

**BONNER COUNTY PLANNING DEPARTMENT
BOARD OF COUNTY COMMISSIONERS
STAFF REPORT FOR JANUARY 8, 2025**



Project Name: **McPherson**

File Number, Type: **ZC0007-24, Zone Change**

Request: The applicant is requesting a zone change from Rural 10 to Rural 5 on three parcels.

Legal Description: 15-59N-1W NWSWSW, 15-59N-1W NESWSW S2SWSW, 15-59N-1W NWSW LESS TAX 1

Location: Jenkins Road, Sandpoint, Idaho

Parcel Number(s): RP59N01W156150A, RP59N01W156001A, RP59N01W155402A

Parcel Size: Approximately 79.445-acres total

Applicant: Gail McPherson

Project Representative: Tessa Vogel, Ruen-Yeager & Associates

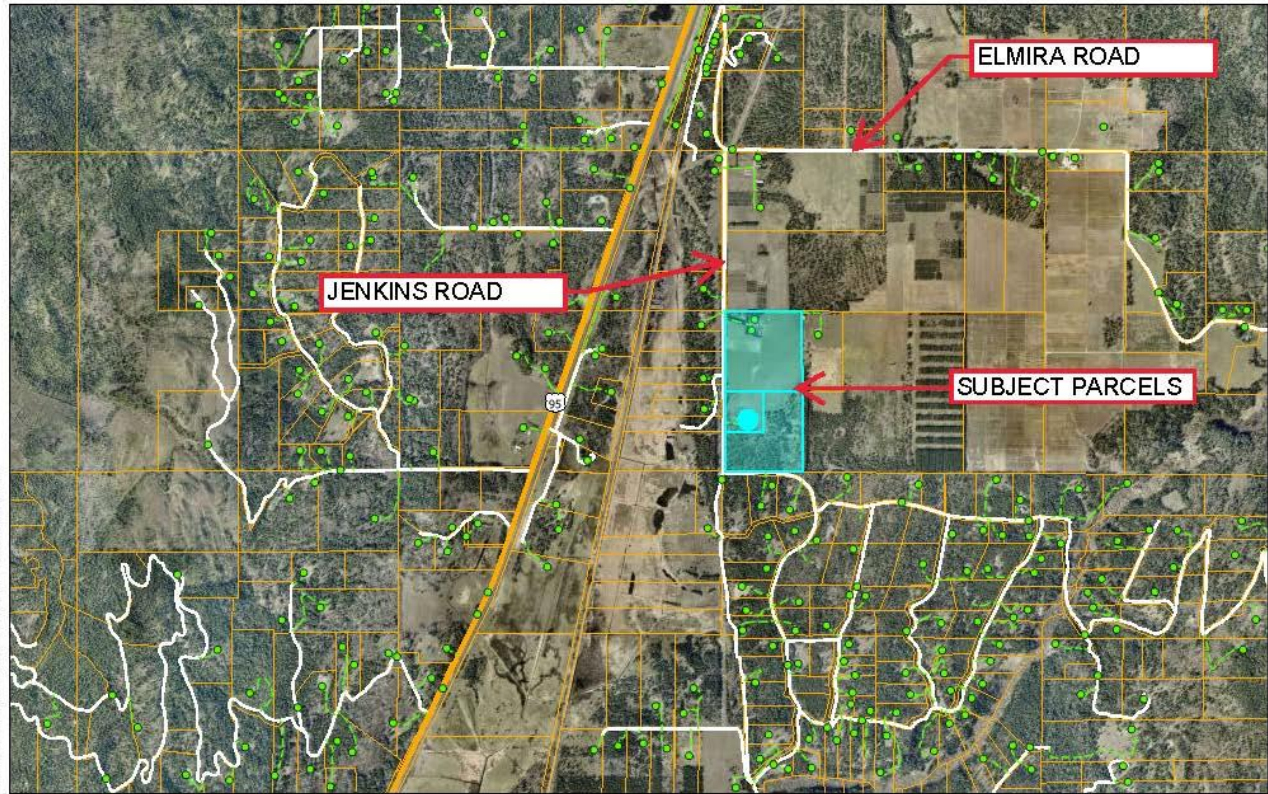
Application filed: June 6, 2024

Notice provided: Mail: December 16, 2024
Site posting: December 19, 2024
Published in newspaper: December 16, 2024

Attachment: Annex A – complete list of agencies routed

Vicinity Map

Bonner County Map



Legend

Driveway
Site

Road Centerlines
Primary

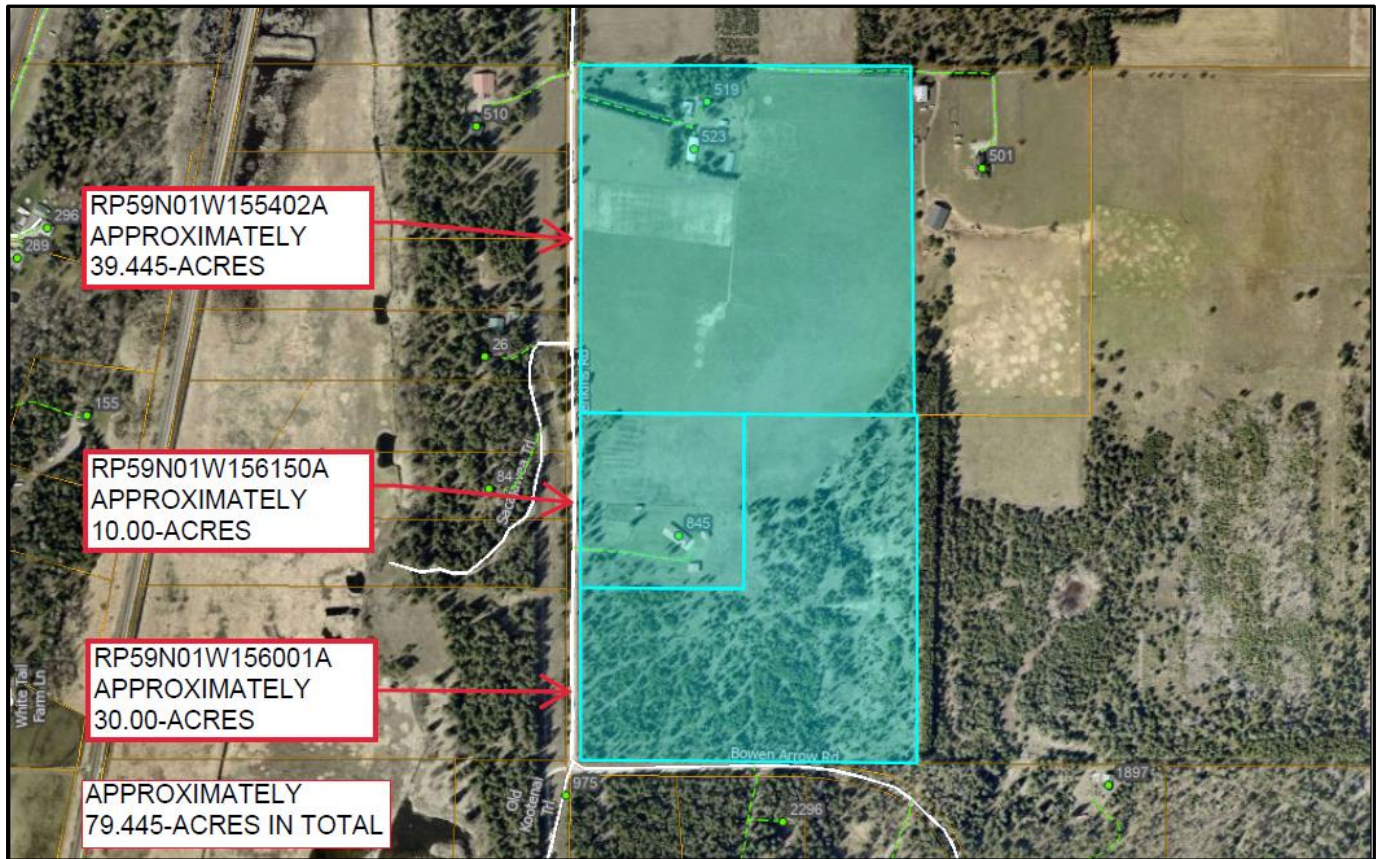
Local; Ramp
Parcels

0 0.2 0.4 0.8 mi
0 0.33 0.65 1.3 km



1:36,112

Site Plan



Project summary:

The applicants are requesting a zone change from Rural 10 to Rural 5 on three (3) parcels consisting of approximately 79.445-acres. The project is located off Jenkins Road in Section 15, Township 59 North, Range 1 West, Boise-Meridian. The comprehensive plan designation is Rural Residential.

Applicable laws:

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

- BCRC 12-111: Purpose et seq, health, safety, and general welfare
- BCRC 12-210 et seq, Title Amendments, Comprehensive Plan Amendments and Zone Changes
- BCRC 12-263: Reconsideration
- BCRC 12-320.1: Zoning districts and map designation, purpose
- BCRC 12-320.2: Zoning districts and map designations established
- BCRC 12-323: Rural District
- BCRC 12-800 et seq., Definitions

Background:

A. Site data:

- Use: Reserved for residential use
- Unplatted
- Size: Approximately 79.445-acres
- Zone: Rural-10
- Land Use: Rural Residential

B. Access:

- Jenkins Road and Bowen Arrow Road, both are Bonner County owned and privately maintained public rights-of-way.

C. Environmental factors:

- The site does contain few mapped slopes of 0-30+%. (USGS)
- The site does not contain mapped wetlands. (USFWS)
- The site does not contain river/stream/frontage on a lake. (NHD)
- The site is within SFHA Zone X per FIRM Panel Number 16017C0505E, Effective Date 11/18/2009.
- Soil Types:
 - Description: Mission silt loam, 2 to 12 percent slopes
 - i. Type: Consociation
 - ii. Drainage: Somewhat poorly drained
 - iii. Classification: Farmland of statewide importance, if drained
 - Description: Haploxeralfs and Xerochrepts, 30 to 55 percent slopes
 - i. Type: Undifferentiated group
 - ii. Drainage: Well drained
 - iii. Classification: Not prime farmland

D. Services:

- Water: Individual well
- Sewage: Individual septic
- Fire: Northside Fire District
- Power: Northern Lights, Inc.
- School District: Lake Pend Oreille School District #84

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural Residential	Rural-10	Residential – 39.445-acres Residential – 10.00-acres Vacant – 30.00-acres
North	Rural Residential	Rural-10	Residential - 140.00-acres
East	Rural Residential	Rural-10	Residential – 20.55-acres Vacant – 140-acres
South	Rural Residential	Rural-5	Vacant – 10.10-acres Residential - 8.00-acres Residential – 7.74-acres
West	Rural Residential	Rural-5	Residential – 9.35-acres Vacant – 10.155-acres Vacant – 8.36-acres Residential – 8.71-acres Vacant – 6.38-acres Residential – 6.50-acres Vacant – 9.17-acres Vacant – 24.66-acres

F. Standards review Bonner County Revised Code

- **12-216: Evaluation of Amendment Proposals**

Staff and the governing bodies shall review the particular facts and circumstances of each proposal submitted and shall determine whether there is adequate evidence that the proposal is in accordance with the general and specific objectives of the comprehensive plan. For zone change proposals, the request shall be evaluated against chapter 12 subchapter 3.2 or as hereafter amended.

- **12-263: Reconsideration:**

A. Reconsideration: Every applicant or affected person seeking judicial review of the Board's final decision must first file with the Board a motion for reconsideration of the Board's decision, specifying deficiencies in the decision within fourteen (14) days of the date of the decision, along with the applicable fee. A failure to seek reconsideration is also a failure to exhaust administrative remedies.

B. Initial Decision: The Board may consider the reconsideration motion as scheduled on an open business meeting agenda and determine whether to grant or deny the request. If the Board grants reconsideration in whole or in part, a hearing before the Board will be scheduled to address the specific deficiencies identified by the applicant or affected person and to allow interested persons to have an opportunity to be heard. If the Board denies the request for reconsideration, it shall promptly notify the parties in writing.

C. Public Notice On Hearing: Notice of the public hearing on the reconsideration, identifying the specific deficiencies alleged in the reconsideration request, will be provided as follows, including:

1. Notice To Agencies And Political Subdivisions: At least fifteen (15) days prior to the public hearing, the Director shall send notice to all political subdivisions providing services with the planning jurisdiction, including school districts and the manager or person in charge of the local public airport.

2. Legal Notice: At least fifteen (15) days prior to the public hearing, the Director shall publish a notice of the time and place in the official newspaper or paper of general circulation in the County.

3. Radius Notice: Will be provided in the same manner as originally provided on the application.

D. Decision: Following the hearing on the reconsideration, the Board may affirm, reverse or modify its prior decision and shall provide a written decision to the applicant and the affected person(s) within sixty (60) days of receipt of the request for reconsideration. If the Board fails to timely decide, the original decision of the Board will stand. (Ord. 573, 10-25-2017)

Staff: On October 23, 2024, the Board of County Commissioners held a duly noticed hearing in which they denied this project in a 2-0 vote. The written decision was given to the applicant and their representative on October 28, 2024. The appeal period for final decisions by the Board of County Commissioners is 14 days from the date of the written decision. This would have ended on November 11, 2024, however, the County was closed for the observation of Veteran's Day. On November 12, 2024, the applicant's representative filed a letter to request reconsideration of the Board's decision and paid the appropriate fees. The applicant has met all of the necessary requirements for this reconsideration.

The Planning Department provided public notice to agencies and taxing districts, neighbors within 300 feet of the property line, and to the Bonner County Daily Bee on December 16, 2024, meeting the minimum noticing requirements as set forth in this section. The Board is hearing this file within 60 days of the request being filed. All requirements for BCRC 12-263 have been met.

The Board shall render a written decision by Friday, January 10, 2025. A failure to render a written decision within this time will result in the original decision of the Board to stand.

- **12-320.1: Zoning Districts and Map Designation, Purpose**

The purpose statements for each zone and map designation set forth in the following sections shall be used to guide the application of the zones and designations to all lands in unincorporated Bonner County. The purpose statements also shall guide interpretation and application of land use regulations within the zones and designations,

and any changes to the range of permitted uses within each zone through amendments to this title.

- **12-320.2: Zoning Districts and Map Designations Established**

In accordance with the provisions of Idaho Code and the objectives set forth in this code, all land in the unincorporated areas of Bonner County is hereby classified according to the following zoning designations and zoning map symbols, which shall be applied as shown on the official zoning district map.

Existing Comprehensive Plan Designation:

Rural Residential:

The Rural Residential area provides for residential development in areas where urban services are not available, and slopes may vary up to 30%. These areas include hazard areas and critical wildlife habitats, where lower densities reduce potential impacts to resources and exposures to loss of property or lives. Small-scale agricultural uses and residential development are permitted.

Comprehensive Plan Analysis:

Property Rights

Goal:

1. Protect property rights and enhance property values through conscientious land use planning that complies with state law relevant to all county land use actions.

Objective:

1. Private property should not be taken for public uses without just compensation or due process of law.
2. Impacts to other properties should be taken into account when considering land use proposals, policies and codes.

Staff: The application was routed to neighbors 300' from the property line, informing neighbors of the proposed zone change. As of the date of this report, Bonner County has not received any public comments. This proposal appears to be aligned with objectives 1 and 2 as no impacts through this zone change have been brought forward from neighbors or agencies.

Population

Goal:

1. Ensure that the impact of demographic changes including generational issues and economic diversity are identified and considered during planning activities and decisions

Objective:

1. Maintain current and projected county population estimates and utilize this information when making land use decisions.

Staff: Bonner County, according to 2022 population estimates census data, has seen a 9.1% increase in population since the 2020 census was performed; increasing from 47,105 to an estimated 51,414. With the increase in the population, there is upward pressure on housing needs in Bonner County, both in the unincorporated portion of the County, and in the incorporated cities. Approval of this proposal could provide additional opportunities for housing.

School Facilities & Transportation

Goal:

1. Preserve the county's commitment to and ability to provide quality education to the current and future students of Bonner County.

Objective:

1. Ensure that the proposed developments and county land use decisions do not adversely impact the local school districts and their ability to provide adequate school facilities and transportation systems.
2. The county should encourage school districts to proactively review development applications to determine particular school needs and concerns.
3. Bonner County roads, trails and bicycle paths should be designed and maintained to allow safe passage of students to schools.
4. Long-term consequences of land use proposals should be considered, including the adequacy of existing facilities and the siting of future schools.

Staff: The Lake Pend Oreille School District #84 and Lake Pend Oreille School Transportation that serves the property were notified of the proposed zone change. The Lake Pend Oreille School District #84 did provide a comment regarding this file; Lake Pend Oreille School Transportation did not respond. **SEE LPOSD #84 COMMENT FOR DETAILS.**

Economic Development

Goal:

1. Support and encourage economic development.

Objective:

1. Support small businesses such as markets, restaurants, recreational activities, campgrounds, and marinas that provide services which support resort residents and visitors in their local communities.
2. Enable development of small-scale cottage industries and home-based occupations while protecting the surrounding areas from adverse impacts.
3. Policies regarding economic development activities should seek to mitigate the impacts of such factors as noise, light glare, odors, fumes and vibrations on the surrounding community.

4. Support local economic development by increasing support for outdoor recreation in Bonner County. Encourage and protect public access to public lands and water, campgrounds, and recreational areas.
5. Support local businesses by enabling development of workforce housing in proximity to commercial, industrial and agricultural uses.

Staff: The property is accessed by suitable transportation systems. Per the applicant, the proposed zone change is not intended for industrial or commercial uses, only for residential uses. The development of new residences in the area could provide more employment for many different industries and could attract more members of the workforce to the area. Further, the proposed zone change from Rural-10 to Rural-5 will be consistent with the zoning in the area. Rural 5 is intended to allow for small farming operations and has the opportunity to impact the local agriculture industry positively.

Land Use

Goal:

1. Bonner County intends to balance and integrate its land use policies and proposed land use map with the components of the comprehensive plan to enable the community to grow while retaining its rural character and protecting its unique natural resources.

Objective:

1. Bonner County should develop and maintain a future land use map and land use codes that acknowledge and protect its agricultural, timber and mining lands, protects the water and wildlife resources, identifies and avoids hazard areas, provides areas for economic growth, encourages affordable housing and centers growth in areas where adequate public and private services can be provided.
2. Encourage clustered development for medium and large scale commercial and industrial uses.
3. Commercial and industrial uses should be located and operated in a manner to ensure the protection of our natural resources including clean air and water, dark skies, and overall environmental quality and rural character of Bonner County.

Staff: The proposed zone change from Rural-10 to Rural-5 is compatible with surrounding land uses. Additionally, the property will not adversely impact natural resources as Bonner County Code requires that setbacks be met to all mapped wetlands, streams or other environments features that might be found on the property. In addition, the comprehensive land use designation is Rural Residential, which supports both Rural-10 and Rural-5 zoning districts.

Natural Resources

Goal:

1. Protect, enhance and maintain the County's natural resources such as air, water, forest, minerals, plants and wildlife for long-term benefits to the public.
2. Acknowledge and consider agency comments regarding natural resources.

Objective:

1. Bonner County's system of lakes and waterways is one of its greatest assets, and Bonner County should strive to preserve both the quality and quantity of its water resources.
2. Bonner County values its productive agricultural lands and forests, mining lands, its fisheries, wildlife, wetlands and aquifer recharge areas and should provide measures to protect and maintain these natural features.
3. Bonner County should protect its water resources by requiring adequate sewer treatment systems based on soil, density, and intensity of use to reduce impacts to water resources.

Staff: Impacts to natural resources were not identified by any agency. Further, the subject site does not appear to have any wetlands. Agricultural uses exist on the land and anticipated to be maintained. The Rural Residential land use designation encourages small-scale agricultural uses and residential development. Both are protected and maintained with this proposal.

Hazardous Areas

Goal:

1. Bonner County's system of lakes and waterways is one of its greatest assets, and Bonner County should strive to preserve both the quality and quantity of its water resources.
2. Bonner County values its productive agricultural lands and forests, mining lands, its fisheries, wildlife, wetlands and aquifer recharge areas and should provide measures to protect and maintain these natural features.
3. Bonner County should protect its water resources by requiring adequate sewer treatment systems based on soil, density, and intensity of use to reduce impacts to water resources.

Objective:

1. Bonner County intends to regulate the location and density of new development in floodplain to reduce the potential for the loss of lives and property within flood hazard areas.
2. Future development should be designed to reduce exposure to wildland fire and to provide for emergency and escape routes for residents.
3. Development within areas of excessive slopes, unstable areas and avalanche zones should be discouraged.

Staff: The subject properties are not located in a mapped floodplain. Potential damage to property or people due to soil erosion or avalanches are minimal. Furthermore, the property is provided with emergency services.

Public Services, Facilities & Utilities

Goal:

1. Future development approvals should require adequate services and should not adversely impact the services or utilities of the utility provider.
2. Require adequate public services, facilities, and utilities in future development approvals.

Objective:

1. New development should be adequately served by fire protection, roads, sewer, schools, law enforcement, ambulance, power and emergency services, water and other public or private services.
2. Require the developers to provide infrastructure, utilities or financial support to offset the capital costs of expansion of services, required by the proposed development.
3. Bonner County shall require adequate provisions for future utility services in areas of commercial, industrial, residential or other similar uses.

Staff: Any future development to this parcel should not affect service as the parcels are served by wells and septic systems. The parcel has services, including electricity provided by Northern Lights, Inc., Bonner County EMS & Sheriff, and the Northside Fire District.

Transportation

Goal:

1. Provide a transportation system that is safe, uncongested, and well maintained.

Objective:

1. Future development should not adversely impact the existing transportation system by reducing the quality or level of service or creating hazards or congestion.
2. Roads within new development should be built to county standards and at the expense of the developer.
3. Roads within new development should provide adequate access for fire and emergency vehicles as well as routes of escape.
4. Future access roads should be designed and built to integrate with the state and county system of roads without overburdening the transportation system.

5. To reduce transportation costs, road building and environmental impacts, cluster development should be encouraged.
6. Bonner County intends for certain intense land use developments to provide paved roads.
7. Bike ways and pedestrian paths should be considered in development plans to provide an integrated community transportation system wherever possible.
8. To communicate and work cooperatively with other jurisdictions within the county to ensure the best possible flow of traffic county-wide.

Staff: The applicant's property is bordered on the west by Jenkins Road, a Bonner County owned, privately maintained gravel right-of-way; on the south by Bowen Arrow Road, a Bonner County owned, privately maintained gravel right-of-way. Bonner County Road & Bridge Department was routed on this zone change and provided a comment as to the state of Jenkins Road, but did not comment on the status of Bowen Arrow Road. The Idaho Transportation Department (ITD) was also routed for comment on this project. ITD stated that they had no objection to the proposed zone change. **SEE ROAD & BRIDGE COMMENT FOR DETAILS.**

Recreation

Goal:

1. Protect and encourage public and private recreational opportunities as an important asset that supports a key segment of the County's economy.

Objective:

1. Ensure public legal recreational access and amenities are not obstructed or adversely impacted by future development.

Staff: Re-zoning this property from Rural-10 to Rural-5 will not affect any existing recreational activities.

Special Areas or Sites

Goal:

1. To protect, preserve and maintain special areas and sites both natural and manmade in relation to land use.

Objective:

1. Future developments should not adversely affect or destroy culturally or ecologically sensitive sites.

Staff: This goal and objective appear to be unaffected.

Housing

Goal/ Objective:

1. Provide an environment that enables opportunities for diverse housing needs.

Staff: The application is consistent with the housing component of the comprehensive plan as the rezone may result in more opportunities for different housing options in Bonner County.

Community Design

Goal:

1. To enable a variety of lifestyles while maintaining the rural character in the future development of Bonner County.

Objective:

1. New development should be located in areas with similar densities and compatible uses.
2. The adverse impacts of new development on adjacent areas should be minimized.
3. Consider the protection of natural resources, rural features and surrounding uses of the community in the design and location of new development.

Staff: The application is consistent with the housing component of the comprehensive plan as the rezone may result in more opportunities for different housing options in Bonner County.

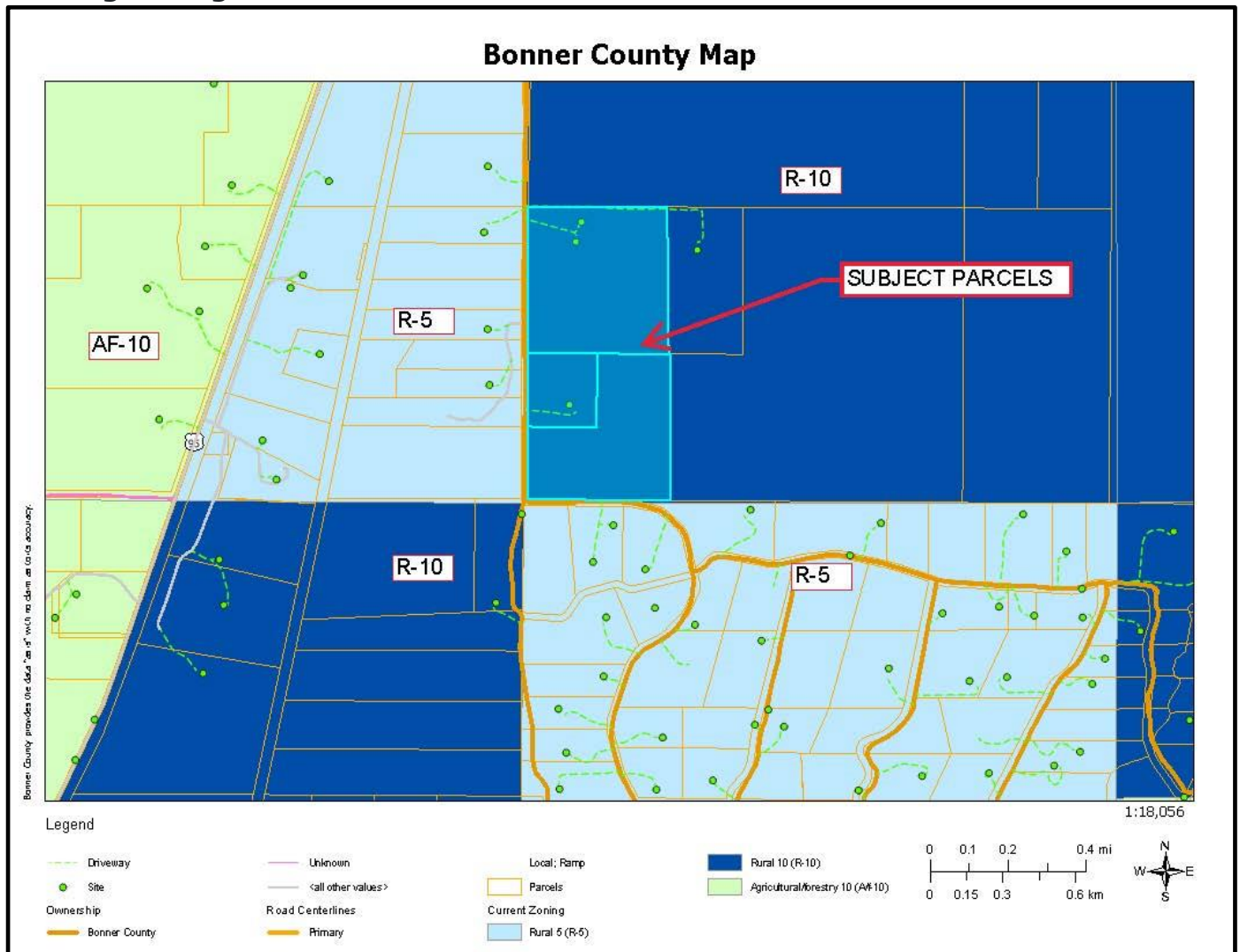
Agriculture

Goals/Objectives:

1. Protect the rural character and agricultural heritage of Bonner County by retaining large- and small-scale commercial agriculture and hobby farms as viable uses.
2. Support the local economy by encouraging production, distribution, and retail sales of locally grown food and other agricultural products.
3. Develop policies to discourage fragmentation of very large productive agricultural lands.

Staff: This proposal has the potential to create approximately sixteen additional lots, if approved. The current comprehensive plan land use is Rural Residential and allows for small scale farming and forestry activities. This is not proposed to change.

Existing Zoning:



BCRC 12-323: RURAL DISTRICT (B-1, Rural-10):

A. The rural district is established to allow low density residential uses that are compatible with rural pursuits. The purpose can be accomplished by:

1. Limiting residential densities and permitted uses to those that are compatible with rural character and nearby resource production districts and sites and can be adequately supported by rural service levels.
2. Allowing small scale farming and forestry activities, and tourism and recreation uses that can be supported by rural service levels and are compatible with rural character.
3. Encouraging conservation development configurations that create permanent open space or farming areas, protect sensitive environmental features, reduce infrastructure costs and/or enhance recreational opportunities.

B. Use of this zone is appropriate in areas designated by the comprehensive plan as follows:

1. R-10 in areas designated as rural residential in the comprehensive plan that meet one or more of the following criteria:

- a. Characterized by slopes that are steeper than thirty percent (30%).
- b. Located within critical wildlife habitat as identified by federal, state or local agencies.
- c. Contain prime agricultural soils.
- d. Served by a network of public and/or private roadways that generally do not meet applicable roadway standards set forth in title 2 (public roads) of this code or appendix A (private roads) of this title or are absent.
- e. Within the floodway.
- f. Contain limited access to public services.

Proposed Zoning:

BCRC 12-323 RURAL DISTRICT (B-2, Rural-5):

B. Use of this zone is appropriate in areas designated by the comprehensive plan as follows:

2. R-5 in areas designated rural residential in the comprehensive plan that are already developed at or near the one dwelling unit per five (5) acre density and/or do not meet the criteria for R-10 above. (Ord. 501, 11-18-2008)

G. Agency Review:

Refer to Annex A for the complete list of agencies that were routed for comment.

The following agencies provided comment:

Lake Pend Oreille School District #84
Idaho Transportation Department
Bonner County Road & Bridge

The following agencies replied "No Comment":

Idaho Department of Environmental Quality
Northside Fire District
Idaho Department of Fish and Game
Panhandle Health Department
Idaho Transportation Department
Kootenai Ponderay Sewer District

All other agencies did not reply.

Public Notice & Comments

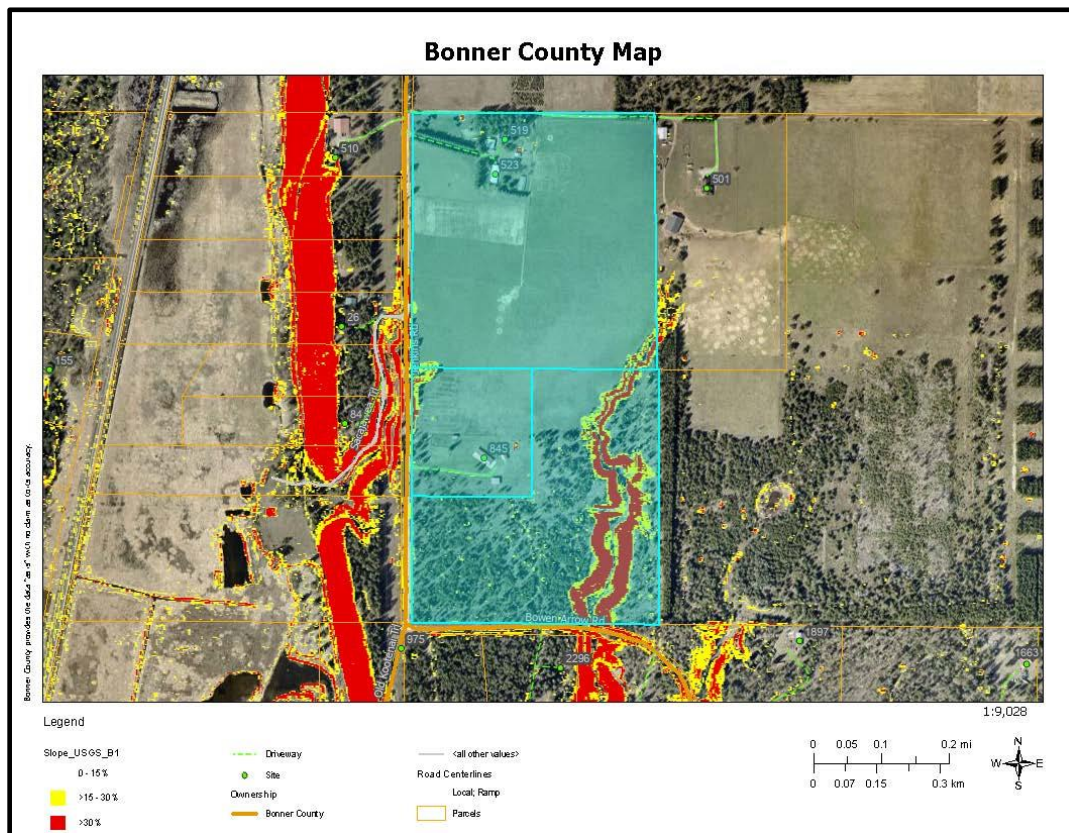
No public comments were received at the time that this staff report was written.

Staff Analysis:

Comparisons of the current zoning, Rural-10 to the proposed zoning, Rural-5

Rural-10 Standards	Rural-5 Standards
<ul style="list-style-type: none">• Characterized by slopes steeper than 30%• Located within critical wildlife habitat• Contain prime agricultural soils• Served by a network of public/private roads that do not meet applicable roadway standards set forth in title 2 (public roads)• Within the floodway• Contain limited access to public services	<ul style="list-style-type: none">• Developed at or near the one dwelling unit per five (5) acres and/or• Does not meet the criteria for R-10

Rural 10 (R-10) Analysis:



Characterized by Slopes Steeper Than 30%:

The parcels do not appear to be characterized by slopes steeper than 30%. The parcels are relatively flat with few slopes that exceed 30% grade in the southeast corner. Approximately 4.8-acres (approximately 6.04%) of the project site contain these steep slopes; most of which are on one of the three parcels. The parcel that contains these slopes is approximately 30-acres; these slopes make up approximately 16% of the individual parcel. According to the land use portion of the comprehensive plan for density ranges, properties that are level to moderately sloped are appropriate to be sized between 5 and 10 acres.

Located Within Critical Wildlife Habitat:

No critical wildlife area was determined by any agency.

Contain Prime Agricultural Soils:

The parcels contain soils that are considered "Farmland of statewide importance, if drained". Bonner County does not have a drainage district that encompasses these parcels. None of these parcels contain soils that fall under the classification of "Prime Farmland" per NRCS and the Bonner County Comprehensive Plan.

Areas that are considered "Prime Farmland" by the Bonner County Comprehensive Plan are classified as "All areas are prime farmland", "Prime farmland, if irrigated", "Prime Farmland, if drained", and "Prime Farmland if drained and protected from flooding or not frequently flooded during the growing season." Soils that are classified as "Farmland of Statewide Importance" are not to be considered "Prime Farmland".

Served By A Network Of Public/ Private Roads That Do Not Meet Applicable Roadway Standards Set Forth In Title 2 (Public Roads):

Access to the parcels is by way of Jenkins Road and Bowen Arrow Road. Both roads are Bonner County owned, privately maintained roads. The Bonner County Road & Bridge Department commented as to the status of Jenkins Road, but did not comment on the status of Bowen Arrow Road. **SEE ROAD & BRIDGE COMMENT FOR MORE DETAIL.**

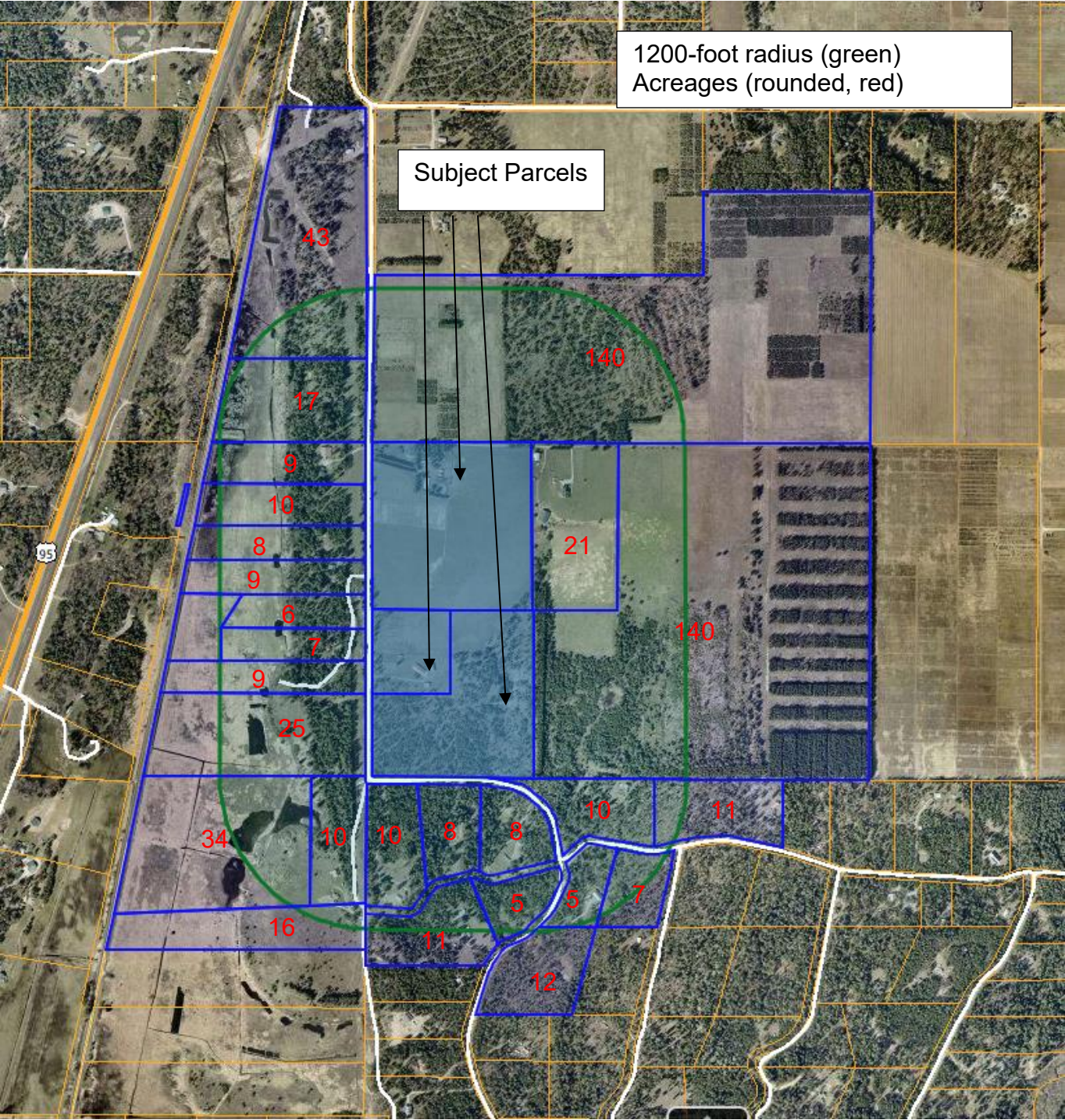
Within the Floodway:

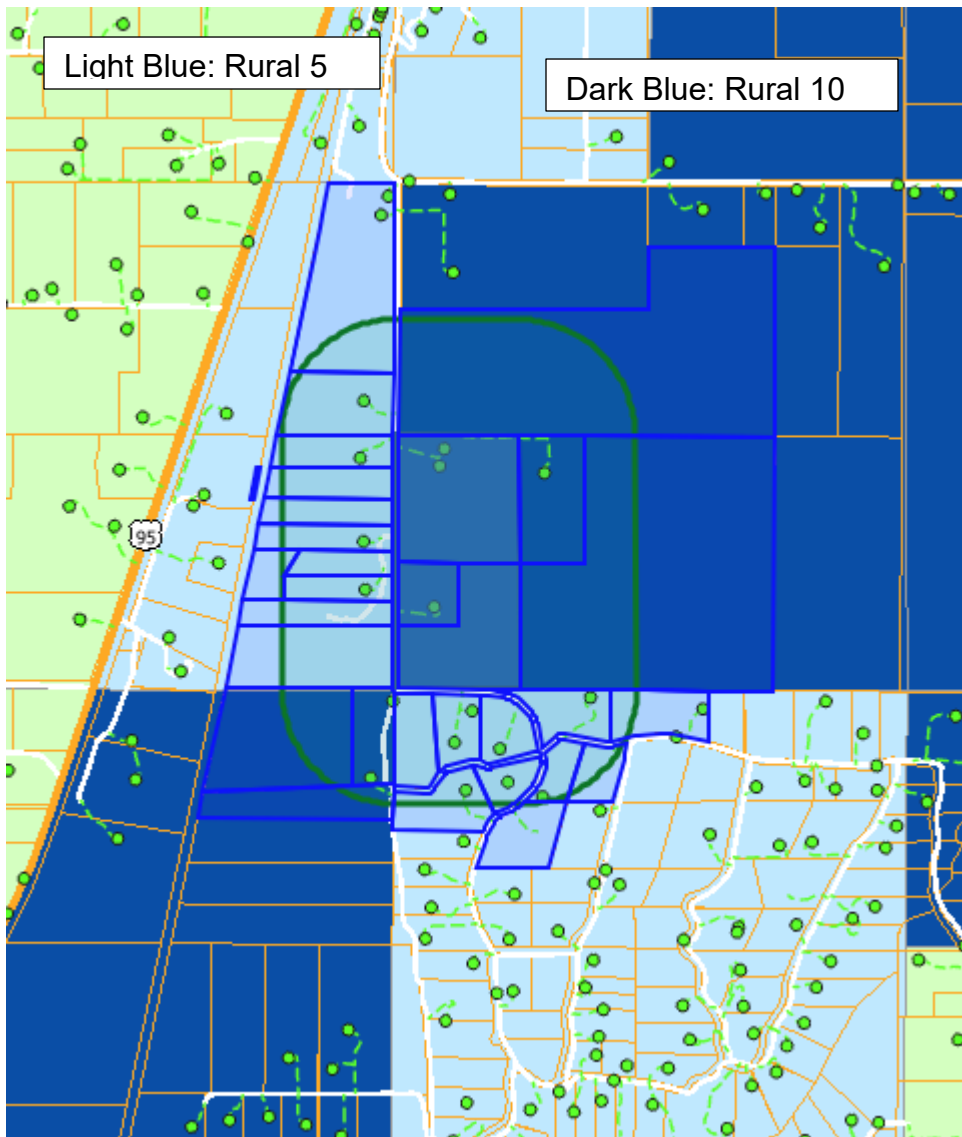
The risk of flooding of the parcel is minimal as it is within Special Flood Hazard Zone X and is not within a mapped floodplain or floodway.

Contain Limited Access to Public Services:

The parcel is not limited in terms of access to public services. Public services that are available for these properties include: fire protection, emergency services and power. Other amenities include a private individual well and septic system.

Rural 5 (R-5) Analysis:





Developed at or Near the One Dwelling Unit Per Five (5) acres:

Within a 1200-foot radius of the subject properties, there are 26 parcels—12 undeveloped and 14 with dwelling units. Seven parcels are 8-acres or smaller, with two of those parcels sized at 5-acres and are developed with single family dwellings. Of the total, 20 parcels are zoned Rural 5, while the subject properties and six others are zoned Rural 10.

and/or

Does Not Meet the Criteria For R-10:

The parcels do not appear to be characterized by slopes greater than 30%, are not located within a critical wildlife area, do not contain prime agricultural soils, are accessed by Bonner County owned roads, are not located within the floodway, and do not contain limited access to public services.

Planner's Initials: AF

Date: January 2, 2025

Zoning Commission Recommendation: APPROVAL

Date: September 19, 2024

Vote: 5-0

Board of County Commissioners' Decision: DENIED

Date: October 24, 2024

Vote: 2-0

Note: 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.

Zone Change - Motion by the Governing Body:

BOARD OF COUNTY COMMISSIONERS

MOTION TO AFFIRM THE PREVIOUS DECISION: I move to affirm the previous decision to deny this project, FILE ZC0007-24, requesting a zone change from Rural-10 to Rural-5, based upon the following conclusions:

Conclusion 1

The proposal **is/is not** in accord with the elements of the Bonner County Comprehensive Plan.

Conclusion 2

This proposal was reviewed for compliance with Title 12, Bonner County Revised Code, and **was/was not** found to be in compliance.

Conclusion 3

The proposal **is/is not** in accord with the purpose of the Rural 5 zoning district, provided at Chapter 3, Title 12, Bonner County Revised Code.

This decision is based upon 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 conclusions of law as set forth in the October 28, 2024 decision letter and direct planning staff to draft written findings and conclusions to reflect this motion, have the Chairman sign, and transmit to all interested parties. This action does not result in a taking of private property. The actions that could be taken are:

- 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.

BOARD OF COUNTY COMMISSIONERS

MOTION TO REVERSE THE PREVIOUS DECISION: I move to reverse the previous decision and approve this project, FILE ZC0007-24, requesting a zone change from Rural-10 to Rural-5, finding that it is in accord with the general and specific objectives of the Bonner County Comprehensive Plan and Bonner County Revised Code as enumerated in the following conclusions of law:

Conclusion 1

The proposal **is** in accord with the elements of the Bonner County Comprehensive Plan.

Conclusion 2

This proposal was reviewed for compliance with Title 12, Bonner County Revised Code, and **was** found to be in compliance.

Conclusion 3

The proposal **is** in accord with the purpose of the Rural 5 zoning district, provided at Chapter 3, Title 12, Bonner County Revised Code.

This decision is based upon 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 facts as set forth in the Staff Report (or as amended during the hearing) and direct planning staff to draft written findings and conclusions to reflect this motion, have the Chairman sign, and transmit to all interested parties. This action does not result in a taking of private property.

Zone Change Ordinance Motion: Roll Call Vote

I move to approve an Ordinance of Bonner County, Idaho, the number to be assigned, citing its authority, and providing for the amendment of the Official Zoning Map of Bonner County by the classification of lands located in Section 15, Township 59 North, Range 1 West, Boise Meridian, Bonner County, Idaho to Rural-5, and providing for an effective date.

Zone Change Findings of Fact, Adopted October 24, 2024

1. The parcels contain steep slopes of 30% or greater.
2. The parcels are not within a critical wildlife habitat as identified by federal, state, or local agencies.
3. The parcels do contain soils classified as "Prime Agriculture soils".
4. The parcels are accessed via Jenkins Road, a Bonner County owned, a privately maintained right-of-way.
5. The parcels are not within a floodplain or floodway.

6. Services are provided by individual well, individual septic system, Northern Lights, Inc. and Northside Fire District.
7. The parcels are not located near other parcels that are currently developed at or near five (5) acres.

Zone Change Suggested Proposed Findings of Fact

1. The parcels are not characterized by slopes steeper than 30%. The site does contain slopes of 30+% or greater; making up approximately 4.8 of the 79.45-acres (approximately 6.04% of the total project). The 30+% slopes are located mostly on one 30-acre parcel, making up approximately 16% of the total area of the individual parcel.
2. The parcels are not within a critical wildlife habitat as identified by federal, state, or local agencies.
3. The parcels do not contain soils classified as "Prime Agriculture soils".
4. The parcels are accessed via Jenkins Road, a Bonner County owned, privately maintained right-of-way.
5. The parcels are not within a floodplain or floodway.
6. Services are provided by individual well, individual septic system, Northern Lights, Inc. and Northside Fire District.
7. The parcels are not located near other parcels that are currently developed at or near five (5) acres per dwelling unit.
8. On September 19, 2024, the Zoning Commission recommended approval of this file to the Board of County Commissioners.
9. On October 24, 2024, the Board of County Commissioners denied this request for a zone change from Rural 10 to Rural 5.
10. On November 12, 2024, the applicant filed a petition for Reconsideration of the Board's final decision.

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

ANNEX A-LIST OF AGENCIES AND TAXING DISTRICTS ROUTED

RECORD OF MAILING

Hearing Date: January 08, 2025

File No.: ZC0007-24

Record of Mailing Approved By:



I hereby certify that a true and correct copy of the "Notice of Public Hearing" was digitally transmitted or mailed (postage prepaid) on this **12th** day of **December 2024** and revised on this **16th** day of **December 2024**.



Jessica Montgomery, Hearing Coordinator

U.S. Fish & Wildlife Service - Email

West Bonner County Cemetery District - Email

West Bonner Library - Email

West Pend Oreille Fire District - Email

Assessor - Email

Bay Drive Recreation District - Email

BONNER COUNTY DAILY BEE - U.S. Mail

Bonner County Floodplain Review - Email

Bonner County Sheriff - Email

City of Clark Fork - Email

City of East Hope - Email

City of Kootenai - Email

City of Ponderay - Email

City of Sandpoint - Email

Coolin Sewer District - Email

Drainage District #7 - Email

East Priest Lake Fire District - Email

Garfield Bay Water & Sewer District - Email

Granite Reeder Water & Sewer District - Email

Idaho Department of Fish & Game - Email

Idaho Department of Lands - Coolin - Email

Idaho Department of Lands - Sandpoint - Email

Idaho Transportation Department (Aeronautics) - U.S. Mail

Independent Highway District - Email

Kootenai-Ponderay Sewer District - Email

KSPT-KPND-KIBR RADIO - U.S. Mail

Lake Pend Oreille School District, #84 (Admin Office) - Email

Lakeland Joint School District, #272 - Email

North of the Narrows Fire District - Email

Northland/Vyve Cable Television - Email

Outlet Bay Sewer District - Email

Pend Oreille Hospital District - Email

Priest Lake Translator District - Email

Sagle Valley Water & Sewer - Email

Schweitzer Fire District - Email

Selkirk Fire, Rescue & EMS - Email

Southside Water & Sewer District - Email

Spokesman-Review - U.S. Mail

Swan Shores Sewer District - U.S. Mail

Tamarack Village Water & Sewer - U.S. Mail

Trestle Creek Sewer District - Email

Avista Utilities - Email
Bayview Water & Sewer - Email
Bonner County EMS - Email
Bonner County Road & Bridge -
Email Bottle Bay Water & Sewer
District - Email City of Dover -
Email
City of Hope - Email
City of Oldtown -
Email City of
Priest River -
Email City of
Spirit Lake -
Email
Coolin-Cavanaugh Bay Fire District -
Email East Bonner Library - Email
Ellisport Bay Sewer -
Email GEM STATE
MINER - U.S. Mail
Idaho Department of Environmental Quality (DEQ) - Email
Idaho Department of Lands - CDA - U.S. Mail
Idaho Department of Lands - Navigable Waters & Mining -
Email Idaho Department of Water Resources - IDWR -
Email
Idaho Transportation Department- District I -
Email Kalispel Bay Sewer & Water - U.S. Mail
KPBX-FM 91 SPOKANE PUBLIC RADIO - U.S. Mail
Laclede Water District - Email
Lake Pend Oreille School District, #84 (Transportation) -
Email Little Blacktail Ranch Water Association - U.S. Mail
Northern Lights, Inc. - Email
Northside Fire District -
Email Panhandle Health
District - Email
Bonner County Airport Manager
- Email Priest Lake Public Library
District - Email Sam Owen Fire
District - Email
SELKIRK ASSOCIATION OF REALTORS - U.S. Mail
Selkirk Recreation District
- Email Spirit Lake Fire
District - Email State
Historical Society - Email
Syringa Heights Water
Association - Email Timber Lake
Fire District - Email
U.S. Army Corps of Engineers - Email
U.S. Forest Service - U.S. Mail
West Bonner County School District,
#83 - Email West Bonner Water &
Sewer District - Email West Priest Lake
Fire District - Email

ANNEX B-APPLICANTS LETTER FOR REQUEST TO RECONSIDER



RUEN-YEAGER & ASSOCIATES, INC.
ENGINEERS ♦ PLANNERS ♦ SURVEYORS

November 12, 2024

Via email and hand-delivery

Bonner County Board of Commissioners
Jake Gabell, Bonner County Planning Director
Alex Feyen, Bonner County Planner

RECEIVED

NOV 12 2024

RE: Reconsideration Request of BOCC Denial of File ZC0007-24, McPherson

Bonner County
Planning Department

Dear Bonner County Board of Commissioners:

Applicant Gail McPherson, through her representative, Ruen-Yeager & Associates, Inc., hereby submits this request for reconsideration of the Bonner County Board of Commissioners; (BOCC) decision to deny file ZC0007-24, pursuant to the provisions of Idaho Code §67-6535. The zone change application was denied at the public hearing on October 23, 2024. The official decision letter is dated October 28, 2024 (attached). This request for reconsideration is within the time allowance for requests for reconsideration per Bonner County Revised Code (BCRC) 12-262 and Idaho Code, and confirmation from Bonner County Planning Director Jake Gabell, who stated the last day eligible for submittal and payment is November 12, 2024, by the end of the working day.

This request for reconsideration is based on the following deficiencies in the BOCC determination to deny file ZV0007-24: That the decision was: 1) arbitrary, capricious or an abuse of discretion; 2) not supported by substantial evidence on the record as a whole; and 3) made upon unlawful procedure.

Arbitrary, Capricious or Abuse of Discretion -

1. The use of the subject parcels as agricultural lands and standards of a different zoning district were used as reasons for denial of the file.
 - a. BOCC stated they did not want the land made smaller than 10 acres as it would fragment the farming operations and impact surrounding agricultural operations. The BOCC also used standards of the Agricultural/Forest zoning districts instead of the Rural zoning districts. BCRC 12-323(A-2) for the Rural Districts states, *"allowing small scale farming and forestry activities, and tourism and recreation uses that can be supported by rural service levels and are compatible with rural character."* This statement applies to both the Rural-10 and Rural-5 zones, meaning that parcels as small as 5 acres are considered appropriate for small scale farming. It is the Agricultural/Forestry Districts (BCRC 12-322) which states lands should be retained for efficient farming, **not** the Rural Districts. BCRC 12-322(A-1) states, *"establishing residential density limits and conservation development standards to retain areas sized for efficient farming."* Per County Planning Director Jake Gabell during the October 23, 2024, public hearing and the standards of the BCRC, no standards of the Agricultural/Forestry zoning districts could be used, only those of the Rural zoning districts. The desire to not have agricultural lands subdivided was arbitrary because small scale farming is permitted in the Rural zoning districts down to 5 acres in size. The use of the Agricultural/Forestry zoning districts' standards was arbitrary and an abuse of discretion as these standards are not applicable to land proposed to be zoned Rural.
2. The BOCC stated in their decision for denial that if the lands have at least one characteristic of the Rural-10 zone, then the request to be changed to Rural-5 must be denied. The BOCC has in the past consistently approved zone changes where it was shown that the land had small portions of 30% or greater slopes but were not considered "characterized" as having those slopes due to the majority of the property not having them.

Not Supported by Substantial Evidence on the Record as a Whole -

1. The Zoning Commission unanimous recommendation to approve this file was not discussed nor the reasoning for the recommendation for approval of the file (Zoning Commission letter of recommendation attached).
2. The slopes of 30% or greater located on the top of the ridge along the eastern boundary of the southernmost subject parcel was used as a reason for denial as the BOCC stated the presence of the slopes characterizes the property as having slopes of 30% or greater.
 - a. The BCRC does not define “characterized” so the dictionary definition is defaulted to which states it is “*to describe the character or quality of.*” This definition does not indicate that one feature or character/quality, such as a small area of the subject parcels having slopes of 30% or greater, found on the subject parcels characterize the lands as a whole in that manner. Per Mr. Gabell during the October 23, 2024, public hearing, it has been the history of the BOCC to interpret “characterized” as the majority of the land being covered in slopes of 30% or greater. Using this interpretation for the approval of past zone changes also sets a precedence for future zone changes.
 - b. Of the total 79.5 acres (3,463,020 square feet) being requested for the zone change, approximately 4 acres (174,240 square feet) of that total land area has slopes of 30% or greater. Less than 5% of the land has slopes of 30% or greater and they are located on a single ridge which is an extension from the main ridge located south of the subject sites on Rural-5 zoned parcels.
3. The BOCC used the presence of Mission Silt Loam soils as a reason to deny the file, stating that due to the soil being described as, “*considered farmland of statewide importance, only if drained.*” however, Mr. Gabell, at the October 23, 2024, public hearing, stated that through work with the Planning Commission “farmland of statewide importance” was separated from “prime agriculture soils” and is different from prime agriculture soils. Mr. Gabell also noted that there is no definition for “farmland of statewide importance” and the BOCC cannot consider it as prime agriculture soils. There are only seven soils that are classified as prime farmland soils when irrigated and less than 6% slopes, per the Soil Survey of Bonner County Area, Idaho. Mission Silt Loam is not one of the seven. In fact, the Soil Survey for #32, Mission Silt Loam, 2% to 12% slopes states this soil unit is somewhat poorly drained with very slow permeability. While suited to non-irrigated crops, the soil is limited by its depth to hard pan and its slow permeability. Grazing has to be avoided until the soils have drained sufficiently. It is not a prime ag soil. There are no drainage districts in the area as well and a majority of the already Rural-5 zoned parcels adjacent to and in the vicinity of the subject parcels for the file include the Mission Silt Loam soil. The soils of the subject site should have never been a reason for denial but instead a reason for approval of the zone change request.

Made Upon Unlawful Procedure -

1. After the County Planner Alex Feyen presented the staff report but before the applicant’s representative or the public could speak, the BOCC began deliberations on the file, not limiting themselves to only questions being directed to Mr. Feyen regarding the staff report. Decision making dialogue occurred prior to the close of the public comment period and opening of deliberations. The BOCC discussion revealed a bias toward their eventual decision.
2. New information was introduced during deliberations, which neither the applicant’s representative nor the public were allowed to address. The new information included:
 - a. Standards of the Agricultural/Forestry zoning districts;
 - b. Agricultural uses on surrounding parcels and how the proposed zone change would impact them; and
 - c. Parcels adjacent to and within the vicinity of the subject parcels already zoned Rural-5 not being at 5 acres but only as small as 8 acres in size.

McPherson Reconsideration Request for ZC0007-24

November 12, 2024

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3. Proper procedural rules were not followed during the first motion during voting when Commissioner Korn made the motion to approve the zone change request. Commissioner Williams, without stepping down as the Chair, seconded the motion to move to discussion where she asked him to ask if that was the motion he meant to make which Commissioner Korn stated he did not know if it was. During the vote, Commissioner Korn voted against the motion and Commissioner Williams, while never stating that she was stepping down as the Chair to vote, which is required, voted against the motion as well.

Based upon the above-mentioned reasons, the applicant requests a reconsideration of the BOCC decision to deny file ZC0007-24 as noted in the October 28, 2024, dated decision letter. The applicant requests the denial decision be reversed and file ZC0007-24 be approved to allow the zone change from Rural-10 to Rural-5. The applicant also asks that all three (3) acting Commissioners be present at the public hearing for the reconsideration as only two (2) Commissioners were present at the October 23, 2024, hearing.

Thank you and if you have any questions, please feel free to contact me.



Tess Vogel, Associate Planner
Project Representative for McPherson
Ruen-Yeager & Associates, Inc.



Gail McPherson, Applicant

Cc: Bill Wilson, Bonner County Civil Deputy Prosecutor

Attachments: Zoning Commission Letter of Recommendation Dated September 23, 2024; BOCC Decision Letter Dated October 28, 2024