

Bonner County Planning Department

"Protecting property rights and enhancing property value"

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Board of County Commissioners Staff Report for August 14, 2024

Project Name:	Providence Subdivision Modification
File Number, Type:	MOD0002-24, Modification
Request:	The applicant is requesting to modify the conditions of approval of the 12/6/2023 Board of County Commissioners (BOCC) Decision Letter for file S0002-23.
Legal Description:	1-57N-2W S947.19 SENE LESS PT TAX 113 & 116; E2SESWNE LESS PT TAX 113; PT NESE LESS PT TAX 113, 116, & 118
Location:	The subject property is located off of Providence Road, a Bonner County owned and maintained public right-of-way in Section 1 of Township 57 North, Range 2 West of Boise Meridian, Idaho.
Parcel Number:	RP57N02W012253A
Parcel Size:	Approximately 39.57 acres of unplatted land
Applicant/ Landowner:	Providence Road LLC, 8144 West Okeechobee Blvd, West Palm Beach, Florida 33411
Project Representative:	Mike Hammack 1180 McGhee Road, Ponderay, Idaho 83852
Application filed:	May 20, 2024
Notice provided:	Mail: June 25, 2024 & July 26, 2024 Site Posting: July 8, 2024 & July 29, 2024 Published in Newspaper: June 25, 2024 & July 30, 2024
Enclosed:	Addendum "A" Agency Comments Addendum "B" 12/4/23 S0002-23 BOCC Decision Letter

S0002-23 SUBDIVISION CHRONOLOGY:

Application Filed: May 12, 2023

Hearing Examiner Hearing: July 5, 2023

Decision to recommend Zoning Commission Hearing: July 10, 2023

Zoning Commission Hearing: August 17, 2023

Zoning Commission Decision to recommend approval to BOCC: August 24, 2023

BOCC Hearing: October 2, 2023

BOCC Written Approval Decision: October 3, 2023

BOCC Reconsideration Filed: October 19, 2023

BOCC Reconsideration Hearing: November 29, 2023

BOCC Post Reconsideration-Decision Letter: December 4, 2023.

Relevant BCRC Code:

12-266: MODIFICATION OF TERMS AND CONDITIONS OF PERMIT APPROVAL:

D. The Planning Director, Zoning Commission and/or Board shall consider the proposed modification in accordance with the requirements for the original permit application and shall confine the review to the proposed modification.

STAFF: A modification hearing cannot supersede the original preliminary plat approval. The modification hearing is only applicable to the applicant's request to modify/amend/remove conditions of approval and related preliminary plat contents.

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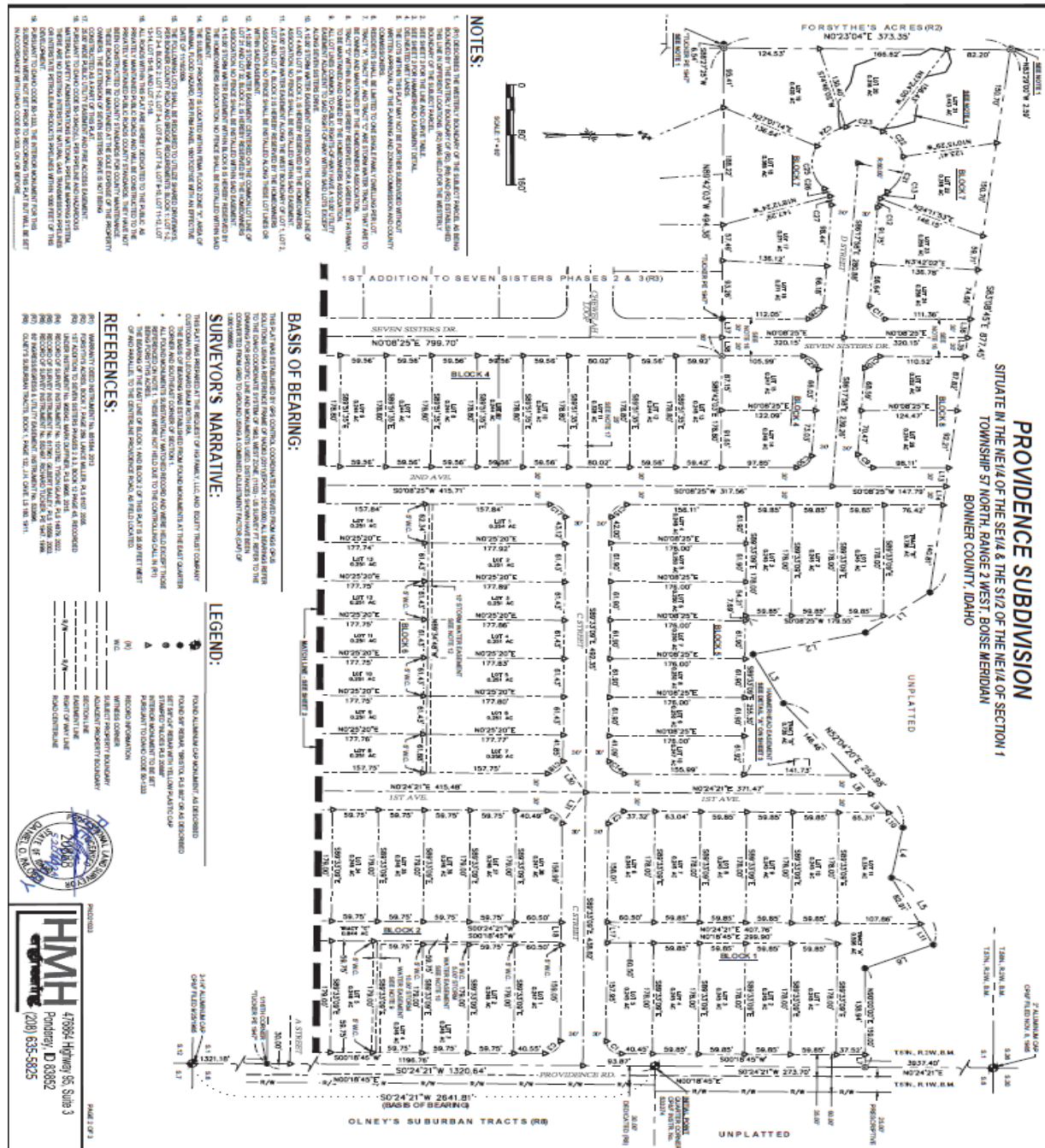
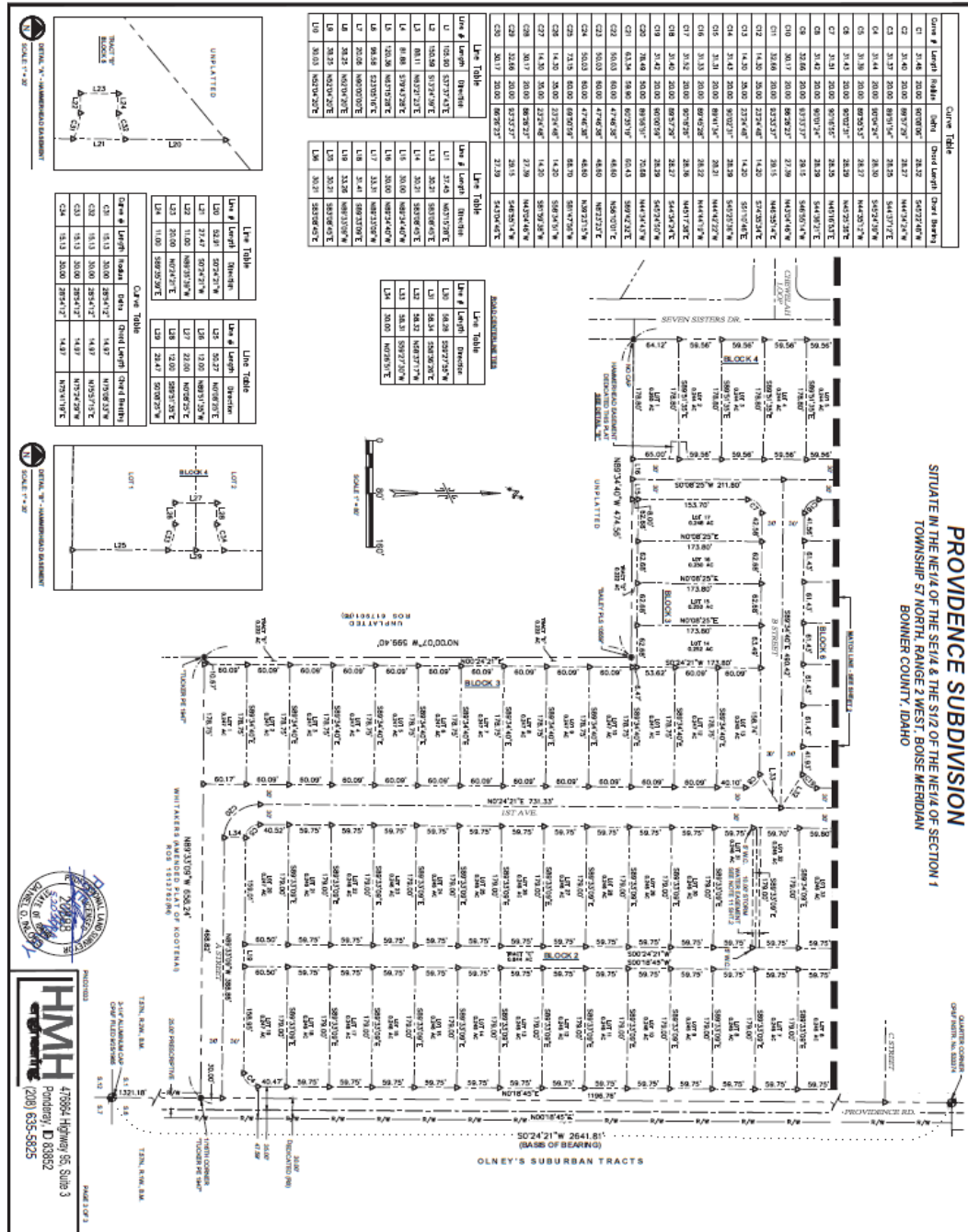
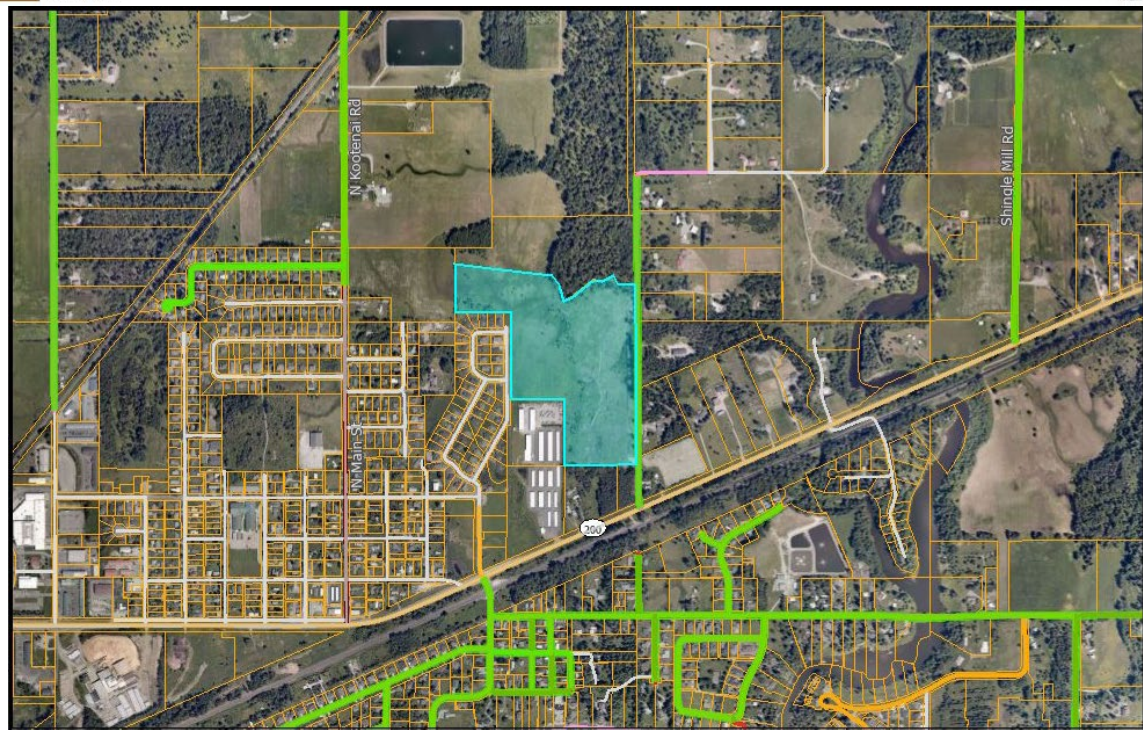
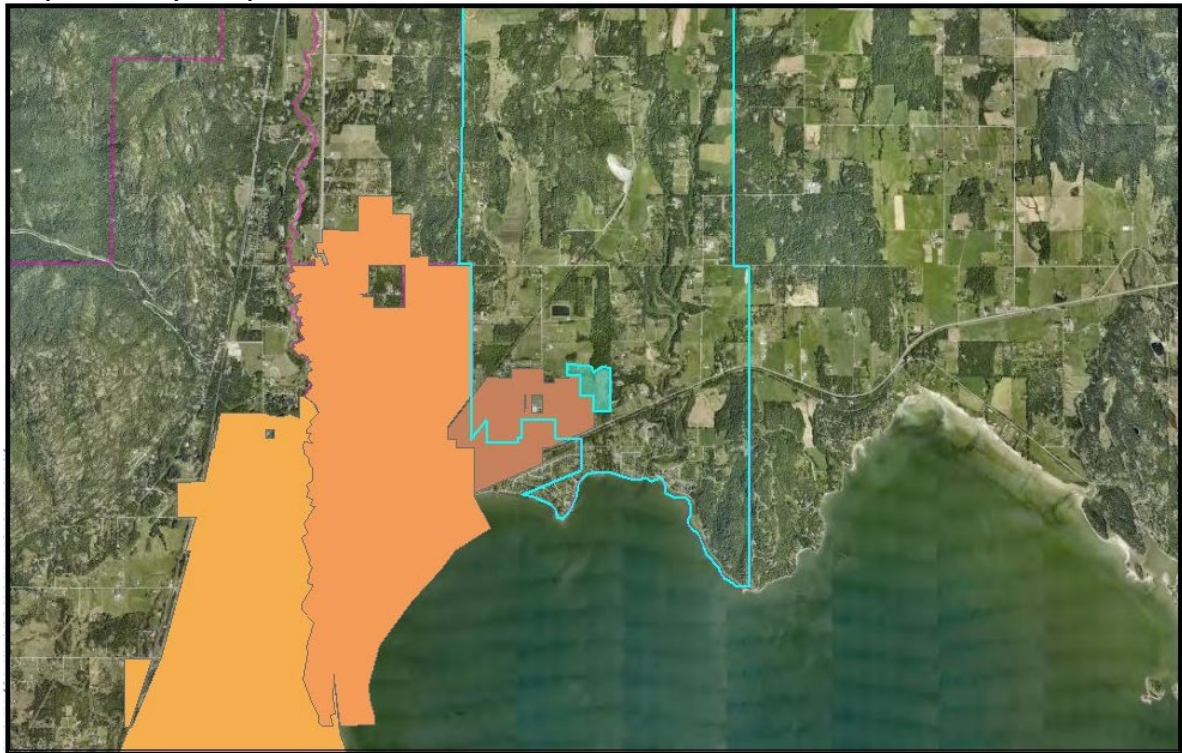


Figure 2 Preliminary Plat - South Half (Updated May 20, 2024)



Property Vicinity Map:



Applicable Laws:

The following sections of BCRC, Title 12, apply to this project:

BCRC 12-266	Modifications
BCRC 12-268	Application Process, General Provisions
BCRC 12-610	Applicability/ Qualifications

Background:

Site Data:

- Use: The property currently exists as vacant land.
- Unplatted
- Size: Approximately 39.57 acres
- Zone: Suburban
- Land Use: Urban

Access:

- The site has direct access and frontage on Providence Road, a Bonner County owned and maintained public right-of-way.
- The project proposes six new roads within the subdivision – A Street, B Street, C Street, D Street, 1st Avenue and 2nd Avenue, to be dedicated to the public and maintained privately.
- This modification includes a revision to the preliminary plat to dedicate a 60-foot wide public right of way which is proposed to connect to the existing Seven Sisters Drive. The proposed amended plat note 16 indicates that while the right of way connecting to Seven Sisters Drive will be dedicated to the public, it is not proposed to be constructed at this time.

Environmental Factors:

- Majority of the site contains no slopes or slopes of less than 15% grade. Site contains minimal slopes of over 30% grade along the northeastern boundary. (US Geological Survey)
- Site contains PEM1C and PFO1C mapped wetlands. (National Wetland Inventory, US Fish and Wildlife Service)
- Site does not contain any mapped waterbodies, streams, lakes, or rivers. (National Hydrography Dataset, US Geological Survey)
- Site contains the following types of soils: (US Department of Agriculture)
 - 1) Odenson silt loam - classified as "prime farmland if drained" with a drainage classification of "poorly drained".
 - 2) Mission silt loam - classified as "prime farmland if drained" with a drainage classification of "somewhat poorly drained".
- Parcel is located within Flood Zone X (Unshaded) and not located within floodway, per FIRM Panel 16017C0710E, effective date 11/18/2009. FEMA defines Zone X (Unshaded) as "The areas of minimal flood hazard, which are the areas outside the SFHA and higher

than the elevation of the 0.2-percent-annual-chance flood.” No further floodplain review is required for this project.

- No local, state, or federal agencies have identified any critical wildlife habitats on or within the vicinity of the subject property.

Services:

- Water: City of Sandpoint
- Sewer: Kootenai Ponderay Sewer District
- Power: Avista Utilities
- Fire: Northside Fire District
- School District: Lake Pend Oreille School District #84
- Ambulance District: Bonner County Ambulance District
- Hospital District: Pend Oreille Hospital District

Comprehensive Plan, Zoning and Current Land Use

Compass	Land Use	Zoning	Current Use & Density
Site	Urban	Suburban	Vacant
North	Urban	Suburban	Vacant
East	Rural Residential	Rural 5	Residential Lots
South	Urban	Suburban	Residential Lot and mini storage
West	-City of Kootenai-	-City of Kootenai-	-City of Kootenai-

Agency and Public Comments:

The application was routed to agencies for their comment on June 3, 2024 for the BOCC hearing to be held July 24, 2024.

AGENCY RESPONSES:

Bonner County Road & Bridge 6/6/2024: *"The Bonner County Road & Bridge Department is in support of this modification request."* (See comment for details)

Idaho Department of Transportation 6/3/2024: *"ITD is currently waiting on updated plans including illumination and traffic control plan before issuing the highway improvement permit."* (See letter for details)

Idaho Department of Fish & Game 6/26/2024 & 8/5/2024: STAFF: The comment is regarding the original subdivision file. The comment does not have any specific comments about this proposed modification. (See letter for details)

City of Kootenai 7/18/2024: STAFF: (See full page comment for details)

Public comments were received and have been added to the record.

Standards Review: BCRC 12-266 Modification of Terms & Conditions of Permit Approval

BCRC 12-266 A: The terms and conditions of the approval of any permit authorized or required in this title may be modified only by the Planning Director, Zoning Commission and/or Board as established in this section. This section applies to modifications of approved permits, including, but not limited to, conditional use permits, special use

permits, variances, preliminary plats, final plats, lot line adjustments and planned unit developments.

STAFF: The applicant is seeking to amend the condition of approval 12 for the preliminary plat, specifically related to the fire access easement and the routing of Seven Sisters Drive through the proposed subdivision.

Request Breakdown:

The applicant proposes to relocate the fire access easement, originally designated through "C" Street, to route through the existing Seven Sisters Drive.

The proposed change requests modifying condition 12 of the Post-Reconsideration BOCC Decision Letter, which states:

The 25 feet wide public utility easement and fire access easement shown on the preliminary plat, across the proposed Lot 11 of Block 4 with the attached Note 17, shall be widened to a 60 feet wide easement to maintain the possibility of being developed as a road in the future.

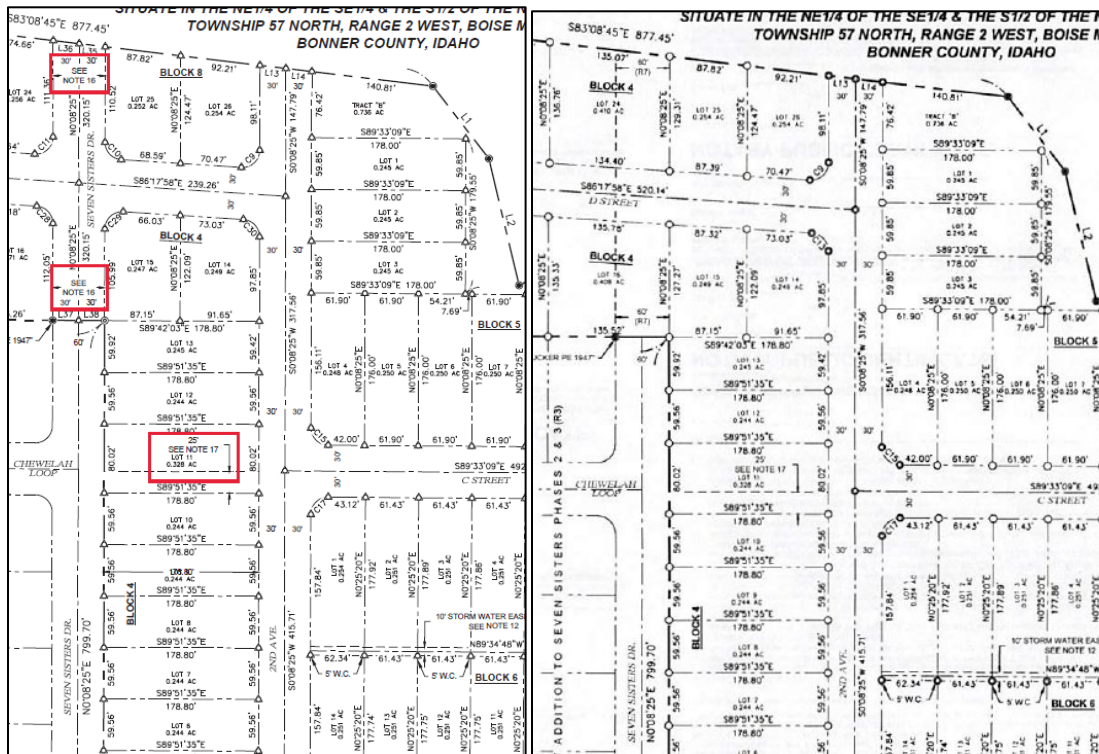
Amending condition 12 will affect notes 16 and 17 on the preliminary plat, which pertain to the fire access easement and related emergency services details.

Condition 3, which addresses emergency access, was not updated by the BOCC to reflect the requirements of condition 12. Removal of condition 12 will not impact condition 3 due to the proposed dedication of a 60-foot right-of-way extending Seven Sisters Drive.

The modification aims to enhance the subdivision's layout and fire safety logistics by integrating an established road (Seven Sisters Drive) into the new development. The request seeks approval to adjust the fire access easement and associated conditions on the preliminary plat, ensuring alignment with revised road layouts and operational needs of emergency services within the subdivision.

Modification of ROW location.

Original fire access easement.



BCRC 12-266 B: Application for a modification of terms and conditions of approval shall be made to the Planning Department, on forms provided by the department, and accompanied by the fee specified in section 12-265 of this subchapter.

STAFF: Proposal complies. Fees and application submitted in accord with this code section.

BCRC 12-266 C: A public hearing shall be scheduled and notice provided in accordance with the requirements for the original permit issuance.

STAFF: Proposal complies and a public notice was produced within the required timeline.

Agency Review:

Bonner County Road & Bridge, June 5, 2024 Comment:

"The Bonner County Road & Bridge Department is in support of this modification request. A public ROW connecting at the north end of Seven Sisters Drive and through to the northern boundary of the plat would provide superior access to this subdivision as well as any future growth further north compared to an emergency access easement across Block 4 Lot 11. Having a public right of way provides better options for future construction and improvements compared to an easement, and our attorney, David Wynkoop, who is an expert in right of way law, has advised us in the past not to accept easements for new public roads, but instead to insist on having

dedicated public right of ways for the strongest protections of the road and access under the law. We are therefore in support of obtaining this connection as a public right of way."

BCRC 12-266 D: The Planning Director, Zoning Commission and/or Board shall consider the proposed modification in accordance with the requirements for the original permit application and shall confine the review to the proposed modification.

STAFF: The proposal to modify condition 12 of the preliminary plat approval will be presented to the Bonner County Commissioners because condition 12 was established through a decision by the Board of County Commissioners.

Condition 12 was added by the Board of County Commissioners and included in its decision letter, any modification to this condition requires approval from the Bonner County Commissioners. The modification will involve updating notes 16 and 17 on the preliminary plat to reflect changes in the fire access easement and associated conditions.

BCRC 12-266 E: The Planning Director, Zoning Commission and/or Board shall render a decision in writing on the proposed modification within five (5) working days after consideration of the proposal, and the decision shall conform to the procedures, standards and requirements pertaining to the original permit.

STAFF: A written decision shall be issued within the required timeframe.

STAFF SUMMARY

The request solely aims to adjust condition of approval 12 and the associated notes on the face of the preliminary plat. Condition 12 requires a 60-foot fire access easement, which the applicant seeks to modify or strike altogether by instead, dedicating a 60-foot right of way connecting Seven Sisters Drive through the subdivision instead of using the C Street to Chewelah Loop easement.

Because condition 12 was originally part of a BOCC decision letter, any modification to it requires approval from the Bonner County Commissioners. The modification will involve amending notes 16 and 17 on the preliminary plat to reflect changes in the fire access easement and associated conditions.

If condition 12 is amended or removed, then it will change the preliminary plat note 17 and a note recommendation resultant from applying condition 3 of the BOCC decision letter.

Preliminary Plat Note 17: "25.00' wide public utility easement and fire access easement."

Condition 3 of BOCC Decision Letter: "Pertinent Note 17 on the plat, "25.00' Wide Public Utility Easement" shall be modified to express that the easement shall only be used for emergency vehicles".

– OR –

"If the above noted gated emergency access to Chewelah Loop is not established, the applicant shall develop Firestone Lane as an alternate emergency access as noted in Note #9 in Bonner County Road & Bridge's letter dated July 3, 2023."

The applicant is proposing to leave note 17 as it is shown on the preliminary plat and on the revised preliminary plat submitted with this proposal.

The modification request does not substantially change the preliminary plat with regards to the original staff analysis in the 12/04/2023 BOCC Decision Letter. (See Addendum "B")

Planner's Initials: **TL** Date: **July 18, 2024**

Note: This is neither a recommendation, nor a decision. The final decision rests with the governing body after the completion of the public hearing and consideration of all relevant oral and written testimony and evidence.

Decision by the Board of County Commissioners:

MOTION TO APPROVE:

I move to approve project FILE MOD0002-24: A Modification to Providence Subdivision Preliminary Plat Approval, requesting to modify the conditions of approval as enumerated in this staff report. The property is located in Section 1, Township 57 North, Range 2 West, Boise Meridian, Bonner County, Bonner County, Idaho, finding that it **is** in accord with the Bonner County Revised Code based on the following conclusions of law:

Conclusions of Law:

1. The proposed modification **is/ is not** in accord with the purposes of Title 12 and of the zoning district in which it is located.
2. The proposed modification **will not/ will** cause circumstances to exist that will cause future residents or the public at large to be exposed to hazards to health or safety.

This decision is subject to the Conditions of Approval as amended or set forth in the BOCC Decision Letter for file S0002-23, and as set forth in this staff report or as amended by BOCC. The decision is based on the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. I further move to adopt the *Findings of Fact* and *Conditions of Approval* as amended during this hearing and direct the Planning staff to draft written findings and conclusions to reflect this decision and transmit to all interested parties. This action does not result in a taking of private property. The action that could be taken to obtain the approval of preliminary plat is to complete the Conditions of Approval as adopted.

MOTION TO DENY:

I move to deny project FILE MOD0002-24: A Modification to Providence Subdivision Preliminary Plat Approval, requesting to modify the conditions of approval as enumerated in this staff report. The property is located in Section 1, Township 57 North, Range 2 West, Boise Meridian, Bonner County, Bonner County, Idaho, finding that it **is not** in accord with the Bonner County Revised Code based on the following;

Conclusions of Law:

1. The proposed modification **is/ is not** in accord with the purposes of this Title and of the zoning district in which it is located.
2. The proposed modification **will not/ will** cause circumstances to exist that will cause future residents or the public at large to be exposed to hazards to health or safety.

This decision is subject to the Conditions of Approval as amended or set forth in the BOCC Decision Letter for file S0002-23, and as set forth in this staff report or as amended by BOCC. The decision is based on the evidence submitted up to the time the Staff Report was prepared, and testimony received at this hearing. I further move to adopt the Findings of Fact as amended during this hearing and direct the Planning staff to draft written findings and conclusions to reflect this decision, and transmit to all interested parties. This action does not result in a taking of private property. The action that could be taken, if any, to obtain the approval of preliminary plat is to:

- 1) File a new application with the Planning Department and meet the standards required by Bonner County Revised Code; or
- 2) Pursue such remedies as may be applicable at Title 67, Chapter 65, Idaho Code.

Findings of Facts:

1. The request is to modify the conditions of preliminary plat approval, Bonner County Planning File S0002-23, as enumerated in the December 4, 2023 BOCC Decision Letter.
2. The request is to modify conditions of approval and related preliminary plat contents for file S0002-23 Providence Subdivision, the subsequent changes to the preliminary plat do not conflict with the original submission and meet the requirements of BCRC 12-6.
3. A modification to the preliminary plat approval conditions will impact the face of the preliminary plat and notes therein.
4. The subject property is zoned Suburban and has a comprehensive plan designation of Suburban.
5. The subject property is ±39.57-acres of un-platted land as it currently exists prior to final plat approval and recording.
6. No additional lots are proposed with the proposed modification.
7. The preliminary plat approval and the revised preliminary plat meet the design standards as reviewed in the S0002-23 staff report and BOCC decision letter.
8. Bonner County Revised Code directives for subdivisions have not substantially changed since the original submission.

Conditions of Approval:

1. All conditions listed in the December 4, 2024 BOCC decision letter remain in force except conditions modified by this proposal.
2. All expiration dates shall follow the preliminary plat approval as enumerated in the BOCC decision letter dated December 4, 2023.
3. Any improvement proposed in this modification shall be reflected in a revised stormwater management plan and improvement plan, to be reviewed in accord with BCRC 12.2 and BCRC 12-644 by Bonner County Engineering Department.
4. The construction of the proposed 60-foot right of way shall be added to the improvement plans to be reviewed by Bonner County Engineering Department in accord with condition 6 as enumerated in the December 4, 2023 BOCC decision letter.

The complete file is available for review in the Planning Department, 1500 Highway 2, Suite #208, Sandpoint, ID. Staff reports are available online before the hearing at www.bonnercountyid.gov. Bonner County Revised Code (BCRC) is available at the Planning Department or online.