

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
PENNEY-TILLOTSON CHANGE REQUEST
ZONING MAP AMENDMENT REPORT (#FZC-13-01)
MARCH 25, 2013**

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Gerald Penney, Bartley and Ardith Tillotson, Barbara Penney, and Thomas Penney for a zoning map amendment in the Highway 93 North Zoning District. The proposed amendment would change the zoning of the subject property from ‘SAG-10 Suburban Agricultural’ to ‘R-2.5 Rural Residential’.

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on April 10, 2013 in the 2nd Floor Conference Room of the Earl Bennett Building located at 1035 1st Ave West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment on May 6, 2013 Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the Earl Bennett Building at 1035 First Avenue West, in Kalispell. Prior to the Commissioner’s public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Flathead County Clerk and Records Office at 800 South Main Street in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Planning Board

This space will contain an update regarding the April 10, 2013 Flathead County Planning Board review of the proposal.

B. Commission

This space will contain an update regarding the Flathead County Commission review of the proposal.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicants

Gerald Penney, Bartley and Ardith Tillotson,
Barbara Penney, and Thomas Penney
PO Box 8892
Kalispell, MT 59904

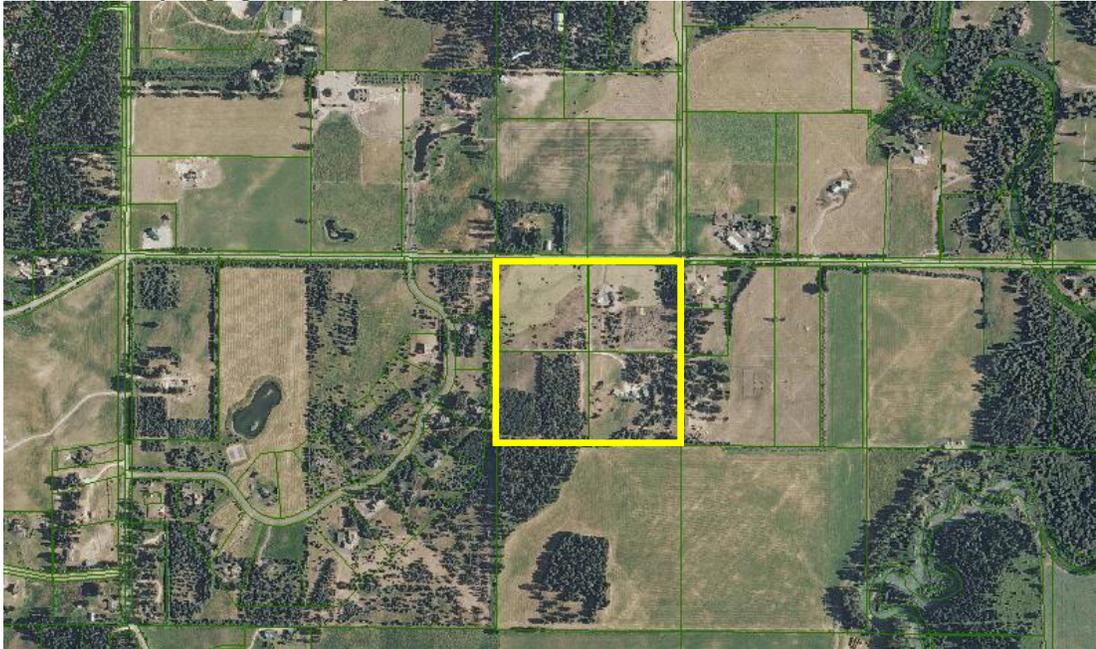
ii. Technical Assistance

Sands Surveying Inc.
2 Village Loop
Kalispell, Mt. 59901

B. Subject Property Location and Legal Description

The subject property consists of four adjacent tracts of record totaling 40.11 acres in size which is located about a half of a mile east of Whitefish Stage Road approximately one mile west of Trumble Creek Road, on the south side of Hodgson Road. The properties can legally described as 6, 6A, 6AA, and 6B in Section 28, Township 30 North, Range 21 West, P.M.M., Flathead County, Montana.

Figure 1: Subject properties highlighted in yellow.



C. Proposed Zoning Map Amendment

The subject property is located within the Highway 93 North Zoning District and is currently zoned ‘SAG-10 Suburban Agricultural’ (see Figure 2 below). The ‘SAG-10’ district is defined in Section 3.07 of the Flathead County Zoning Regulations (FCZR) as a “*district to provide and preserve 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.*”

As depicted in Figure 3 below, the applicant has requested the zoning map amendment to allow the property to be zoned ‘R-2.5 Rural Residential,’ defined in Section 3.43 FCZR as a “*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.*”

Figure 2: Current zoning applicable to subject properties (highlighted in blue).

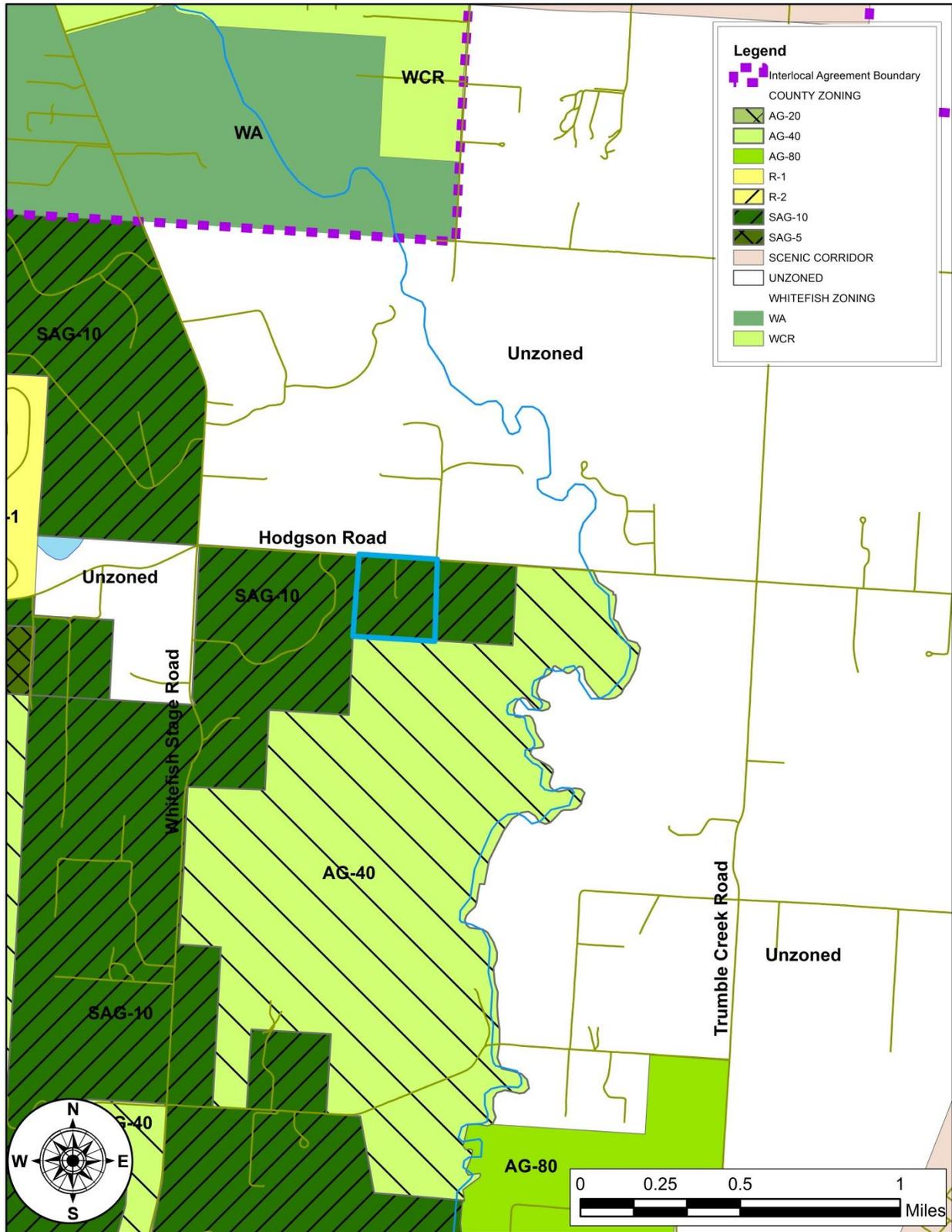
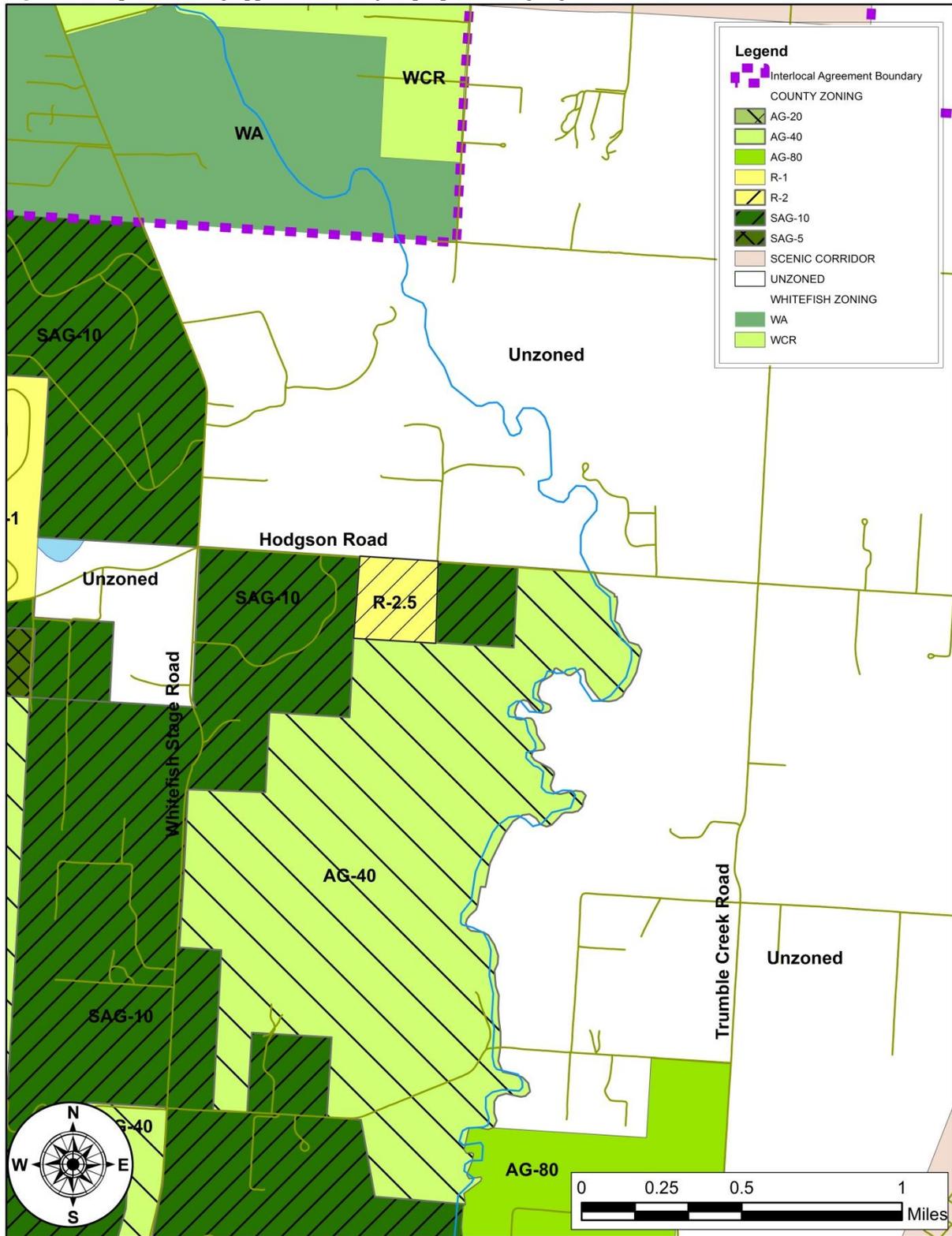


Figure 3: Proposed zoning applicable to subject properties (highlighted in blue).



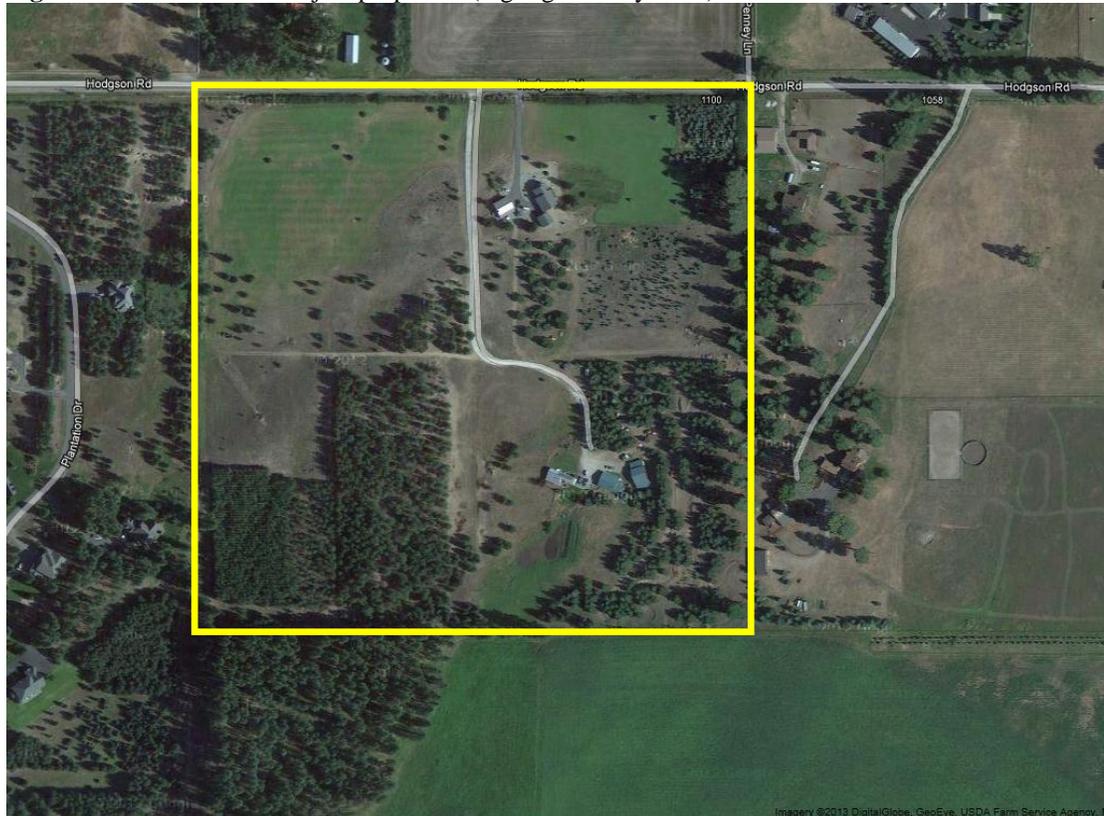
D. General Character of and Reason for Amendment

The applicant states, the owners of the property are longtime residents of the valley and the father of the current owners farmed the property. After the father's death the 40 acres of land was split into four parcels giving 10 acres to each of his three children and his wife, the current owners. Gerald Penney one of the applicants and owner of a ten acre parcel would like to split off a portion of the family property to his son, which would not meet the minimum lot area of 10 acres within the SAG-10 zone. A zone change to 'R-2.5' would allow for a minimum lot area of 2.5 acres and Mr. Penney would be able to provide a share of the family property to his son.

On February 26, 1991 the Commissioners received a letter from Jay and Barbara Penney regarding the implementation of the Highway 93 North Zoning District. At that time they requested their property, if zoned, be placed into a zoning designation with the smallest minimum lot size. Attached with the letter was a map showing the property was to be designated as 'AG-40,' however, the property was rezoned 'SAG-10' before adoption of the district. At the time of the adoption of the zoning district 'R-1' and 'R-2' zones were included in the district, however, staff was not able to find a reason why the property was zoned 'SAG-10' after the request for the highest density zoning allowed within the district.

The subject property contains a hill in the middle of the four properties. The north side of the properties is open and used for agriculture the southwest property is covered in trees. Currently there are two houses both located on the eastern side of the subject properties and surrounded by a grouping of trees.

Figure 4: Aerial view of subject properties (highlighted in yellow)



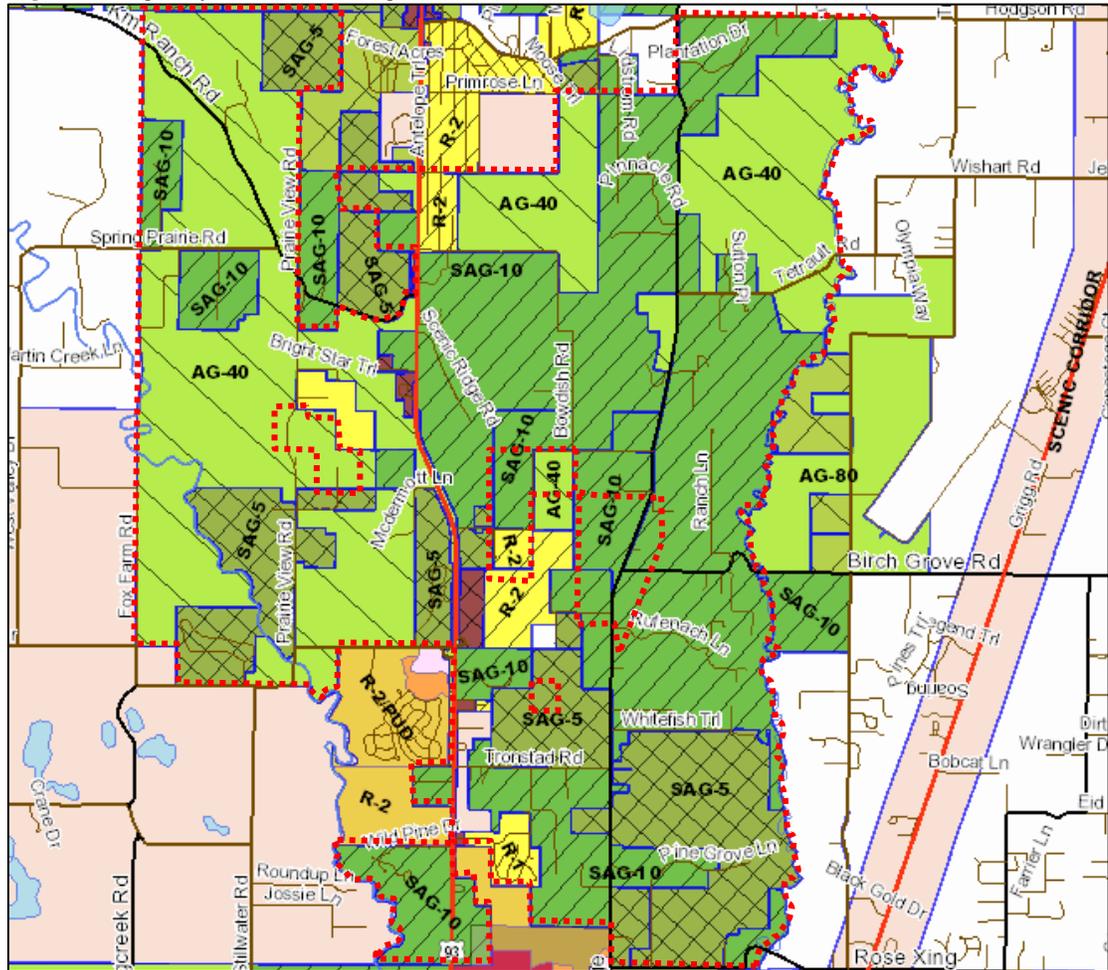
E. Adjacent Zoning and Character of the Overall Zoning District

The subject property is located within the Highway 93 North Zoning District and surrounded by suburban agricultural, agricultural and un-zoned areas (see Figure 2). The subject properties are bordered to the east and west by 'SAG-10 Suburban Agricultural,' and to the south by 'AG-40 Agricultural' the properties to the north are all un-zoned. Beyond the immediate vicinity of the proposal, suburban agricultural, agricultural and residential zoning are prevalent among the established zoning use designation. Additionally many of the nearby properties are un-zoned.

The predominant character of the area surrounding the subject property is rural residential, and agricultural. The lots to the west are within a subdivision and generally range from 1.9 acres to 4.6 acres, and were created through a clustering provision in the zoning regulations. The subdivision is approximately 135 acres in size and the clustering provision created approximately 82 acres of open space within and around the subdivision. Therefore, approximately 61% of the subdivision is required to remain open space.

The SAG-10 lots to the east generally range in size from 2.4 acres to 14.7 acres. Agricultural lots to the south, in the 'AG-40', range from 40 acres to 80 acres. Comment received states "The Penney's petition states that the area to the North of Hodgson Road is un-zoned. This fact is irrelevant. However, a review of the nature and character of the property to the North of Hodgson Road would reveal that the parcels are divided into typically ten, twenty and forty acre holdings." Upon review of County IMS and a site visit, staff determined that agricultural lots in the un-zoned area to the north, in the immediate vicinity, range in size from 3.7 to 19.8 acres. The properties to the north, south and east are relatively flat fields in agricultural use.

Figure 5: Highway 93 North Zoning District (outlined with dashed red line)



When an application appears to have the potential for spot zoning, the “three part test” established by legal precedent in the case of *Little v. Board of County Commissioners* is reviewed specific to the requested map amendment. 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 brief review of the three-part test in relation to this application.

i. The Zoning Allows A Use That Differs Significantly From The Prevailing Use In The Area.

The intent of the currently existing ‘SAG-10 Suburban Agricultural’ zone is to protect and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses. There was also concern over the definitions for AG-40 and SAG-10, and that the purpose of the AG-40 is to protect and preserve agricultural land, and SAG-10 is to protect and preserve agricultural functions. The proposed ‘R-2.5 Rural Residential’ zone is intended for rural, primarily residential areas where larger estate-type lot sizes are appropriate and agricultural operations are a decreasingly viable land use. The permitted and conditional uses applicable to these zoning classifications are very similar, and the zoning map

amendment requested would allow types of uses that are generally the same or less intrusive than the uses allowed within the existing and surrounding 'SAG-10.' The subject property is adjacent to properties currently zoned 'SAG-10' and 'AG-40' and properties that are un-zoned.

The permitted and conditional uses within 'R-2.5' are similar to that of 'SAG-10,' there are some uses not permitted in 'R-2.5' that are allowed in 'SAG-10' and some uses in 'R-2.5' require a conditional use permit that would be permitted in 'SAG-10' without one. Cell towers and cluster housing are listed as permitted uses within 'SAG-10' but would require a Conditional Use Permit in 'R-2.5.' The only use allowed in 'R-2.5' that is not allowed in 'SAG-10' is radio, TV, and broadcast station, which is a conditional use within 'R-2.5.' However, the property to the south is zoned 'AG-40' and radio, TV and broadcast stations are listed as a conditional use with 'AG-40'.

The adjacent properties to the south are zoned 'AG-40.' The FCZR list several uses within the 'AG-40' zone that are not listed as either permitted or conditional uses in 'R-2.5.' There are a few uses which are not listed within 'AG-40' that are listed as conditional use in 'R-2.5,' such as community residential facility, golf course, driving range and manufactured home park, however, all those uses are allowed under a conditional use permit in the subject properties existing zoning designation. The un-zoned areas to the north have no land use restrictions and the owners of those properties could have a variety of uses that differ greatly from the adjacent zoned areas.

The minimum lot size in the proposed 'R-2.5' designation is 2.5 acres smaller than the 10 acre minimum lot size of the current zoning and 40 acres of the adjacent lots. Allowing the zoning of the subject property to change to 'R-2.5' would not add uses to the property that differ significantly from the prevailing uses in the area.

Approximately 1 mile west of the subject property is an area zoned R-1, and approximately 1.3 miles to the west is an area zoned R-2. There is also un-zoned areas located to the north of the property, about ½ a mile east and west of the subject property. Within the area of the subject property there is a range of zoning from limited residential to large tract agriculture and un-zoned areas.

ii. The Zoning Applies To A Small Area Or Benefits A Small Number Of Separate Landowners.

The zoning map amendment would apply to four tracts of land owned by four landowners. Using standard ArcGIS software the subject property is located within an approximately 3,523 acre 'SAG-10' district of which approximately 40.11 acres (1.1%) of the 'SAG-10' district is being proposed for a zoning map amendment. To the south of the subject property is an 'AG-40' district of approximately 910 acres. The new 'R-2.5' zoning district would be dissimilar in size to the existing 'AG-40' and 'SAG-10' district and un-zoned areas that border the subject property and the zoning would apply to a relatively small number of landowners.

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.

The zoning map amendment would apply to four tracts for the benefit of four separate landowners; this zoning map amendment may be at the expense of the landowners to the south, east, and west because of the contrast in minimum lot area allowed. The requested map amendment to ‘R-2.5’ would alter the use and minimum lot size permissible on the subject property. In the event the subject properties were subsequently developed to the greatest build-out possible the 2.5 acre minimum lot size would result in a higher overall density development than currently established in the area and on adjacent zoned properties. However, the properties north of Hodgson Road remain un-zoned and have no such minimum lot area restrictions, these parcels can continue to be divided creating a higher density not currently allowed on the subject property. Although the zoning map amendment would benefit only four landowners, it does not appear to be at the expense of all the surrounding landowners and general public.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

F. Public Services and Facilities

Sewer:	Individual septic systems
Water:	Individual septic systems
Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyTel
Schools:	Whitefish School District (K-12)
Fire:	Whitefish Rural Fire District
Police:	Flathead County Sheriff’s Office

G. Criteria Used for 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 amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

H. Compliance With Public Notice Requirements

Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject properties on March 14, 2013. Legal notice of the Planning Board public hearing on this application was published in the March 24, 2013 edition of the Daily Interlake.

Public notice of the May 6, 2013 Board of County Commissioners public hearing regarding the zoning map amendment was physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A.] on March 13, 2013. 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 will include information on the date, time and location of

the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

I. Agency Referrals

Referrals were sent to the following agencies on February 8, 2013:

- Bonneville Power Administration
 - Reason: BPA has requested that anytime agency referrals are sent they receive a copy.
- Department of Environmental Quality
 - Reason: DEQ has requested referrals for anything not proposed as public water supply.
- Department of Natural Resources and Conservation
 - Reason: DNRC has requested referrals on anything with potential water issues.
- Flathead County Attorney's Office
 - Reason: This zoning map amendment request has the potential for spot zoning.
- Flathead City-County Health Department; Environmental Health Services
 - Reason: Increased development as a result of the zoning map amendment may necessitate review by the Department.
- Flathead County Public Works/Flathead County Road Department
 - Reason: The zone change request has the potential to impact County infrastructure, should development occur in the future.
- Flathead County Sheriff
 - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing public services.
- Flathead County Solid Waste
 - Reason: The type and amount of solid waste resulting from uses permitted within the requested the zoning classification could have an impact on existing public services.
- Flathead County Weeds and Parks Department
 - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing public services.
- Glacier Park International Airport
 - Reason: Properties requesting a zoning map amendment are located within the airport influence area boundary.
- Whitefish Rural Fire District
 - Reason: The subject property is located within the jurisdiction of the local fire district and increased development as a result of the zoning map amendment could impact the level of service available.

III. COMMENTS RECEIVED

A. Public Comments

Following the required comment period established under Section 2.08.030(1)(C) FCZR, this office received seven written comments regarding the proposed zoning map amendment on the subject property. The first three written comments were received on January 31, 2013 are not opposed to the proposal. The fourth written comment was received March 15, 2013, the fifth on March 21, 2013, the sixth on March 22, 2013 and the seventh March 25, 2013 generally against the proposal and outlining several concerns. The concerns which are applicable to the criteria for review shall be addressed in pertinent sections of the staff report. The concerns deemed not applicable to review criteria are summarized below, followed by staff's comments:

- “Penney’s petition states that the reason for the proposed rezoning is to give his son a portion of land so that his son can build a house close to his relatives. This is inconsistent with the fact that the Penney’s have the subject property currently listed for sale and have had it for sale since May 25, 2010. Further, Penney’s petition is not merely carving off a small portion of land for a relative it is subdividing the entire forty acre parcel into sixteen different 2.5 acre lots creating a high density residential area in the middle of Ag-40 and SAG-10.”
 - Response: The applicants have not applied for or had a pre-application meeting with this office to discuss a possible subdivision on the property. If the applicants do apply for a subdivision it would be subject to the criteria set forth in the Flathead County Subdivision Regulations.
- “Further, if the subject property is declared R-2.5 (Rural Residential) there is no control as to how the sixteen newly created parcels will be bought, transferred and sold forever.”
- “Forty acres divided into 2.5 acres lots would no longer be rural and certainly would not ‘maintain the agricultural nature’ of the acreage.”
 - Response: As previously stated, the applicants have not applied for or had a pre-application meeting with this office to discuss a possible subdivision on the property. If the applicants do apply for a subdivision it would be subject to the criteria set forth in the Flathead County Subdivision Regulations.
- “A further division of into parcels smaller than ten acres or a rezoning to anything less than the current zoning of SAG-10 would fail to protect the nature and character of the surrounding area and would be to the detriment of surrounding and neighboring landowners.”
 - Response: This comment does not address how the zoning map amendment would fail to protect the nature and character of the surrounding area and would be to the detriment of surrounding and neighboring landowners.
- “With respect to the Flathead County Growth Policy the Penney’s petition is

inconsistent with said policy and amounts to a request for spot zoning.”

- Response: The issue of spot zoning was addressed previously in Section II.E of this report and the Growth Policy shall be addressed in Section IV.B.i.
- “It is well known that numerous wildlife inhabit this area pheasants, turkeys, bear, deer and elk. In fact there is a resident herd of approximately forty or more elk that consistently migrate from Whitefish Stage to both North and South side of Hodgson Road all the way over to Highway 2.
 - Response: Staff discussed this concern with Montana Fish, Wildlife and Parks (FWP) and determined that there is a herd of 30 to 40 elk that live in the area year round. FWP also stated that if the lots are divided into 2.5 acres as the zoning would allow it is pretty much not elk habitat anymore.
- “It is the responsibility of the local government to insure that the zoning of all local areas be upheld and that homeowners are protected and therefore do not need to worry about surprise changes.
 - Response: All property owners have the right to apply for a zoning map amendment on their property and it is up to the County Commissioner’s to grant or deny the application to rezone or amend by resolution, based on the criteria found in Section 2.08.030 [FCZR].

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 April 10, 2013 and/or the Commissioner’s Public Hearing scheduled May 6, 2013. 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).

B. Agency Comments

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: The County Road Department does not have any comments regarding this request.
- Whitefish Rural Fire District
 - Comment: We have no objection to the proposed zone change.
- Flathead County Solid Waste District
 - Comment: The District would request that a contract hauler bring solid waste to the landfill if the zoning change would be granted, and any further subdividing of the above referenced property would be developed into commercial lots. The district does not view a solid waste issue at this time.
- Flathead City County Health Department
 - Comment: These properties, including the proposed 2.5 acre tract, meet minimum requirements utilizing onsite water and wastewater treatment should the proposed tract when transferred, have to be reviewed under the Sanitation in Subdivision Act. Additional

development or division of the property would require a subsequent review and approval of water supply, sewage treatment and storm drainage prior to issuance of a permit to construct a sewage treatment system on the new tract.

- Whitefish Rural Fire Department
 - Comment: We have no objection to the proposed change from ‘SAG-10’ to ‘R-2.5’.
- Bonneville Power Administration
 - Comment: BPA has no objection to the proposed change to the approval of this request at this time.

IV. EVALUATION OF PROPOSED AMENDMENT

A. Build Out Analysis

Once a specific zoning designation is applied in a certain area, landowners have certain land uses that are allowed “by-right.” A build-out analysis is performed to examine the maximum potential impacts of full build-out of those “by-right” uses. It 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-case” 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.

i. Current Zoning

As previously stated, the subject property is currently zoned ‘SAG-10 Suburban Agricultural’ district is defined in Section 3.07.010 of the Flathead County Zoning Regulations (FCZR) as a “*district to provide and preserve 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 following is a list of permitted uses in an ‘SAG-10’ zone:

1. Agricultural/horticultural/silvicultural use.
2. Cellular tower.
3. Class A and Class B manufactured home.
4. Cluster housing.
5. Dairy products processing, bottling, and distribution.
6. Day care home.
7. Dwelling, single-family.
8. Guest house.
9. Home occupation.
10. Homeowners park and beaches.
11. Nursery, landscaping materials.
12. Park and publicly owned recreational facility.
13. Produce stand.
14. Public transportation shelter station.
15. Public utility service installation.

16. Ranch employee housing.
17. Stable, riding academy, rodeo arena.

The following uses are listed as conditional uses in an 'SAG-10' zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Airfield.
2. Aircraft hangars when in association with properties within or adjoining an airport/landing field.*
3. Animal hospital, veterinary clinic.
4. Bed and breakfast establishment.
5. Camp and retreat center.
6. Caretaker's facility.*
7. Cemetery, mausoleum, columbarium, crematorium.
8. Church and other place of worship.
9. Community center building operated by a non-profit agency.
10. Community residential facility.**
11. Contractor's storage yard.*
12. Dwelling, family hardship.*
13. Electrical distribution station.
14. Extractive industry.
15. Golf course.
16. Golf driving range.
17. Kennel, commercial.*
18. Manufactured home park.
19. Recreational facility, low-impact.
20. School, primary and secondary.
21. Temporary building or structure.*
22. Water and sewage treatment plant.
23. Water storage facility.

Bulk and dimensional standards under 'SAG-10' zoning require minimum setbacks of 20 feet from the front, side, rear and side-corner property boundaries for all principal structures, while setbacks for accessory structures require 20 foot setbacks from front and side-corner property boundaries and 5 foot setbacks from side and rear property boundaries. Additionally there are provisions for smaller setbacks for non-conforming lots when the width of the lot is less than 200 feet and 150 feet. Setbacks of 20 feet are required from streams, rivers and unprotected lakes that do not serve as property boundaries, and an additional 20 feet from county roads classified as collector or major/minor arterials. The maximum allowable building height is 35 feet for all structures, and the permitted lot coverage is 20%.

Due to size of the existing 10 acre lots and the 10 acres minimum lot size, the properties could not be divided further. Tract 6A and 6AA of the subject property are currently developed with two single family residences and out buildings, and there are minimal options for additional uses of those lots under the current applicable zoning. The other two lots appear to be used for agricultural uses and are uninhabited.

ii. Proposed Zoning

The proposed zoning map amendment would change the zoning designation on the subject property from ‘SAG-10 Suburban Agricultural’ to ‘R-2.5 Rural Residential.’ ‘R-2.5’ is defined in Section 3.43 FCZR as a “*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 following is a list of permitted uses in an ‘R-2.5 Rural Residential’ zone:

1. Agricultural/horticultural/silvicultural use.
2. Class A manufactured home.
3. Day care home.
4. Dwelling, single-family.
5. Guest house.
6. Home occupation.
7. Homeowners park and/or beach.
8. Livestock.
9. Nursery, landscaping material.
10. Park and/or publicly owned recreation facility.
11. Produce stand.
12. Public transportation shelter station.
13. Public utility service installation.
14. Stable, private.

The following uses are listed as conditional uses in an ‘R-2.5 Rural Residential’ zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Airfield.
2. Aircraft hangar when in association with properties within or adjoining an airport/landing field.*
3. Bed and breakfast establishment.
4. Camp and retreat center.
5. Caretaker’s facility.*
6. Cellular antenna and monopole.
7. Cemetery, mausoleum, columbarium, crematorium.
8. Church.
9. Community center building operated by a non-profit agency.
10. Community residential facility.**
11. Dwellings, cluster development.
12. Dwelling, family hardship.*

13. Electrical distribution station.
14. Golf course.
15. Golf driving range.
16. Manufactured home park.
17. Radio and television broadcast station.
18. School, primary and secondary.
19. Stable, public.
20. Temporary building or structure.*
21. Water and sewage treatment plant.
22. Water storage facility.

The bulk and dimensional standards under 'R-2.5' zoning require a minimum yard requirement of 20 feet from the front, side, rear and side-corner yards, and setbacks for accessory structures require a minimum yard of 20 foot for front and side-corners and 5 foot for side and rear yards. Additionally, a setback of 20 feet is required from streams, rivers and unprotected lakes that do not serve as property boundaries, and an additional 20 feet from county roads classified as collector or major/minor arterials. The maximum allowable building height is 35 feet for all structures and permitted lot coverage is 25%.

Based on the definition of lot area [Section 7.12.020 FCZR], Where surface utilities or street easements are located within a parcel, lot area shall not include that area contained within the easement. Therefore, minimum lot size in an 'R-2.5' zone is 2.5 acres. Development standards anticipate approximately 30% of the total land area being allocated to infrastructure. Thus under the proposed zoning the subject properties could be divided through the subdivision review process, and result in 11 residential lots; however floodplains, and other environmental constraints may preclude that number of units from actually being realized. Further, the subject properties could potentially be independently divided, through other means besides subdivision process that could result in up to 16 lots. The permitted and conditional uses within 'R-2.5' are similar to that of 'SAG-10,' however, some uses permitted in 'SAG-10' may not be permitted in or maybe a conditional use in 'R-2.5.' The only use listed that is not allowed in 'SAG-10' which is a conditional use within 'R-2.5' is Radio, TV, and Broadcast Station.

In summary, the requested zone change from 'SAG-10' to 'R-2.5' has the potential to increase density through subsequent division of the land in the future. The bulk and dimensional requirements are similar for 'SAG-10' and 'R-2.5.' The map amendment would introduce only one new use to the subject property that is not typical of suburban agricultural zoning designation. However, several uses that are permitted in the 'SAG-10' are not permitted within 'R-2.5.'

- B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)**
- i. 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 (by Resolution #2015 A) and updated October 12, 2012 (by Resolution #2015 R).

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as ‘Suburban Agricultural.’ The proposed Rural Residential zoning classification contrasts with the current Suburban Agricultural 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 use. 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 plan. 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.” Therefore, 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 policies in the document.

The text and a variety of goals and policies within the text of the Growth Policy pertaining to land use, transportation, public services and utilities as well as natural resources have been found to both support and oppose the requested zoning map amendment.

- ❖ 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 owners to give land to their children while still keeping land for themselves.
- ❖ 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 the 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.
 - 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.
 - In ‘R-2.5’ the owners would still be able to farm and forest the land if they so choose.

- ❖ 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 use.
 - P.4.2 – Identify lands most suited to agriculture (appropriate soils, access to water, shape and size of parcel, etc.).
 - P.4.3 – Identify a desirable gross density for rural residential development that retains land value, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc).
 - The zoning map amendment allows greater flexibility to the land owner while still allowing agriculture and forestry uses.
- ❖ G.8 – Safe healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowner to develop land, protect the health, safety, and general welfare of neighbors and efficiently provide local services.
- ❖ G.10 – Restrict development on lands that pose an unreasonable risk to the public health, safety, and general welfare of all Flathead County residents.
- ❖ 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.
 - P.23.4 – Recognize areas in proximity to employment and retail centers as more suitable for higher residential densities and mixed use development.
 - Hodgson Road is a collector road and the driveways directly access the road. Additionally the property is not located in close proximity to employment and retail centers.
- ❖ G.31 Growth that does not place unreasonable burden on the ability of the school district to provide quality education.
- ❖ 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.

Chapter 2 Part 5 of the Growth Policy discusses agricultural land uses being converted to residential living. The Growth Policy states, “Lands that have traditionally been used for agriculture are being converted increasingly to residential uses as residents seek rural living. Issues can result from mixing residential and agricultural culture when new rural residents are unpleasantly surprised by the sights, sounds, and smells associated with farming. Rural living requires adjustments from urban living, and is unreasonable to expect that the farming techniques could or would change when an adjacent field is converted to a residential subdivision. Vegetative buffers on the edges of the new

developments which abut existing agricultural operations can aid in lessening the cross contamination of weeds chemicals, noise and odors.” The neighboring subdivision provides a buffer between agriculture and residential uses, with the dedicated open space. However, this proposed zoning map amendment would not require the open space to create minimum lots.

Part 7 of Chapter 2 deliberates that inappropriate residential density can cause a variety of challenges. The Growth Policy states, “Residential development at a density that is not compatible with existing local services and neighborhood character is likely to be contentious.” The proposed ‘R-2.5’ designation is meant as a buffer between higher density residential and lower density suburban agriculture and based on the definition would not be compatible with the existing agricultural uses within the vicinity.

Finding #1: The proposed zoning map amendment to ‘R-2.5’ from ‘SAG-10’ does not appear to comply with the Flathead County Growth Policy because the proposed residential development is not compatible with the existing neighborhood character based on the definition of ‘R-2.5’ in the Flathead County Zoning Regulations.

ii. Whether the proposed map amendment is designed to:

1. Secure safety from fire and other dangers;

The subject property is located within the Whitefish Rural Fire District, and the nearest fire and emergency response center is located approximately 0.5 miles west at the corner of Whitefish Stage Road and Hodgson Road. The subject property is not located in the Wildland Urban Interface or within the Fire District Priority Area. The Whitefish Rural Fire Department would respond in the event of a fire or medical emergency.

Hodgson Road is a county collector road with a 24-foot wide paved surface and a 60-foot road and utility easement. Tract 6AA has direct driveway access onto Hodgson Road and Tracts 6 and 6A have access via 40 foot private road and utility easement located on the boundary of 6B and 6AA. The easement widens at the south end to allow for a future cul-de-sac positioned at the corner of the four lots. There appears to be adequate access for emergency vehicles on the subject property.

The subject property appears to be mapped as Zone X, areas determined to be outside the 0.2% annual chance floodplain on FEMA FIRM Panel 30029C 1410G.

Finding #2: The proposed map amendment would secure safety from fire and other dangers because the properties are located within the Whitefish Rural Fire District about a half mile from the nearest fire station, the subject properties would be provided access for emergency vehicles via an existing private road and utility easement and the property is not located within a floodplain.

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

The property is located within the Whitefish Rural Fire District which provides fire and emergency medical services and the Flathead County Sheriff's Department provides police services to the subject property. 'R-2.5' zoning classification would allow for similar uses to what already exists in the area and what is allowed within in the current 'SAG-10' designation and neighboring 'AG-40,' therefore it is not anticipated to adversely impact public health, safety or general welfare.

Finding #3: The proposed zoning map amendment from 'SAG-10 Suburban Agricultural' to 'R-2.5 Rural Residential' would not have a negative impact on public health, safety and general welfare because the property is served by the Whitefish Rural Fire Department, Flathead County Sheriff, and future development would be similar to uses already in the area.

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

While potential additional residential development on the subject property may be accomplished through an exemption process, it is anticipated substantial future residential development would require additional review, at which time specific impacts to transportation, water and sewer services, would be considered and mitigated as determined to be appropriate. The definition of 'R-2.5' states, "Public facilities should be appropriately developed to accommodate the density and land uses of this designation. This includes paved roads."

The property is accessed off Hodgson Road a paved county collector, and is located approximately a half mile east of Whitefish Stage Road a paved state secondary highway. Hodgson Road connects U.S. Highway 2 and U.S. Highway 93

Traffic counts taken by the Flathead County Road and Bridge Department for Hodgson Road in 2007 indicate annual average daily traffic to be 1,350 vehicle trips per day east of Whitefish Stage Road. Typical subdivisions use on average 30% of the lot area for public infrastructure such as roads, therefore at full build-out a total of 11 homes could be built on the property. The average daily trip (ADT) generation for a typical single family residence is 10 average daily trips (ADT). The proposed zone map amendment could generate an additional 110 ADT, which would contribute to an increase of 7.5% ADT on Hodgson Road. It is anticipated that because Hodgson Road is paved two-lane county collector it would be capable of handling the increased traffic.

The subject property will be serviced by on-site septic and water systems. The applicant will be required to work with Flathead City-County Health Department to develop an on-site well and sewer system to meet the needs of any future development. Comments received from the Flathead City-County Health Department state, "These properties, including the proposed 2.5 acre tract, meet minimum lot size requirements utilizing onsite water and

wastewater treatment should the proposed tract when transferred, have to be reviewed under the Sanitation in Subdivision Act. Additional development or division of property would require a subsequent review and approval for water supply, sewage treatment and storm drainage prior to issuance of a permit to construct a sewage treatment system on the new tract.”

The subject properties are located within the Whitefish School District; the proposed zone change could generate school children. Whitefish Elementary Schools have seen a decline of 8% in student enrollment over the last ten years and decline 1% between 2011 and 2012. Whitefish High School has decreased 29% in student enrollment over the last ten years and decline 4% between 2011 and 2012. Additionally, Central School recently completed a major remodel and last year voters approved a bond to renovate the High School. It anticipated that the school would have capacity should any growth occur as a result of the proposed zoning map amendment.

The proposed amendment from ‘SAG-10 Suburban Agricultural’ to ‘R-2.5’ would reduce the relatively large 10-acre minimum lot size to a smaller 2.5-acre minimum lot size, it is anticipated subsequent future development would require review and park area required would be determined at that time. Additionally, there are numerous parks, natural areas, and recreational opportunities accessible in the vicinity of the proposal.

Finding #4: The proposed zoning map amendment would not hinder the adequate provision of transportation, water, sewer, schools and parks because the applicant will utilize individual septic systems and wells which will require future review and the proposal may generate school children which the school districts would be able to accommodate and there are numerous parks, natural areas, and recreational opportunities in the vicinity.

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

1. The reasonable provision of adequate light and air;

Two of the properties within the proposed zoning map amendment are currently developed with homes, garages, and other building. While the proposed zoning map amendment has the potential to increase development density on the subject properties, any additional lots created would be required to meet the bulk, dimensional, permitted lot coverage and minimum lot size requirements of the ‘R-2.5’ zoning classification. The bulk and dimensional requirements for ‘R-2.5’ zoning are very similar to those of the existing ‘SAG-10’ zoning at the location with the exception of the permitted lot coverage. The permitted lot coverage in ‘SAG-10’ is 20% and the 25% for ‘R-2.5.’

The properties directly to the west are zoned ‘SAG-10’ but use a clustering provision in the zoning regulations allowing for 20 lots with an average size of about 2.65 acres, these lots are surrounded by approximately 82.0 acres of open space. The average lots in the neighboring subdivision and the lots that are permissible in ‘R-2.5’ are comparable in size, and the setbacks requirements are equivalent. However, the subdivision is approximately 135

acres in size and the clustering provision created approximately 82 acres of open space within and around the subdivision. Therefore, approximately 61% of the subdivision is required to remain open space.

With the higher densities allowed within the 'R-2.5' and greater permitted lot coverage it is likely that at full build-out more of the land would be covered with structures and buildings. However, the bulk and dimensional requirements required in an 'R-2.5' district would ensure the reasonable provision of adequate light and air available to the subject property as well to the surrounding area.

Finding #5: The proposed zoning map amendment would provide adequate light and air to the subject properties and surrounding area because future development would be required to meet the bulk, dimensional and permitted lot coverage requirements of the 'R-2.5' zoning, which are similar to the bulk and dimensional requirements of the current 'SAG-10' zoning.

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

The subject properties have two existing driveways off Hodgson Road which currently serves as access. Hodgson Road is a paved two-lane county collector. Sight distance along Hodgson Road at the location of the existing accesses appears adequate considering the straight flat nature of the road in the vicinity of the subject property.

Comments received from an adjacent property owner raise concerns over, "the increase of traffic along Hodgson Rd, already busy with many large gravel trucks." Traffic counts taken by the Flathead County Road and Bridge Department for Hodgson Road in 2007 indicate annual average daily traffic to be 1,350 vehicle trips per day east of Whitefish Stage Road. Typical subdivisions use on average 30% of the lot area for public infrastructure such as roads, therefore at full build-out a total of 11 homes could be built on the property. The average daily trip (ADT) generation for a typical single family residence is 10 average daily trips (ADT). The proposed zone map amendment could generate an additional 110 ADT, which would contribute to an increase of 7.5% ADT on Hodgson Road. It is anticipated that because Hodgson Road is paved two-lane county collector it would be capable of handling the increased traffic.

There is no existing bike/pedestrian facility currently located along in the vicinity of the subject property, and the Flathead County Trails Plan does not propose any facilities near the subject property.

Finding #6: Effects on motorized and non-motorized transportation systems appears acceptable because sight distances on Hodgson Road at the intersection of the driveway onto the subject properties appear adequate, a paved road can accommodate the increase of 7.5% ADT and the subject property does not abut existing or proposed bike/pedestrian facilities.

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

The property is not located directly adjacent to any city, and is located outside of any city master plan and growth policy areas. The nearest municipality is the City of Whitefish, located approximately 2.58 miles from the subject property. The subject property is located 1.01 miles outside the 'interlocal agreement' between the City of Whitefish and Flathead County. The Whitefish City-County Growth Policy Future Land Use Map, adopted by the City of Whitefish in 2007, does not include the subject property.

Finding #7: The proposed zoning map amendment would not affect urban growth in the vicinity of Whitefish because the map amendment is located well outside the area of influence of the City.

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

A portion of the property is currently used for agricultural purposes and much of the surrounding properties to the north, south and east are agricultural. The application states, "There is hay production, some horse pasture, and some tree farming on the 40-acres map amendment." The permitted and conditional uses found under the proposed 'R-2.5 Rural Residential' zoning does not differ greatly to those listed under the existing 'SAG-10 Suburban Agricultural.'

The proposed zoning map amendment would allow for the future division of the subject properties, with the potential to create lots with a minimum size of 2.5 acres. The smaller lots would be consistent with the character of the immediate vicinity of the subject property.

The properties directly to the west are zoned 'SAG-10' but use a clustering provision in the zoning regulations allowing for 20 lots with an average size of about 2.65 acres, and are surrounded by approximately 82.0 acres of open space. The average lots in the neighboring subdivision and the lots that are permissible in 'R-2.5' are comparable in size. However, the subdivision is approximately 135 acres in size and the clustering provision created approximately 82 acres of open space within and around the subdivision. Therefore, approximately 61% of the subdivision is required to remain open space.

The properties to the north of the subject property are all un-zoned and there is no minimum lot size for those properties. The properties in the un-zoned area vary in size anywhere from 2.5 acres up to 20 acres. Additionally, a few of the properties adjacent to the subject properties on the east side are currently approximately 2.5 acres in size. The properties to the south are currently used for agriculture, and contain large tracts of land 40 plus acres in size.

The definition of 'R-2.5' specifically states, 'this district is not appropriate in areas primarily surrounded by lower-density SAG and AG zones and/or in areas adjacent to significant ongoing agricultural/silvicultural/horticultural and/or extractive industry operations.' Because the property is primarily surrounded by lower-density 'SAG-10 and AG-40, the 'R-2.5' designation appears to be not appropriate.

Finding #8: The proposed zoning map amendment does not appear suitable for the particular use because according to the definition, the ‘R-2.5’ designation is not appropriate in areas surrounded by lower density suburban agriculture and agriculture zones and in areas adjacent to significant ongoing agriculture.

5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

As previously stated, the definition of ‘R-2.5’ specifically addresses appropriateness of that zoning designation in areas primarily between higher-density zones and in areas adjacent to significant ongoing agricultural operations. The use in this district is appropriate in transition areas between higher density residential and lower density suburban agriculture zones.

Directly north, east and south of the subject property is land currently in agricultural production, developed with some single family residence and accessory structures. The properties to the west are single family homes within a ‘SAG-10’ cluster subdivision.

Within the area of the subject property there is zoning of ‘AG-40,’ ‘SAG-10’ and un-zoned areas. The uses permitted within the ‘R-2.5’ designation is similar to what is permitted and what currently exists in the surrounding ‘AG-40’ and ‘SAG-10’ designations. The un-zoned areas would be allowed to have many land uses including ones uses not permitted within the ‘R-2.5’ designation.

Allowing the requested zoning amendment on the subject property to change to ‘R-2.5’ may conserve the value of building but based on the definition of “R-2.5 Rural Residential” this proposed designation would not seem to be appropriate use of land in this location.

Finding #9: The zoning map amendment does not appear to encourage the appropriate use of land because the ‘R-2.5’ is appropriate in transition areas between high density residential and low density agriculture and there is no high density residential within 1 mile of the property.

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

The nearest municipality is the City of Whitefish, is a separate jurisdiction from the County and governed by separate zoning regulations. The subject property is located approximately 2.58 miles from the City of Whitefish and located 1.01 miles outside the ‘interlocal agreement’ area between the City of Whitefish and Flathead County.

The nearest properties located within the ‘interlocal agreement’ are zoned ‘WA – Agricultural’ and ‘WCR – Country Residential’ by the City of Whitefish. The ‘WA’ district, *“is intended for areas for silviculture, agricultural functions, outdoor recreation purposes, open spaces or future development, and for detached single-family homes with customary farm and/or accessory buildings*

situated in a setting conducive to a rural lifestyle.” The ‘WCR’ district, “is intended for detached single-family homes together with farm and/or accessory buildings situated in a setting conducive to a rural lifestyle.” The minimum lot size in ‘WA’ is 15 acres and 2.5 acres in ‘WCR.’ The list of uses within both zones is similar to that of ‘R-2.5’ and the minimum lot size within ‘R-2.5’ is compatible with the City of Whitefish ‘WCR’ designation.

Finding #10: The proposed map amendment appears to be compatible with the zoning ordinance of the City of Whitefish because the closest Whitefish zones are ‘WA’ and ‘WCR’ designations which list uses that are similar to that of ‘R-2.5’ and ‘WCR’ and ‘R-2.5’ have identical minimum lot sizes.

V. SUMMARY OF FINDINGS

- 1) The proposed zoning map amendment to ‘R-2.5’ from ‘SAG-10’ does not appear to comply with the Flathead County Growth Policy because the proposed residential development is not compatible with the existing neighborhood character based on the definition of ‘R-2.5’ in the Flathead County Zoning Regulations.
- 2) The proposed map amendment would secure safety from fire and other dangers because the properties are located within the Whitefish Rural Fire District about a half mile from the nearest fire station, the subject properties would be provided access for emergency vehicles via an existing private road and utility easement and the property is not located within a floodplain.
- 3) The proposed zoning map amendment from ‘SAG-10 Suburban Agricultural’ to ‘R-2.5 Rural Residential’ would not have a negative impact on public health, safety and general welfare because the property is served by the Whitefish Rural Fire Department, Flathead County Sheriff, and future development would be similar to uses already in the area.
- 4) The proposed zoning map amendment would not hinder the adequate provision of transportation, water, sewer, schools and parks because the applicant will utilize individual septic systems and wells which will require future review and the proposal may generate school children which the school districts would be able to accommodate and there are numerous parks, natural areas, and recreational opportunities in the vicinity.
- 5) The proposed zoning map amendment would provide adequate light and air to the subject properties and surrounding area because future development would be required to meet the bulk, dimensional and permitted lot coverage requirements of the ‘R-2.5’ zoning, which are similar to the bulk and dimensional requirements of the current ‘SAG-10’ zoning.
- 6) Effects on motorized and non-motorized transportation systems appears acceptable because sight distances on Hodgson Road at the intersection of the driveway onto the subject properties appear adequate, a paved road can accommodate the increase of 7.5% ADT and the subject property does not abut existing or proposed bike/pedestrian facilities.
- 7) The proposed zoning map amendment would not affect urban growth in the vicinity of Whitefish because the map amendment is located well outside the area of influence of the City.

- 8) The proposed zoning map amendment does not appear suitable for the particular use because according to the definition, the 'R-2.5' designation is not appropriate in areas surrounded by lower density suburban agriculture and agriculture zones and in areas adjacent to significant ongoing agriculture.
- 9) The zoning map amendment does not appear to encourage the appropriate use of land because the 'R-2.5' is appropriate in transition areas between high density residential and low density agriculture and there is no high density residential within 1 mile of the property.
- 10) The proposed map amendment appears to be compatible with the zoning ordinance of the City of Whitefish because the closest Whitefish zones are 'WA' and 'WCR' designations which list uses that are similar to that of 'R-2.5' and 'WCR' and 'R-2.5' have identical minimum lot sizes.

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 not comply with all the review criteria, based upon the 10 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.