

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING MAP AMENDMENT REPORT (#FZC-22-26)
MONTARISE DEVELOPMENTS, LLC
JANUARY 11, 2023

I. GENERAL INFORMATION

A. Project Description

This a report to the Flathead County Planning Board and Board of Commissioners regarding a request by APEC Engineering, on behalf of Montarise Developments, LLC, for a zoning map amendment within the Prairie View and Highway 93 North Zoning Districts. The proposed amendment, if approved, would change the zoning of the subject properties from ‘SAG-5 *Suburban Agricultural*’ to ‘R-2.5 *Rural Residential*.’

B. Application Personnel

1. Owner

Montarise Developments, LLC
704 E. 13th Street Ste 200
Whitefish, MT 59937

2. Technical Representation

APEC Engineering, Inc
75 Somers Road
Somers, MT 59932

C. Process Overview

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the South Campus Building at 40 11th Street West in Kalispell.

1. Land Use Advisory Committee/Council

This property is not located within the jurisdiction of a Land Use Advisory Committee.

2. Planning Board

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on January 11, 2023 at 6:00 P.M., in the Second Floor Conference Room of the South Campus Building located at 40 11th Street West in Kalispell, MT. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration.

3. Commission

The Commissioners will hold a public hearing on the proposed zoning map amendment on January 24, 2023 at 9:30 A.M. Prior to the Commissioner’s public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Office of the Board of Commissioners at 800 South Main Street in Kalispell.

II. PROPERTY CHARACTERISTICS

A. Subject Property Location and Legal Description

The properties are located along Highway 93 and KM Ranch Road south of Whitefish (see Figure 1 below) and total approximately 155.9 acres. The properties are legally described as:

Parcel A of Correction Certificate of Survey No. 17161, located and being in a portion of Section 36, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana.

Figure 1: Subject property (outlined in yellow)

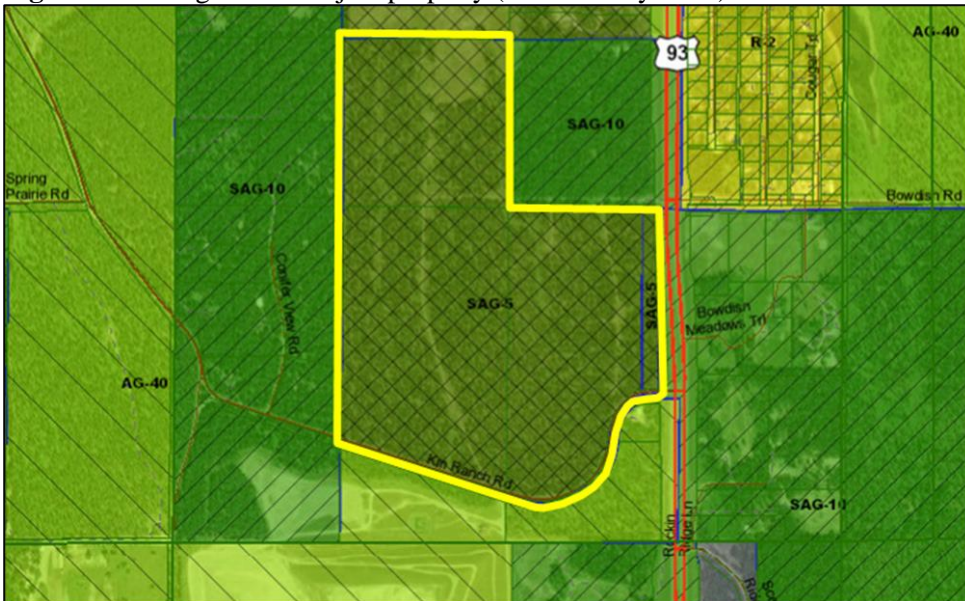


B. General Character of and Reason for Amendment

The subject property is located along the Highway 93 North corridor with much of the acreage also fronting KM Ranch Road. The land is heavily and evenly forested aside from a small patch on the north of the property that is void of trees. Currently the property is undeveloped. The application states the reason for the zone change as, *“The changing conditions are a recent sharp increase in population growth in the Flathead Valley, bringing with it an increase in demand for additional housing units, which has created a significant increase in the cost of the existing residential inventory. The owner is seeking to provide additional housing inventory, and proposes a zone change from 5-acre minimum lot sizes to 2.5 acre minimum lot sizes, applying a residential mixed-use PUD for additional density, at a location convenient to the transportation network and to the community’s service areas.”*

A previous zoning map amendment was submitted by the applicants in February of 2022 (FZC-22-05) requesting SAG-5 ‘Suburban Agricultural’ to R-1 ‘Suburban Residential’. After review and a subsequent negative recommendation by the Flathead County Planning Board on October 12, 2022, the applicants withdrew the proposal.

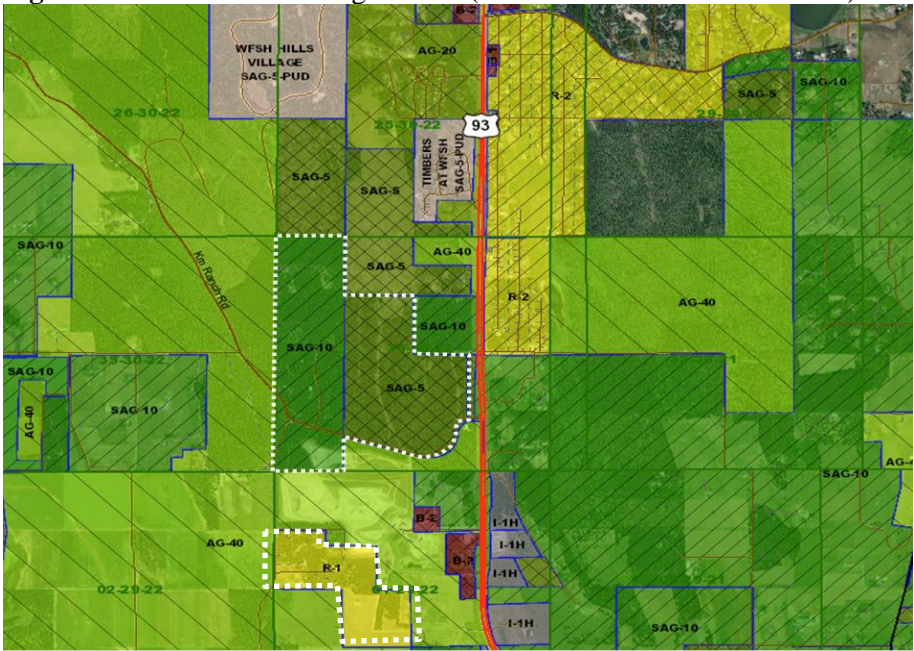
Figure 2: Zoning on the subject property (outlined in yellow)



C. Adjacent Zoning and Character of the Overall Zoning District

The property is located in the Prairie View Zoning District with a small portion being located within the Highway 93 North Zoning District. The character of the surrounding zoning districts is generally low density residential as well as agricultural. Across Highway 93 North is a portion of the Happy Valley Homesites Subdivision which falls within the Highway 93 North Zoning District and offers higher density. To the south of the property across KM Ranch Road is property owned by the Flathead County Landfill. To the north of the property is SAG-5, to the east is SAG-10, to the south is AG-80 and to the west is SAG-10. The Prairie View Zoning District is comprised of SAG-5, SAG-10, and R-1 zoning. The R-1 zoning within Prairie View is comprised entirely of the boundaries of the Flathead County Landfill.

Figure 3: Prairie View Zoning District (outlined with dashed white line)



D. Public Services and Facilities

- Sewer: N/A
- Water: N/A
- Electricity: Flathead Electric Cooperative
- Natural Gas: Northwestern Energy
- Telephone: CenturyTel
- Schools: School District #44
- Fire: Whitefish Rural Fire District
- Police: Flathead County Sheriff

III. COMMENTS

A. Agency Comments

1. Agency referrals were sent to the following agencies on November 18, 2022:
 - Flathead County Sheriff
 - Whitefish Rural Fire District
 - Flathead County Road and Bridge Department
 - Flathead County Solid Waste District
 - Flathead City-County Health Department
 - Flathead County Weeds and Parks Department
 - Bonneville Power Administration
 - Montana Fish, Wildlife and Parks
 - Whitefish High School District
 - Whitefish School District
 - MDT
2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:
 - Flathead County Road & Bridge Department

- Comment: “After completing a review of the zone change request we have one comment. We have reviewed the Traffic Impact Study prepared by Abelin Traffic Services. It appears they are recommending the developers create separate turning lanes at the KM Ranch Road and Bowdish Road (to be constructed as part of the improvements for the development on the west side of Highway 93) intersection with Highway 93 to maximize capacity at these two intersections. It is our opinion these improvements would be a benefit for the intersections.” Letter dated November 30, 2022.
- Flathead County Solid Waste District
 - Comment: “In the Flathead County Growth policy there is discussion regarding a 1,320 ft buffer around the landfill for compatible uses with landfilling activities. At this time, we do not know if this is addressed since this is only the Zoning Map Amendment but wanted to bring it to your attention for this application.

The District requests all solid waste generated at the proposed location be hauled by a private hauler. Evergreen Disposal is the licensed (PSC) Public Service Commission private hauler in this area. Their business phone number is 406-257-1739.” Letter dated November 29, 2022.
- Flathead City-County Health Department
 - Comment: “Environmental Health offers no comment regarding this proposed zone change other than that any proposed subdivision is subject to review under Title 76-4 Part 1, Sanitation in Subdivision, MCA. This review will address water supply, wastewater, storm water drainage and solid waste disposal.” Letter dated December 5, 2022.

B. Public Comments

1. Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on December 21, 2022. Legal notice of the Planning Board public hearing on this application was published in the December 25, 2022, edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice include information on the general character of the proposed zoning map amendment, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

2. Public Comments Received

As of the date of the completion of this staff report, 56 written public comments have been received regarding the requested zoning map amendment.

Public comments received regarded increased traffic, road infrastructure, water quality, impact on schools, a change in the character of the neighborhood, violation of the Growth Policy, public health and safety, wildlife and ecology concerns, and issues with the proximity of the landfill.

It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for January 11, 2023, and/or the Commissioner’s Public Hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

IV. EVALUATION OF PROPOSED AMENDMENT

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing zoning amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

A. Build-Out Analysis

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

Per Section 3.08 of the Flathead County Zoning Regulations (FCZR), SAG-5 is defined ‘*A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*’

The R-2.5 designation is defined in Section 3.10 FCZR as, ‘*A district intended for rural, primarily residential areas where larger, estate-type lot sizes are appropriate and agricultural/silvicultural/horticultural operations are a decreasingly viable land use. The use of this district is appropriate in transition areas adjacent to and between higher-density Residential (R) and lower-density Suburban Agriculture (SAG) zones. This district is not appropriate in areas primarily surrounded by lower-density SAG and AG zones and/or areas adjacent to significant ongoing agricultural/silvicultural/horticultural and/or extractive industry operations. Furthermore, public facilities should be appropriately developed to accommodate the density and land uses of this designation. This includes paved roads. It is intended that no uses be permitted in this district that will tend to devalue property for residential purposes or interfere with the health, safety, order or general welfare of persons residing therein.*’

The permitted uses and conditional uses for the SAG-5 and the R-2.5 zoning are similar. The amendment would reduce the number of permitted uses from 16 to 15 and decrease the number of conditional uses from 28 to 23.

There are eight permitted and conditional uses in SAG-5 that are not allowed in R-2.5:

- Animal hospital, veterinary clinic
- Class B manufactured home
- Contractor’s storage yard
- Extractive industry
- Kennel, commercial
- Recreational facility
- Recreational vehicle park
- Riding academy and rodeo arena

The permitted use allowed in SAG-5 that requires a conditional use permit in R-2.5 is “Cluster housing/Dwellings, Cluster development”. There are no permitted or conditional uses allowed in R-2.5 that are not allowed in SAG-5.

The bulk and dimensional requirements within the current and proposed zoning require a 20-foot setback from front, side, side corner, and rear boundary line for principal structures and a setback of 20 feet for the front and side corner and 5 feet from the rear and side for detached accessory structures. A 20-foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries. The permitted lot coverage is 25% within SAG-5 and 25% within R-2.5. The maximum height is 35 feet for the principal structure and accessory structures in SAG-5. The maximum height is 35 feet for the principal structure and 18 feet for accessory structures that do not meet the principal structure setbacks in the R-2.5 zone

The existing zoning requires a minimum lot area of five acres. The subject property totals 155.9 acres, therefore approximately 30 additional lots could be created under the existing zoning, though that number would likely be fewer once utilities and infrastructure are accounted for. The proposed zoning requires a minimum lot area of two and a half acres, therefore, approximately 61 additional lots could be created. The applicants have indicated a future subdivision proposal that would include a PUD (Planned Unit Development). A residential mixed-use PUD overlay within R-2.5 zoning allows for a 200% bonus density (2 dwelling units per 2.5 acre). The applicants indicate a potential of 103 dwelling units at completion of two phases of development. The requested zone change has the potential to increase density through subsequent subdivision in the future. The bulk and dimensional requirements are similar but the amendment would reduce the number of permitted and conditional uses and increase potential density.

B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

1. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R). The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as ‘Suburban Agricultural.’ The proposed R-2.5 zoning classification would appear to contrast with the current designation. However, Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, “This map depicts areas of Flathead County that are legally designated for particular land uses. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plans. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map.”

Staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved, the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on goals and policies of the Growth Policy.

Part 4 of Chapter 2 of the Growth Policy states, *‘It is clear that agriculture plays a vital role in both the economy and culture of Flathead County. The custom and culture of agriculture in Flathead County is one of the features that is contributing to rapid growth and development. Lands that have traditionally been used for agriculture are being converted increasingly to residential uses as residents seek rural living.’*

Part 7 of Chapter 2 the Growth Policy states, *‘The change in land uses from agriculture and timberlands to residential and the accompanying impacts of that change, create some of the greatest growth challenges to the county.’*

Currently the property is undeveloped and forested. Many of the properties in the surrounding area are low-density residential. There is higher density residential to the east of the subject property, across Highway 93. The Flathead County Landfill is located directly to the south and there are industrial and commercial uses nearby along Highway 93. The proposed R-2.5 zoning would continue to allow for agricultural and silvicultural uses.

The introduction to Part 7 of Chapter 2 states, *‘The density of residential developments is an issue raised throughout the public involvement process [...] Residential development, including the subdivision of land, is not inherently problematic. However, residential development at a density that is not compatible with existing local services and neighborhood character is likely to be contentious.’* It goes on to say that, *‘Capacity is based on the size and quality of the road, and once the capacity is exceeded, public safety suffers. Low density residential land uses on low capacity roads are a match, but medium or high density land uses on low capacity roads create problems.’*

The proposed zoning would allow for both agriculture and silviculture on the property. The R-2.5 zone is a rural residential zone with a two and a half-acre minimum lot size. The R-2.5 zone does not require public water and sewer and the lots would generally be large enough to accommodate a septic system with a drainfield while providing separation for a well. The proposed change would allow for 61 additional lots. The provided traffic study based calculations off a proposed 103 dwelling unit density through a PUD overlay. Further discussion regarding access and transportation is contained below in this report.

The following is a consideration of goals and policies which appear to be applicable to the proposed zone change:

- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
 - The amendment would allow the owner to subdivide but would also allow for the continuation of the existing use on the property.
- ❖ **G.3** – *Preserve the cultural integrity of private and public agriculture and timber lands in Flathead County by protecting the right to active use and management and allowing a flexibility of private land use that is economically and environmentally viable to both the landowner and Flathead County.*
 - **P.3.3** – *Maintain flexibility of land use options to forest and agriculture land owners by focusing on mitigating the negative impacts of development.*
 - The property is not currently used for agriculture, however, the proposed R-2.5 zoning would continue to allow for agricultural and silvicultural uses, similar to the existing zone.
 - **P.3.5** – *Identify reasonable densities for remote, rural development that do not strain the provision of services or create a public health or safety hazard.*
 - The property is located in a relatively urbanized area of the County, adjacent to a State highway. Further discussion regarding public health and safety is contained below in this report.
- ❖ **G.4** – *Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land uses.*

- **P.4.3** – *Identify a desirable gross density for rural residential development that retains land values, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc.)*
- **P.4.5** – *Develop equitable and predictable impact-mitigation for converting agricultural lands to residential uses.*
 - The proposed zoning would allow for agricultural and silvicultural use on the subject property while providing additional flexibility to the landowner to subdivide the property and sell off smaller lots. Further discussion regarding public services is contained below in this report.
- ❖ **G.8** – *Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.*
 - The R-2.5 designation would allow for densities of one dwelling unit per two and a half acres for single family. One dwelling unit per two and a half acres would not require public water and sewer. Further discussion on public utilities is contained later in this report.
- **P.8.2** – *Identify required criteria for various densities that support the seven elements of the public’s vision outlined in Chapter 1.*

The Seven Elements of the Public’s Vision include:

 - *Protect the Views*
The vision states, ‘*One characteristic that residents of Flathead County cherish is the view. Views of mountains, lakes, forests, wildlife, and open spaces are cited as characteristics residents of Flathead County would not change. “Scenic resources” are valued throughout the county regardless of age, gender or location.*’ The proposed zone change would likely have minimal impact on views because additional lots created through future subdivision would be required to meet the bulk and dimensional requirements of the proposed R-2.5 zone.
 - *Promote a Diverse Economy*
The vision states, ‘*The cost of living and home ownership should be affordable to the median income.*’ The proposed zone change would allow for approximately 61 additional lots to be created through future subdivision, and the R-2.5 zone would continue to allow for single-family dwellings and accessory dwelling units (ADU), which could increase the housing supply.
 - *Manage Transportation*
Vision 3 discusses managing traffic flow through land development patterns; this report contains discussion regarding the proposals impacts on traffic below.
 - *Maintain the Identity of Rural Communities*
The vision states, ‘*Preventing communities from growing together and losing their unique identities was another concern of many scoping meeting participants. The concern of seeing Flathead County turn into one continuous sprawling development was expressed in a variety of ways. Many residents of Flathead County do not want to see strip malls, used car lots, mini storage, warehouse stores, lumber yards, and other visually dominating land uses disrupt the perception of driving between unique rural communities.*’ The proposed R-2.5 zoning is a rural residential zoning district that would allow for additional single-family residential development.

- *Protect Access to and Interaction with Parks and Recreation*
This report contains a discussion on parks and recreation below.
- *Preserve the Rights of Private Property Owners.*
The amendment would allow the owner to subdivide the property, but would also allow for many of the same uses that currently exist on surrounding properties.
- ❖ *G.14 – Solid waste collection facility operation and landfill expansion free from land use conflicts with adjacent property owners.*
 - *P.14.1 – Identify a 1,320 foot buffer surrounding the landfill and designate this area only for those land uses compatible with current and future landfill activities. Compatible use types such as industrial should be encouraged in this buffer.*
 - The subject property is located directly north of the Flathead County Landfill. Future subdivision of the subject property could include a condition of approval incorporating a buffer along KM Ranch Road, between residential development and the landfill.
- ❖ *G.15 – Promote a diverse demographic of residents.*
 - *P.15.1 – Encourage housing, employment, education and recreation to attract, support and maintain young families.*
 - The R-2.5 zone would allow for single family dwellings, Class A manufactured homes, and accessory dwelling units (ADUs) as a permitted use, all of which has the potential to add to the housing market.
- ❖ *G.23 – Maintain safe and efficient traffic flow and mobility on county roadways.*
 - *P.23.2 – Limit private driveways from directly accessing arterials and collector roads to safe separation distances.*
 - Primary access to the property would be from KM Ranch Road, which is a County road, and Highway 93, which is a State highway. Future subdivision of the property would not result in individual approaches onto the roads. All lots would be accessed by internal subdivision roads. Further discussion regarding access and transportation is contained below in this report.
- ❖ *G.31 – Growth that does not place unreasonable burden on the school district to provide quality education.*
 - This report contains discussion on the proposal’s potential burden on schools below.
- ❖ *G.32 – Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*
- ❖ *G.33 – Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*
 - This report contains discussion on the adequacy of emergency service below.

Finding #1: The proposed zoning map amendment generally complies with the Flathead County Growth Policy because the R-2.5 zoning would continue to allow for agricultural and silvicultural uses, and the R-2.5 zone would allow for single-family dwellings, manufactured homes, and ADUs at a higher density which has the potential to create additional housing options.

2. Whether the proposed map amendment is designed to:

a. Secure safety from fire and other dangers;

The subject property is located within the Whitefish Rural Fire District and the Whitefish Volunteer Fire Department is located approximately 3.6 driving miles northeast of the property, along Hodgson Road. Additionally, the Whitefish Fire Department is located

approximately 5.9 driving miles north of the property within the City of Whitefish and would respond in the event of a fire or medical emergency. The property is located within the Wildland Urban Interface (WUI) and a 'High' County-wide priority area. Highway 93 is a paved, five-lane, State-maintained highway within right-of-way of varying widths. KM Ranch Road is a paved, two-lane, county road within a 60 foot wide right-of-way, where it runs along the subject property and then as it travels northwest turns to a gravel, two-lane, county road within a 60-foot-wide right-of-way. The roads appear capable of providing access for emergency vehicles. No comment was received from the local fire district regarding this proposal.

According to FEMA FIRM Panel 30029C1405J, the property is located within an unshaded Zone X, an area determined to be outside the 0.2% annual chance flood hazard.

Finding #2: The proposed zoning map amendment would secure safety from fire and other dangers because although the property is within the WUI and a 'High' County-wide priority area, the property is served by the Whitefish Rural Fire District and is located approximately 3.6 miles from the nearest fire station, access is from a paved, State highway and a paved County road, and the property is not located within a Special Flood Hazard Area.

b. Promote public health, public safety, and general welfare;

As previously stated, the subject property is located within the Whitefish Rural Fire District and the nearest fire station is approximately 3.6 driving miles from the property. The Whitefish Volunteer Fire Department and the City of Whitefish Fire Department would respond in the event of a fire or medical emergency and the Flathead County Sheriff's Office provides police services to the subject property. Highway 93 and KM Ranch Road appear adequate to provide ingress and egress for emergency vehicles which would help to ensure adequate public health and safety.

The R-2.5 zoning classification would allow for similar uses to what already exists in the area, therefore, the zone change is not anticipated to adversely impact public health, safety, or welfare.

Finding #3: The proposed zoning map amendment would have a minimal impact on public health, safety and general welfare because the property is served by the Whitefish Rural Fire District and Flathead County Sheriff's Office, and future development would comply with the permitted and conditional uses in the R-2.5 zone which are similar to the existing surrounding uses.

c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Primary access to the subject property is via Highway 93 and KM Ranch Road. Highway 93 is a paved, five-lane, State-maintained highway within right-of-way of varying widths. The most recent traffic count for Highway 93 by The Montana Department of Transportation in the vicinity of the properties was collected in 2021 and indicated 17,962 average daily trips (ADT).

No comment was received from Montana Department of Transportation, but previous comment from the prior zone change request (FZC-22-05) indicated, "*MDT has been contacted by APEC Engineering regarding two approach permits onto US 93 for the referenced development. This request has been sent for review through MDT's System Impact Action Process and analysis is currently ongoing. MDT has no further comments at this time.*"

“Montarise Development, LLC will need permits from MDT if rezoning is passed and the Access Controlled approaches of KM Ranch Road and Bowdish Road off US93, or other MDT facilities are impacted. Please have the owner contact Justun Juelfs, the Kalispell Area Maintenance, Chief. They will work with the owner on the MDT requirements.” It is anticipated this comment still holds relevant for the current proposal.

KM Ranch Road where it runs along the subject property is a paved, two-lane, County road within a 60-foot right-of-way, KM Ranch Road turns to gravel further west of the subject property. The submitted traffic study conducted by Abelin Traffic Services for the proposed subdivision indicates the proposal would generate approximately 756 ADT. The traffic study predicts that 5% of the traffic will end up on KM Ranch going west, while the other 95% will head east to get to Highway 93. Without additional information it is difficult to assess how much of the 95% heading towards Highway 93 will utilize the proposed Bowdish intersection or the KM Ranch Road access.

The most recent traffic counts for KM Ranch Road by Flathead County Road & Bridge Department in the vicinity of the property were collected in 2019 and indicated 1,152 average daily trips (ADT). Comments from the County Road and Bridge Department state, *“After completing a review of the zone change request we have one comment. We have reviewed the Traffic Impact Study prepared by Abelin Traffic Services. It appears they are recommending the developers create separate turning lanes at the KM Ranch Road and Bowdish Road (to be constructed as part of the improvements for the development on the west side of Highway 93) intersection with Highway 93 to maximize capacity at these two intersections. It is our opinion these improvements would be a benefit for the intersections.”*

According to the traffic study, intersection improvements will likely be needed at the Bowdish Road (to be constructed) and Highway 93 and the KM Ranch and Highway 93 intersections. It was indicated that a traffic signal will likely not be warranted with the proposed subdivision. MDT would likely require intersection improvements and the subdivision will be conditioned for MDT approval.

The applicant has indicated a proposed secondary access to be constructed on the west side of the highway across from Bowdish Road. The use of the easement and construction of the road will be evaluated during subdivision review.

The Flathead City-County Health Department had no comment regarding the proposal. The property owners would be required to undergo review and approval from the Flathead City-County Health Department and the Montana Department of Environmental Quality, as applicable, if the properties are further subdivided or developed.

According to the 2021 Census Data there are 50,808 housing units in Flathead County. The Flathead County Superintendent of Schools *2022 Statistical Report of Schools* states there are 17,446 students enrolled in public, private and home schools. The total students (17,446) divided by the total households (50,808) equals approximately 0.34 students per household. With R-2.5 zoning the proposal has the potential to create 62 additional lots in the future and therefore would generate approximately 21 school-age children. With R-2.5 zoning and a proposed PUD overlay approximately 35 school-age children would be generated. The Whitefish School District did not provide comment on this proposal. It is anticipated that the schools would have capacity should any residential growth occur as a result of the proposed zoning map amendment.

The proposed amendment from SAG-5 to R-2.5 would reduce the minimum lot size from 5 acres to 2.5 acres. It is anticipated subsequent future development would require subdivision review and parkland dedication requirements would be determined at that time.

There are numerous parks, natural areas, and recreational opportunities accessible in the vicinity of the proposal.

Finding #4: The proposed zoning map amendment could have a negative impact on the adequate provision of transportation because access to the property currently exists via Highway 93 and KM Ranch Road and without additional information, determining the extent of impacts to either road remains uncertain, and future development would require approach permits from the Montana Department of Transportation and will require review through MDT's System Impact Action Process.

Finding #5: The proposed zoning map amendment would facilitate the adequate provision of water and sewer services, schools, and parks because future development of the property would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality, as applicable, the proposal has the potential to generate 21 school-age children or 35 school-age children with a PUD overlay, no comment was received from the local school district, and parkland dedication would be considered during subdivision review.

3. In evaluating the proposed map amendment, consideration shall be given to:

a. The reasonable provision of adequate light and air;

The bulk and dimension requirements of the zoning regulations is one of the primary factors in establishing adequate light and air for any given zoning district. As indicated in the application, *"...a future subdivision proposal that includes a Residential-use PUD overlay, for the creation of 33 single-family (2-acre) lots, 2 multi-family lots, 2 lots (14.21 acres) for recreational cottages and 1 lot (12.79 acres) for small scale hospice care units. The proposal is for a total of 103 dwelling units at completion of the two phases of development."* As previously stated, a residential mixed-use PUD overlay within R-2.5 zoning allows for a 200% bonus density (2 dwelling units per 2.5 acre). Any additional lots created or structures constructed would be required to meet the bulk, dimensional, permitted lot coverage and minimum lot area requirements of the PUD overlay R-2.5 zoning classification.

The bulk and dimensional requirements within the current and proposed zoning require a 20 foot setback from front, rear, side-corner and side boundary line for principal structures and a setback of 20 feet for the front and side-corner and 5 feet from the rear and side for accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials for both the proposed and current zoning. For SAG-5 the permitted lot coverage is 25% (residential uses) and maximum height is 35 feet. For R-2.5 the permitted lot coverage is 25% and maximum height of 35 feet for principal structures and 35 feet for accessory dwellings that meet principal building setback requirements and 18 feet when accessory building setback requirements are not met. With the exception of lot size, the bulk and dimensional requirements for the R-2.5 and SAG-5 are very similar. While the increased density would decrease the availability of light and air, R-2.5 zoning would still provide for adequate measures as well and at the same time, meets the definition of R-2.5 which denotes low density development in rural areas. The requirements have been established to provide for a reasonable provision of light and air.

Finding #6: The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed R-2.5 designation.

b. The effect on motorized and non-motorized transportation systems;

As previously stated, primary access to the subject property is via Highway 93 and KM Ranch Road. Highway 93 is a paved, five-lane, State-maintained highway within right-of-way of varying widths. The most recent traffic count for Highway 93 by MDT in the vicinity of the properties was collected in 2021 and indicated 17,962 average daily trips (ADT). Previous comments from MDT indicate, “MDT has been contacted by APEC Engineering regarding two approach permits onto US 93 for the referenced development. This request has been sent for review through MDT’s System Impact Action Process and analysis is currently ongoing. MDT has no further comments at this time.

Montarise Development, LLC will need permits from MDT if rezoning is passed and the Access Controlled approaches of KM Ranch Road and Bowdish Road off US93, or other MDT facilities are impacted. Please have the owner contact Justun Juelfs, the Kalispell Area Maintenance, Chief. They will work with the owner on the MDT requirements.”

KM Ranch Road is a paved, two-lane, county road within a 60-foot right-of-way. The most recent traffic counts for KM Ranch Road in the vicinity of the properties were collected in 2019 and indicated 1,152 average daily trips (ADT). Comments from the County Road and Bridge Department state, “After completing a review of the zone change request we have one comment. We have reviewed the Traffic Impact Study prepared by Abelin Traffic Services. It appears they are recommending the developers create separate turning lanes at the KM Ranch Road and Bowdish Road (to be constructed as part of the improvements for the development on the west side of Highway 93) intersection with Highway 93 to maximize capacity at these two intersections. It is our opinion these improvements would be a benefit for the intersections.”

KM Ranch Road where it runs along the subject property is a paved, two-lane, County road within a 60-foot right-of-way, KM Ranch Road turns to gravel further west of the subject property. It is anticipated that most of the traffic as a result of future subdivision will utilize the paved portion of KM directly adjacent to the property that leads to Highway 93. The submitted traffic study conducted by Abelin Traffic Services for the proposed subdivision indicates the proposal would generate approximately 756 ADT. It is predicted that 5% of the traffic will end up on KM Ranch going west, while the other 95% will head east either using KM Ranch Road or the to be constructed Bowdish intersection on the west side of the highway, to get to Highway 93. According to the traffic study, intersection improvements will likely be needed at the Bowdish Road (to be constructed) and Highway 93 and the KM Ranch and Highway 93 intersections. MDT would likely require intersection improvements and the subdivision will be conditioned for MDT approval.

The Flathead County Trails Plan identifies Highway 93 as a proposed connector trail. It is anticipated there would be minimal impact on non-motorized traffic because subdivision review of the properties would require an easement for a bicycle and pedestrian trail along Highway 93.

Finding #7: The proposal could have a negative impact on motorized transportation systems because access to the subject property currently exists via Highway 93 and KM Ranch Road, and without additional information, determining the extent of impacts to either road remains uncertain, and future development would require approach permits from the Montana Department of Transportation and will require review through MDT’s System Impact Action Process.

Finding #8: Effects on non-motorized transportation systems will be minimal because future subdivision of the property would require an easement for a bicycle and pedestrian trail along Highway 93.

c. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The subject property is located about midway between the cities of Kalispell and Whitefish. The subject property is located approximately 2.25 miles north of Kalispell City limits and 4 miles south of Whitefish City limits. The property does not fall within the boundaries of Kalispell or Whitefish's Growth Policy.

Finding #9: The proposed zoning map amendment would not have an impact on the urban growth in the vicinity of cities and towns because the closest incorporated city is located approximately 2.25 miles south of the subject property.

d. The character of the district(s) and its peculiar suitability for particular uses;

The character of the district and its peculiar suitability for particular uses can best be addressed using the "three part test" established for spot zoning by legal precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

i. *The zoning allows a use that differs significantly from the prevailing use in the area.*

The property is located in the Prairie View Zoning District with a small portion located within the Highway 93 North Zoning District. The character of the surrounding zoning districts is generally low density residential as well as agricultural. Across Highway 93 is a portion of the Happy Valley Homesites Subdivision which falls within the Highway 93 North Zoning District and offers higher density R-2 zoning. To the south of the property across KM Ranch Road is property owned by the Flathead County Landfill. Directly to the north of the property is SAG-5, to the east and west is SAG-10, and to the south is AG-80.

The permitted uses and conditional uses for the proposed and existing zoning are similar as demonstrated in the build-out section above. The amendment would decrease the number of permitted uses from 16 to 15 and decrease the number of conditional uses from 28 to 23. R-2.5 zoning allows for smaller lot sizes than the existing SAG-5 zoning but still allows for similar residential and agricultural uses as the existing SAG-5 zoning.

ii. *The zoning applies to a small area or benefits a small number of separate landowners.*

The SAG-5 zoning in the Prairie View Zoning District surrounding and including the subject property totals approximately 175 acres. Additionally, there is 135 acres of SAG-10 zoning and 90 acres of R-1 zoning which consists entirely of the Flathead County Landfill.

Using standard ArcGIS software, staff determined the subject property is currently located within a SAG-5 zoned area encompassing approximately 283 acres, to the northeast is R-2 zoning that totals approximately 360 acres, and to the north along Highway 93 a patch of AG-40 totaling 25 acres along with additional AG-40 encompassing large swaths to the west and south of roughly 2,000 acres. The surrounding SAG-10 zoning is approximately 4,000 acres. South along the highway there is mixed zoning of B-2 of roughly 23 acres and I-1H of 75 acres. The property is 155.9 acres in size and would be larger than many of the existing zoning districts in the area.

The zoning map amendment would apply to three tracts for the benefit of one owner. Adjacent to the northeast of the property is R-2 zoning within Happy Valley. The R-2 zone allows for much smaller lots than the neighboring SAG-10 and AG-40 zoning. The proposal would change the subject property to R-2.5 which would allow for lot sizes between the existing SAG-5 zoning and the neighboring R-2 zoning.

- iii. ***The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.***

Although the proposal only includes one landowner, it would not result in special legislation at the expense of the surrounding landowners or general public because the permitted and conditional uses listed within the proposed R-2.5 zone are similar to the permitted and conditional uses in the current SAG-5 zoning, as discussed in the build-out analysis section of this report.

Finding #10: The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zoning does not allow uses that differ significantly from the prevailing use in the area, the R-2.5 zone would allow for a lot size larger than the neighboring R-2 but less than the existing SAG-5, and the acreage of the proposed zone change is in between size of the acreages of the nearby zoning use districts.

- e. **Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

The adjacent properties are primarily rural residential, undeveloped, and the Landfill is across the road. Previous sections of this report have discussed the differences between permitted and conditional uses in the existing SAG-5 zoning and the proposed R-2.5 zoning designation. Many of the land uses listed as permitted uses in the proposed R-2.5 zone exist in the vicinity of the subject property such as single-family residential and agricultural uses. The permitted and conditional uses would likely not impact the value of buildings and would be appropriate land uses throughout the area of the proposed zone change because they already exist in the area.

Finding #11: This zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the R-2.5 designation allows for similar uses to the surrounding zones, and would be more dense than the existing SAG-5 zoning and less dense than the existing R-2 zoning.

- 4. **Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

The subject property is located about midway between the cities of Kalispell and Whitefish. The subject property is located approximately 2.25 miles north of Kalispell City limits and 4 miles south of Whitefish City limits. Since there are no nearby municipalities, the proposal will have no impact on compatibility of zoning ordinances of nearby municipalities.

Finding #12: The proposed zoning map amendment would not have an impact on the compatibility of zoning ordinances of nearby municipalities because the closest incorporated city is located approximately 2.25 miles south of the subject property.

V. SUMMARY OF FINDINGS

- 1. The proposed zoning map amendment generally complies with the Flathead County Growth Policy because the R-2.5 zoning would continue to allow for agricultural and silvicultural uses, and the R-2.5 zone would allow for single-family dwellings, manufactured homes, and ADUs at a higher density which has the potential to create additional housing options.

2. The proposed zoning map amendment would secure safety from fire and other dangers because although the property is within the WUI and a 'High' County-wide priority area, the property is served by the Whitefish Rural Fire District and is located approximately 3.6 miles from the nearest fire station, access is from a paved, State highway and a paved County road, and the property is not located within a Special Flood Hazard Area.
3. The proposed zoning map amendment would have a minimal impact on public health, safety and general welfare because the property is served by the Whitefish Rural Fire District and Flathead County Sheriff's Office, and future development would comply with the permitted and conditional uses in the R-2.5 zone which are similar to the existing surrounding uses.
4. The proposed zoning map amendment could have a negative impact on the adequate provision of transportation because access to the property currently exists via Highway 93 and KM Ranch Road and without additional information, determining the extent of impacts to either road remains uncertain, and future development would require approach permits from the Montana Department of Transportation and will require review through MDT's System Impact Action Process.
5. The proposed zoning map amendment would facilitate the adequate provision of water and sewer services, schools, and parks because future development of the property would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality, as applicable, the proposal has the potential to generate 21 school-age children or 35 school-age children with a PUD overlay, no comment was received from the local school district, and parkland dedication would be considered during subdivision review.
6. The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed R-2.5 designation.
7. The proposal could have a negative impact on motorized transportation systems because access to the subject property currently exists via Highway 93 and KM Ranch Road, and without additional information, determining the extent of impacts to either road remains uncertain, and future development would require approach permits from the Montana Department of Transportation and will require review through MDT's System Impact Action Process.
8. Effects on non-motorized transportation systems will be minimal because future subdivision of the property would require an easement for a bicycle and pedestrian trail along Highway 93.
9. The proposed zoning map amendment would not have an impact on the urban growth in the vicinity of cities and towns because the closest incorporated city is located approximately 2.25 miles south of the subject property.
10. The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zoning does not allow uses that differ significantly from the prevailing use in the area, the R-2.5 zone would allow for a lot size larger than the neighboring R-2 but less than the existing SAG-5, and the acreage of the proposed zone change is in between size of the acreages of the nearby zoning use districts.
11. This zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the R-2.5 designation allows for similar uses to the surrounding zones, and would be more dense than the existing SAG-5 zoning and less dense than the existing R-2 zoning.
12. The proposed zoning map amendment would not have an impact on the compatibility of zoning ordinances of nearby municipalities because the closest incorporated city is located approximately 2.25 miles south of the subject property.

VI. CONCLUSION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: lvr