, and  
21 working cattle ranch experiences, as provided in the third criteria set forth  
22 in MCA § 50-51-102(5)(c) defining "guest ranch," are expensive and time-  
23 intensive recreational "accommodations" made available to both overnight  
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guests and day visitors at Dunrovin Ranch;

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- (5) Both overnight guests and day visitors are to be counted in determining whether Dunrovin Ranch is a qualified small guest ranch which is exempt from the licensing requirements and administrative regulations which are imposed on large guest ranches, commercial hotels, motels and rooming houses, and commercial food service establishments;
- (6) Counting both overnight guests and day visitors who partake of the recreational activities of a guest ranch, Dunrovin Ranch accommodates 18 people on the average per day; and
- (7) Dunrovin Ranch meets the statutory definitions of "guest ranch" and "small establishment;" and Dunrovin Ranch is an exempt "guest ranch" under MCA § 50-51-101 et seq., and is therefore exempt from licensing requirements and administrative regulations as a matter of law.

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19

**ORDER**

Therefore, IT IS HEREBY ORDERED that:

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- (1) Defendants' Correction of the Record (Ct.Doc.53) is GRANTED;
- (2) The County has shown no compelling state interest in treating Dunrovin Ranch as anything other than a small exempt guest ranch;
- (3) Dunrovin Ranch is an exempt small guest ranch as a matter of law;
- (4) Missoula County's Motion to Enforce Settlement Agreement

(Ct.Doc.45) is DENIED; and,

(5) The Defendants are awarded attorney's fees against Missoula County  
under MCA § 25-10-711.

SO ORDERED and DATED this 28<sup>th</sup> day of February, 2014.

  
ED MCLEAN, District Judge

cc: D. James McCubbin, Esq.  
Colleen M. Dowdall, Esq.

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# Montana Code Annotated 2013

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*outfitter*

**37-47-101. (Temporary) Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.
- (2) "Board" means the board of outfitters provided for in [2-15-1773](#).
- (3) "Business entity" means any version of a proprietorship, partnership, corporation, or limited liability company.
- (4) "Consideration" means something of value given or done in exchange for something of value given or done by another.
- (5) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (6) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.
- (7) "License year" means the period indicated on the face of the license for which the license is valid.
- (8) "Net client hunter use" or "NCHU" means the number of clients authorized to be served by an outfitter on private and state land and on any federal land where an outfitter's use of the federal land is not limited by some means other than NCHU.
- (9) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal, facilities, camping equipment, vehicle, watercraft, or other conveyance, or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or outfitter's assistant in accompanying that person.
- (10) "Outfitter's assistant" means a person who is employed or retained by and directed by a licensed outfitter to perform the tasks of a guide, but the person may not represent to the public that the person is an outfitter, guide, [or professional guide].
- (11) "Participant" means a person using the services offered by a licensed outfitter. *(Effective September 1, 2015)*

**37-47-101. (Effective September 1, 2015) . Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.
- (2) "Board" means the board of outfitters provided for in [2-15-1773](#).
- (3) "Business entity" means any version of a proprietorship, partnership, corporation, or limited liability company.
- (4) "Consideration" means something of value given or done in exchange for something of value given or done

by another.

(5) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(7) "License year" means the period indicated on the face of the license for which the license is valid.

(8) "Net client hunter use" or "NCHU" means the number of clients authorized to be served by an outfitter on private and state land and on any federal land where an outfitter's use of the federal land is not limited by some means other than NCHU.

(9) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal, facilities, camping equipment, vehicle, watercraft, or other conveyance, or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide in accompanying that person.

(10) "Participant" means a person using the services offered by a licensed outfitter.

**History:** Ap. p. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973; amd. Sec. 17, Ch. 9, L. 1977; Sec. 26-908, R.C.M. 1947; Ap. p. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; Sec. 26-904, R.C.M. 1947; R.C.M. 1947, 26-904(1), 26-908; amd. Sec. 1, Ch. 170, L. 1981; amd. Sec. 2, Ch. 545, L. 1981; amd. Sec. 1, Ch. 410, L. 1983; amd. Sec. 2, Ch. 528, L. 1987; Sec. [87-4-101](#), MCA 1985; redes. [37-47-101](#) by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 565, L. 1989; amd. Sec. 38, Ch. 16, L. 1991; amd. Sec. 1, Ch. 328, L. 1995; amd. Sec. 2, Ch. 543, L. 1999; amd. Sec. 142, Ch. 483, L. 2001; amd. Sec. 97, Ch. 467, L. 2005; amd. Sec. 3, Ch. 241, L. 2013; amd. Sec. 1, Ch. 341, L. 2013.

*Provided by Montana Legislative Services*

Data from 38th Annual Montana Economic Outlook Seminar Report  
 UM Bureau of Business and Economic Research  
 2011 data for 6 "urban" Counties

	Cascade	Flathead	Gallatin	Lewis & Clark	Missoula	Yellowstone	Total
population	81,837	91,301	91,377	64,318	110,138	150,096	589,067
sq. miles	2,698	5,099	2,507	3,461	2,598	2,635	18,998
Budget	\$39,315,164	\$49,447,715	\$50,008,594	\$32,056,314	\$69,696,812	\$67,370,254	\$307,894,853
Taxes	\$22,861,030	\$32,442,097	\$26,049,731	\$23,495,886	\$34,296,422	\$45,538,226	\$184,683,392
FTEs	487	516	472	410	613	431	2,929
budget/person	480	542	547	498	633	449	523
budget/mi sq.	\$14,572	\$9,698	\$19,948	\$9,262	\$26,827	\$25,567	\$16,207
Taxes/person	\$279	\$555	\$285	\$365	\$311	\$303	\$314
taxes/mi sq	\$8,473	\$6,362	\$10,391	\$6,789	\$13,201	\$17,282	\$9,721
FTEs/1,000 persons	5.95	5.65	5.17	6.37	5.57	2.87	4.97
FTEs/1,000 mi sq	181	101	188	118	236	164	154

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**50-51-103. Department authorized to adopt rules or guidelines.** (1) The department may adopt rules governing the operation of bed and breakfasts, hotels, motels, roominghouses, boardinghouses, and tourist homes to protect the public health and safety.

(2) Rules applicable to a bed and breakfast, hotel, motel, roominghouse, boardinghouse, or tourist home may relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal systems, refuse collection and disposal, registration and supervision, fire and life safety, food service, staggered license expiration dates, and reimbursement of local governments for inspections and enforcement.

(3) The department may not adopt rules governing guest ranches and outfitting and guide facilities that meet the definitions in [50-51-102](#) but may adopt voluntary guidelines for these facilities. The guidelines must take into consideration the size, type, location, and seasonal operations of an establishment and may include only guidelines to:

- (a) address that the establishment has safe drinking water and an adequate water supply;
- (b) ensure an adequate and sanitary sewage system and ensure adequate and sanitary refuse collection and disposal; and
- (c) address food safety concerns, such as adequate storage, refrigeration, and food handling.

(4) These guidelines must be developed through a negotiated process in cooperation with guest ranches and outfitters and guides. These guidelines are not intended to be regulatory in nature.

(5) The department shall develop guidelines for county sanitarians to provide assistance to guest ranches and outfitters and guides, and the guidelines must be tailored to the needs of each type of establishment.

(6) As provided in [7-1-113](#), nothing in this section prohibits a local government from adopting an ordinance that:

- (a) is the same as or more stringent than rules adopted by the department under this section; or
- (b) differs from the voluntary guidelines adopted by the department under this section.

**History:** En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973; R.C.M. 1947, 34-306(a); amd. Sec. 2, Ch. 350, L. 1997; amd. Sec. 4, Ch. 412, L. 1997; amd. Sec. 57, Ch. 7, L. 2001; amd. Sec. 3, Ch. 334, L. 2011.

*Provided by Montana Legislative Services*

Jim Sylvester

James, Sylvester

Appendix

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243-5113

		Montana Urban County Comparisons:						
		1995	2000	2005	2008	2009	2010	2011
Cascade	Population	81,166	80,357	81,822	81,784	82,178	81,327	81,837
	Per Cap Income	18,369	23,721	27,523	34,417	36,533	37,437	38,790
	Taxable Value	107,008	107,197	109,296	121,155	123,562	125,892	129,049
	Total Mills	107.31	110.24	140.67	160.29	161.92	153.76	177.15
	Budget (16 fnds)	13,838,585	26,316,883	28,529,625	25,743,492	32,970,110	31,727,842	30,315,164
	Taxes	11,483,028	11,817,397	15,374,668	19,419,935	20,007,159	19,357,154	22,861,030
	FTEs	299	430	464	483	522	500	487
	Road Miles	1,594	1,495	1,322	1,411	1,522	1,520	1,522
Flathead	Population	67,285	74,471	82,601	86,766	89,624	90,928	91,301
	Per Cap Income	17,347	22,327	25,981	35,185	34,982	34,424	34,458
	Taxable Value	123,986	136,131	157,165	193,906	201,407	215,926	222,786
	Total Mills	95.82	101.45	128.38	142.20	141.96	135.75	145.62
	Budget (16 fnds)	19,216,709	26,275,025	34,837,041	44,057,994	46,640,608	48,206,921	49,447,715
	Taxes	11,880,339	13,810,490	20,176,843	27,573,433	28,591,738	29,311,955	32,442,097
	FTEs	327	369	477	504	520	514	516
	Road Miles	2,067	2,147	2,214	2,676	2,784	2,797	2,784
Gallatin	Population	57,771	67,831	80,748	87,243	90,343	89,513	91,377
	Per Cap Income	17,032	22,820	27,211	36,117	35,926	34,769	35,953
	Taxable Value	94,965	118,616	154,680	196,866	209,639	223,244	230,919
	Total Mills	70.46	79.40	96.79	108.35	110.92	116.23	121.47
	Budget (16 fnds)	14,496,609	24,147,807	35,573,754	48,467,506	50,048,860	76,006,481	50,008,594
	Taxes	6,691,234	9,418,110	14,971,477	21,330,431	23,253,158	25,947,650	28,049,731
	FTEs	249	369	438	454	461	459	472
	Road Miles	1,395	1,392	1,393	1,653	1,646	1,737	1,645
Lewis & Clark	Population	51,523	55,716	58,150	59,929	61,942	63,395	64,318
	Per Cap Income	18,469	23,600	28,079	36,553	38,243	38,771	38,238
	Taxable Value	78,014	87,562	87,919	101,877	140,921	109,542	113,195
	Total Mills	76.07	102.63	176.40	195.30	194.34	195.43	207.57
	Budget (16 fnds)	12,432,167	17,357,001	26,764,943	38,316,951	35,565,951	33,950,732	32,055,314
	Taxes	5,934,525	8,986,488	15,508,912	19,896,578	27,386,587	21,407,793	23,495,886
	FTEs	260	316	355	355	417	431	410
	Road Miles	1,316	1,350	1,256	1,319	1,514	1,538	1,514
Missoula	Population	85,669	95,168	102,239	105,638	108,623	109,299	110,138
	Per Cap Income	17,711	23,234	27,997	33,587	35,108	35,156	34,766
	Taxable Value	141,142	149,709	161,743	184,460	189,153	190,855	192,774
	Total Mills	105.21	112.08	161.09	171.87	176.62	176.40	177.91
	Budget (16 fnds)	27,170,404	40,962,540	44,020,749	66,030,622	67,546,446	70,325,159	69,696,812
	Taxes	14,849,550	16,779,385	26,055,180	31,703,140	33,408,203	33,666,822	34,296,422
	FTEs	470	575	640	666	732	679	613
	Road Miles	1,510	1,558	1,726	1,906	1,837	1,838	1,837
Yellowstone	Population	122,762	129,530	136,543	139,766	144,797	147,972	150,069
	Per Cap Income	19,676	24,425	29,421	38,124	38,927	39,412	38,488
	Taxable Value	219,821	218,717	215,714	246,297	265,673	274,709	290,515
	Total Mills	76.39	81.16	123.72	146.86	146.61	147.64	156.75
	Budget (16 fnds)	35,353,922	35,931,340	47,007,940	41,771,650	56,253,282	58,117,584	67,370,254
	Taxes	16,792,126	17,751,072	26,688,136	36,171,177	38,950,319	40,558,037	45,538,226
	FTEs	480	446	449	427	430	430	431
	Road Miles	1,702	1,560	1,351	1,478	1,583	1,573	1,583
Average 6 Largest County's / STATE	Population	855,995	903,329	935,784	956,648	966,224	989,415	998,199
Per Cap Income	18,101	23,355	27,702	29,815	31,695	36,662	36,782	
Taxable Value	1,787,064	1,900,647	1,779,929	2,041,351	2,153,979	2,166,431	2,287,177	
Total Mills (avg)	88.54	97.83	137.84	154.15	159.24	154.20	164.41	
Budget (avg)	18,111,635	24,112,286	31,367,405	39,774,121	42,675,858	47,767,813	44,763,115	
Taxes (avg)	56,147,773	66,745,545	103,400,547	136,674,760	151,590,004	150,892,256	163,822,363	
FTEs	5,675	6,256	6,440	6,627	7,055	7,055	6,550	
Road Miles (avg)	1,597	1,584	1,544	1,741	1,814	1,834	1,814	

(38A)

Annual Montana Economic Outlook Report

Montana Bureau of Business & Economic Research  
February 19, 2013

# Montana Code Annotated 2013

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**50-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Bed and breakfast" means a private, owner- or manager-occupied residence that is used as a private residence but in which:

- (a) breakfast is served and is included in the charge for a guest room; and
- (b) the number of daily guests served does not exceed 18.

(2) (a) "Day visitor" means a guest whose primary purpose on the guest ranch is to participate in recreational activities regularly provided by the guest ranch for a fee including but not limited to hunting, horseback riding, working cattle, hiking, biking, snowmobiling, or fishing, who may be served food incidental to the activity, and who does not stay overnight.

(b) The term does not include persons attending weddings, parties, large group functions, or other meals not related to the recreational activities described in subsection (2)(a) and who may not be served food unless the guest ranch or other entity serving the food has a license issued pursuant to [50-50-201](#).

(3) "Department" means the department of public health and human services provided for in [2-15-2201](#).

(4) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, guest ranch, outfitting and guide facility, boardinghouse, or tourist home.

(5) "Guest ranch" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations on advance reservations for a minimum stay;

(c) provides recreational activities that include but are not limited to hunting, horseback riding, fishing, hiking, biking, snowmobiling, or a working cattle ranch experience to its guests and day visitors; and

(d) is a small establishment or a seasonal establishment.

(6) "Hotel" or "motel" includes:

(a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, or public lodginghouse;

(b) a place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(7) "Outfitting and guide facility" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations to guests;

(c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or guide, as defined in [37-47-101](#); and

(d) is a small establishment or a seasonal establishment.

(8) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a bed and breakfast, hotel, motel, boardinghouse, tourist home, guest ranch, outfitting and guide facility, or roominghouse.

(9) "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are rented that

provide sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

(10) "Seasonal establishment" means a guest ranch or outfitting and guide facility operating for less than 120 days in a calendar year and offering accommodations to between 9 and 40 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment was open for the purpose of accommodating guests as a guest ranch or outfitting and guide facility during the year.

(11) "Small establishment" means a guest ranch or an outfitting and guide facility offering accommodations to between 9 and 24 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment was open for the purpose of accommodating guests as a guest ranch or outfitting and guide facility during the year.

(12) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

(13) "Transient guest" means a guest for only a brief stay, such as the traveling public.

**History:** En. Sec. 2, Ch. 18, L. 1967; amd. Sec. 2, Ch. 485, L. 1973; amd. Sec. 1, Ch. 325, L. 1977; R.C.M. 1947, 34-302; amd. Sec. 8, Ch. 597, L. 1983; amd. Sec. 1, Ch. 730, L. 1991; amd. Sec. 8, Ch. 366, L. 1995; amd. Sec. 137, Ch. 418, L. 1995; amd. Sec. 316, Ch. 546, L. 1995; amd. Sec. 1, Ch. 350, L. 1997; amd. Sec. 3, Ch. 412, L. 1997; amd. Sec. 1, Ch. 264, L. 1999; amd. Sec. 2, Ch. 334, L. 2011; amd. Sec. 2, Ch. 357, L. 2011.

*Provided by Montana Legislative Services*

**50-51-101. Findings and purpose of regulation or guidelines.** (1) It is found that the welfare of the public is benefited by regulation or voluntary guidelines for the operation of establishments providing lodging space accommodations and for persons providing accommodations in order to prevent or eliminate unsanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found that the regulation of or application of voluntary guidelines to establishments providing lodging space accommodations is in the interest of social well-being and the health and safety of the state and all of its people.

(2) The legislature recognizes that there is a wide disparity in the type of establishments, especially in the size, the time of year at which the establishments operate, and the ability of small establishments with few employees and a limited operating season to conform to the same standards to which larger establishments are required to conform. These factors must be considered, especially in the operation of small or seasonal businesses that are such an important part of Montana's tourism business. For these reasons, the legislature believes that department actions must be tailored to properly and reasonably address differences in the size, location, purpose, and time of year of operation of certain small or seasonal establishments. The legislature believes that guidelines to assist these small and seasonal establishments with addressing basic health standards are appropriate, rather than regulations. The guidelines should be voluntary and address basic health standards and should not detract from the rustic, out-of-doors experience offered by many guest ranches and outfitter and guide facilities and desired by many tourists. The legislature is also aware that most of these small and seasonal establishments such as guest ranches and outfitting and guide facilities have not been subject to department regulation. While voluntary guidance from the department on basic public health concerns may benefit these establishments, regulation is not warranted.

**History:** En. Sec. 1, Ch. 18, L. 1967; amd. Sec. 1, Ch. 485, L. 1973; R.C.M. 1947, 34-301; amd. Sec. 2, Ch. 412, L. 1997; amd. Sec. 1, Ch. 334, L. 2011.

**50-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Bed and breakfast" means a private, owner- or manager-occupied residence that is used as a private residence but in which:

- (a) breakfast is served and is included in the charge for a guest room; and
- (b) the number of daily guests served does not exceed 18.

(2) (a) "Day visitor" means a guest whose primary purpose on the guest ranch is to participate in recreational activities regularly provided by the guest ranch for a fee including but not limited to hunting, horseback riding, working cattle, hiking, biking, snowmobiling, or fishing, who may be served food incidental to the activity, and who does not stay overnight.

(b) The term does not include persons attending weddings, parties, large group functions, or other meals not related to the recreational activities described in subsection (2)(a) and who may not be served food unless the guest ranch or other entity serving the food has a license issued pursuant to [50-50-201](#).

(3) "Department" means the department of public health and human services provided for in [2-15-2201](#).

(4) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, guest ranch, outfitting and guide facility, boardinghouse, or tourist home.

(5) "Guest ranch" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations on advance reservations for a minimum stay;

(c) provides recreational activities that include but are not limited to hunting, horseback riding, fishing, hiking, biking, snowmobiling, or a working cattle ranch experience to its guests and day visitors; and

(d) is a small establishment or a seasonal establishment.

(6) "Hotel" or "motel" includes:

(a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, or public lodginghouse;

(b) a place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(7) "Outfitting and guide facility" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations to guests;

(c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or guide, as defined in [37-47-101](#); and

(d) is a small establishment or a seasonal establishment.

(8) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a bed and breakfast, hotel, motel, boardinghouse, tourist home, guest ranch, outfitting and guide facility, or roominghouse.

(9) "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

(10) "Seasonal establishment" means a guest ranch or outfitting and guide facility operating for less than 120 days in a calendar year and offering accommodations to between 9 and 40 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment was open for the purpose of accommodating guests as a guest ranch or outfitting and guide facility during the year.

(11) "Small establishment" means a guest ranch or an outfitting and guide facility offering accommodations to between 9 and 24 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment was open for the purpose of accommodating guests as a guest ranch or outfitting and guide facility during the year.

(12) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or

weekly basis.

(13) "Transient guest" means a guest for only a brief stay, such as the traveling public.

**History:** En. Sec. 2, Ch. 18, L. 1967; amd. Sec. 2, Ch. 485, L. 1973; amd. Sec. 1, Ch. 325, L. 1977; R.C.M. 1947, 34-302; amd. Sec. 8, Ch. 597, L. 1983; amd. Sec. 1, Ch. 730, L. 1991; amd. Sec. 8, Ch. 366, L. 1995; amd. Sec. 137, Ch. 418, L. 1995; amd. Sec. 316, Ch. 546, L. 1995; amd. Sec. 1, Ch. 350, L. 1997; amd. Sec. 3, Ch. 412, L. 1997; amd. Sec. 1, Ch. 264, L. 1999; amd. Sec. 2, Ch. 334, L. 2011; amd. Sec. 2, Ch. 357, L. 2011.

**50-51-103. Department authorized to adopt rules or guidelines.** (1) The department may adopt rules governing the operation of bed and breakfasts, hotels, motels, roominghouses, boardinghouses, and tourist homes to protect the public health and safety.

(2) Rules applicable to a bed and breakfast, hotel, motel, roominghouse, boardinghouse, or tourist home may relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal systems, refuse collection and disposal, registration and supervision, fire and life safety, food service, staggered license expiration dates, and reimbursement of local governments for inspections and enforcement.

(3) The department may not adopt rules governing guest ranches and outfitting and guide facilities that meet the definitions in [50-51-102](#) but may adopt voluntary guidelines for these facilities. The guidelines must take into consideration the size, type, location, and seasonal operations of an establishment and may include only guidelines to:

(a) address that the establishment has safe drinking water and an adequate water supply;

(b) ensure an adequate and sanitary sewage system and ensure adequate and sanitary refuse collection and disposal; and

(c) address food safety concerns, such as adequate storage, refrigeration, and food handling.

(4) These guidelines must be developed through a negotiated process in cooperation with guest ranches and outfitters and guides. These guidelines are not intended to be regulatory in nature.

(5) The department shall develop guidelines for county sanitarians to provide assistance to guest ranches and outfitters and guides, and the guidelines must be tailored to the needs of each type of establishment.

(6) As provided in [7-1-113](#), nothing in this section prohibits a local government from adopting an ordinance that:

(a) is the same as or more stringent than rules adopted by the department under this section; or

(b) differs from the voluntary guidelines adopted by the department under this section.

**History:** En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973; R.C.M. 1947, 34-306(a); amd. Sec. 2, Ch. 350, L. 1997; amd. Sec. 4, Ch. 412, L. 1997; amd. Sec. 57, Ch. 7, L. 2001; amd. Sec. 3, Ch. 334, L. 2011.

**50-51-201. License required.** (1) Except as provided in subsection (2), a person engaged in the business of conducting or operating an establishment shall annually procure a license issued by the department.

(2) A guest ranch or an outfitting and guide facility that meets the definitions in [50-51-102](#) is not required to obtain a license under subsection (1).

(3) A separate license is required for each establishment. However, when more than one type of establishment is operated on the same premises and under the same management, only one license is required that must enumerate on the certificate the types of establishments licensed.

(4) Before a license may be issued by the department, it must be validated by the local health officer or, if there is no local health officer, the sanitarian, in the county where the establishment is located.

**History:** En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; R.C.M. 1947, 34-303(part); amd. Sec. 3, Ch. 200, L. 1979; amd. Sec. 2, Ch. 730, L. 1991; amd. Sec. 9, Ch. 366, L. 1995; amd. Sec. 3, Ch. 350, L. 1997; amd. Sec. 5, Ch. 412, L. 1997; amd. Sec. 4, Ch. 334, L. 2011.