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**Fwd: [EXT SENDER] 8/16/22 updated revision**

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**Matt Linscott** <matt.linscott@bonnercountyid.gov>

Tue, Aug 23, 2022 at 3:46 PM

To: Swati Rastogi <swati.rastogi@bonnercountyid.gov>

Cc: Jenna Crone <jenna.crone@bonnercountyid.gov>, Allan Songstad <allan.songstad@bonnercountyid.gov>

Swati,  
Attached are some comments I'd like to submit on AM0012-22.  
Thanks,  
Matt Linscott  
[Quoted text hidden]



**Comments on Aug. 16th meeting.docx**

18K

Land Use.

POLICIES: Current proposed language.

“Applications for land use actions shall be reviewed against the land use map and land use designations to ensure consistency with the Comprehensive Plan.”

This was eliminated at the 2:17:00 mark of the Aug 16<sup>th</sup> workshop. However, does not reflect that in the 8/16/22 revision. Please see my comments.

Reason for my suggested language.

As the language, “Applications for land use actions”, may be perceived to apply to subdivisions, MLD’s, boundary line adjustments, family splits, please consider this language in red, to conform with LLUPA and precedent. As illustrated below, “in accordance “, does not require zoning decisions strictly conform to the land use designations.

My suggested language for Land Use Policy

Applications for adopting or amending zoning ordinances shall be “in accordance” with the Comprehensive plan. Conditional Use Permits shall not be “in conflict” with the Comprehensive Plan.

“Zone changes, have to be “in accordance” to the Comprehensive plan.” “Conditional use permits are not required to be “in accordance with” the comprehensive plan. Instead, it is sufficient that they not be “in conflict” with the comprehensive plan. Thus, it appears, the conditional use need not satisfy every aspirational goal of the comprehensive plan, so long as it is not in direct conflict with specific prohibitions in the comprehensive plan.” (Idaho land use manual)

“A comprehensive plan is not a legally controlling zoning law, it serves as a guide to local government agencies charged with making zoning decisions. The ‘in accordance with’ language of I.C. § 67-6511 does not require zoning decisions strictly conform to the land use designations of

the comprehensive plan. However, a board of commissioners cannot ignore their comprehensive plan when adopting or amending zoning ordinances.” Evans v. Teton Cnty., 139 Idaho 71, 76, 73 P.3d 84, 89 (2003) (Quoted in the Idaho Land Use Manual)

“The Court quoted once again from “Urrutia” to the effect that “a comprehensive plan does not operate as legally controlling zoning law.” (Idaho Land Use Manual)

“It is to be expected that the land to be subdivided may not agree with all provisions in the comprehensive plan, but a more specific analysis, resulting in denial of a subdivision application based solely on non-compliance with the comprehensive plan elevates the plan to the level of legally controlling zoning law. Such a result affords the Board unbounded discretion in examining a subdivision application and allows the Board to effectively re-zone land based on the general language in the comprehensive plan.” Urrutia, 134 Idaho at 358-59, 2 P.3d 743-44 (emphasis supplied) (Idaho Land Use Manual)

“The governing board cannot, however, deny a use that is specifically permitted by the zoning ordinance on the ground that such use would conflict with the comprehensive plan. . . . If there is a conflict between the comprehensive plan and a use permitted under the zoning ordinance, the zoning ordinance controls.” Sanders Orchard, 137 Idaho at 699, 52 P.3d at 844. (Idaho Land Use Manual)

“The take home message here is that comprehensive planning is forward thinking and thus inherently different than in-the-present zoning actions. Accordingly, in-the-present zoning decisions are not expected to conform precisely and immediately to the comprehensive plan.” (Idaho Land Use Manual)

“For all other applications (e.g., PUDs and subdivisions), there would be no need to address the comprehensive plan, because LLUPA mandates no “accordance” or “not in conflict” requirement for them.

“As noted above, LLUPA’s requirement of consistency with the comprehensive plan applies to zoning ordinances and conditional use permits, not to other land use actions. Idaho Code §§ 67-6511, 67-6512(a).” (Idaho Land Use Manual) (Emphasis added)

This illustrates that the Comprehensive Plan is only applicable to those land use actions as prescribed in state code. With the language suggested, it would clarify and align, that not all applications for land use actions are to be reviewed with the Comprehensive Plan, only rezones and CUP’s. As the Comprehensive plan is not a regulatory/controlling document.

## Natural Resources

### Objectives

Second bullet point. “Bonner County values its productive agricultural lands, forests, **and mining lands**....

### Policies

Productive farmland and timberland **and mining lands** shall be identified and protected from adverse effects of adjoining developments.

(It was affirmed this language was added at approx. the 2:53:15 and 2:56:12 mark of the meeting. Located in the second bullet point of the Objectives, and last bullet point of the Policies)

## Public Services

Policies. First bullet point. Proposed language.

“**Bonner County shall encourage development within the boundaries of existing sewer and water areas.**”

The existing language may be interpreted, that development is only encouraged to take place within boundaries of existing sewer and water areas.

And potentially discouraged elsewhere... If that is not the intent, additional language could be added, such as, “**Bonner County shall encourage higher suburban type density within the boundaries of sewer and water areas.**”

As was discussed on the 16<sup>th</sup>, sewer and water districts can grow. The Sagle subarea plan suggested to include a ring around the current existing boundaries, to adjust for future growth. If “**existing**” were left in the proposed language, someone may argue that “existing” would mean the boundaries as of the date of adoption of this language, and not reflect on potential sewer/water boundary expansion.