FLATHEAD COUNTY PLANNING AND ZONING OFFICE
MARK OWENS ZONE CHANGE REQUEST
ZONING MAP AMENDMENT REPORT (#FZC-14-02)
APRIL 21, 2014

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Mark Owens for a zoning map amendment in the Airport West Zoning District. The proposed amendment would change the zoning of the subject property from 'AG-20 Agricultural' to 'SAG-5 Suburban Agricultural.'

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on May 14, 2014 in the 2nd Floor Conference Room of the Earl Bennett Building located at 1035 First 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. Documents pertaining to the zoning map amendment are available for public inspection at 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 Recorders Office at 800 South Main Street in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Planning Board

Update May 19, 2014
On May 14, 2014 the Flathead County Planning Board held a public meeting on the proposal and the Board voted 6-1 to adopt the staff report as Findings of Fact and voted 5-2 to forward a recommendation for approval to the Board of County Commissioners. Details of the Board's actions and the recommended Findings of Fact are included on the attached Planning Board Addendum to this report.

B. Commission

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

II. GENERAL INFORMATION

A. Application Personnel

i. Owner/Applicants

Mark Owens
500 Palmer Drive
Kalispell, MT 59901

ii. Technical Assistance

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

B. Subject Property Location and Legal Description

The subject property consists of one tract totaling 19.386 acres and located at 715 Birch Grove Road, approximately one-tenth of a mile west of Trumble Creek Road as shown in Figure 1 below. The property can be legally described as Tract 3D in Section 09, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

Figure 1: Subject property outlined in yellow

C. Proposed Zoning Map Amendment

The subject property is located within the Airport West Zoning District and is currently zoned 'AG-20 Agricultural' (see Figure 2 below). The AG-20 designation is defined in Section 3.06 of the Flathead County Zoning Regulations (FCZR) as, '*A district to protect and preserve agricultural land for the performance of a wide range of agricultural functions It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development.'*

As depicted in Figure 3 below, the applicant has requested the zoning map amendment to allow for 'SAG-5 Suburban Agricultural' zoning. The SAG-5 designation is defined in Section 3.08 FCZR as, '*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.'*

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

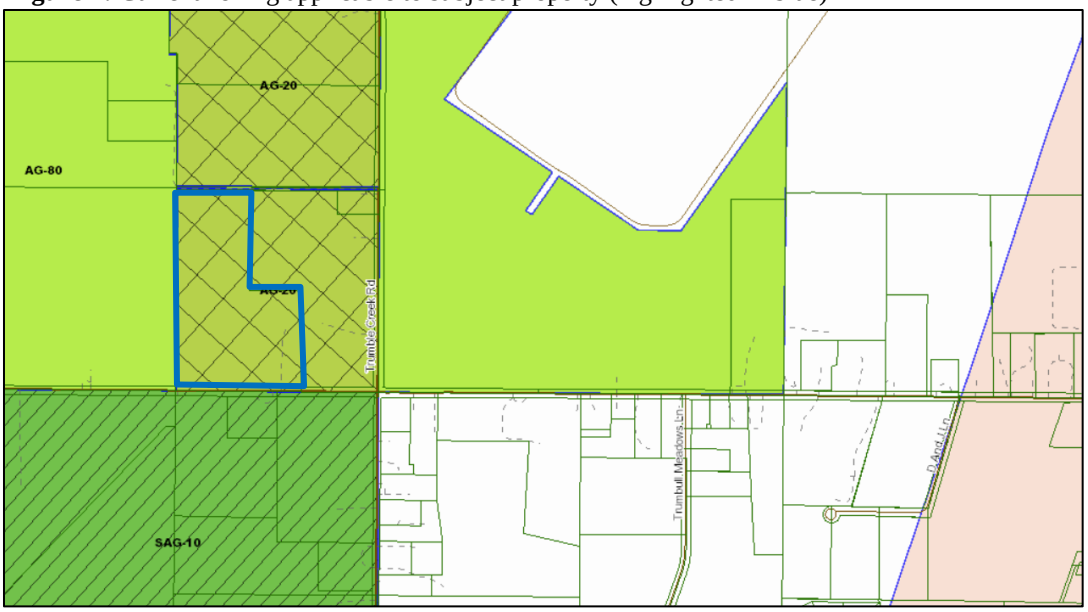
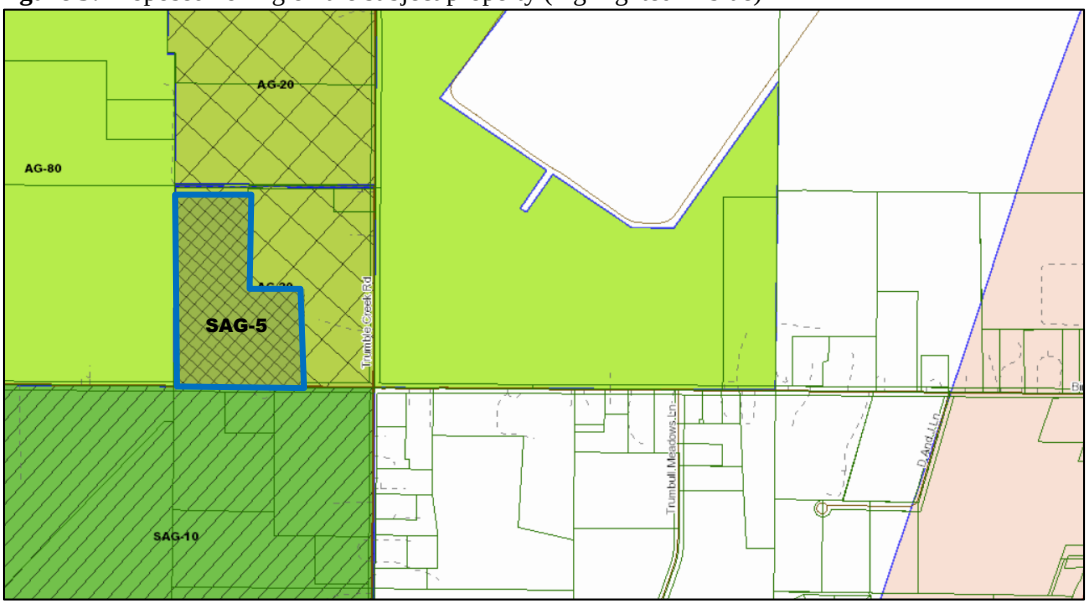


Figure 3: Proposed zoning on the subject property (highlighted in blue)

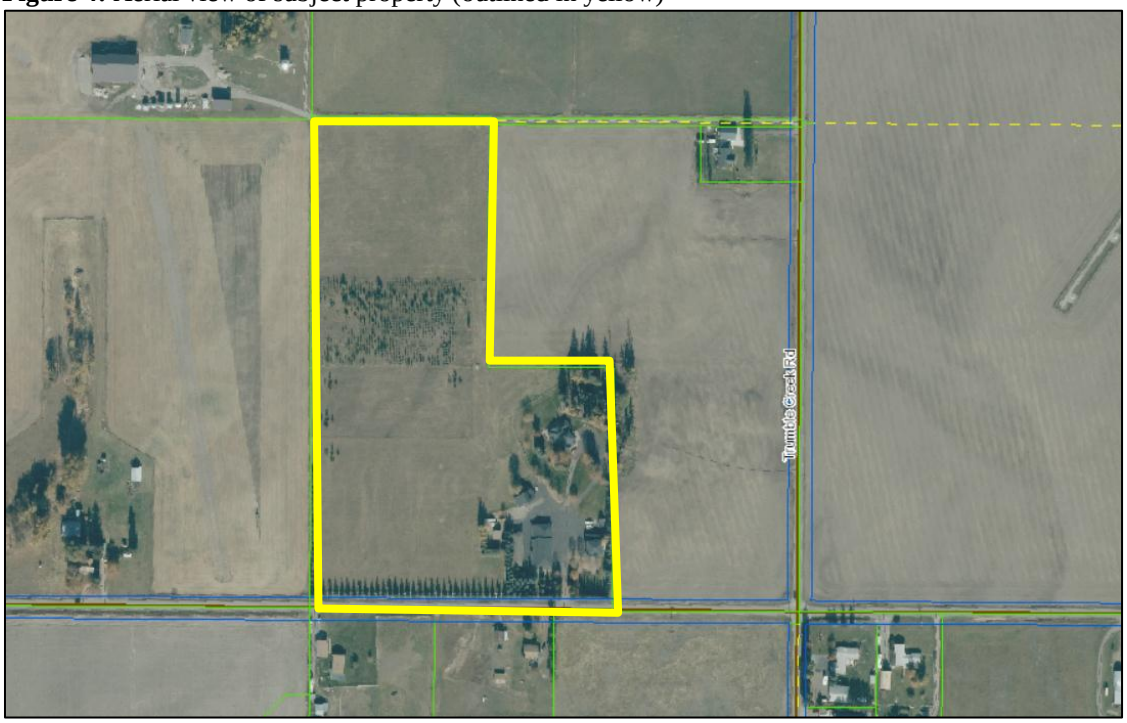


D. General Character of and Reason for Amendment

The property is located on relatively flat open land that is currently used for agriculture (as shown in Figure of 4 below). The east side of the property contains a single family home and accessory buildings. According to the application, "The property is 19.356 acres in size and the applicants would like to split the property to create a building site for the owner's son. The SAG-5 would allow the owners the ability to split the property whereas the AG-20 or the SAG-10 would not." The

proposed SAG-5 zoning if approved would allow the applicant to potentially divide the tract into three lots with a minimum lot size of 5 acres.

Figure 4: Aerial view of subject property (outlined in yellow)

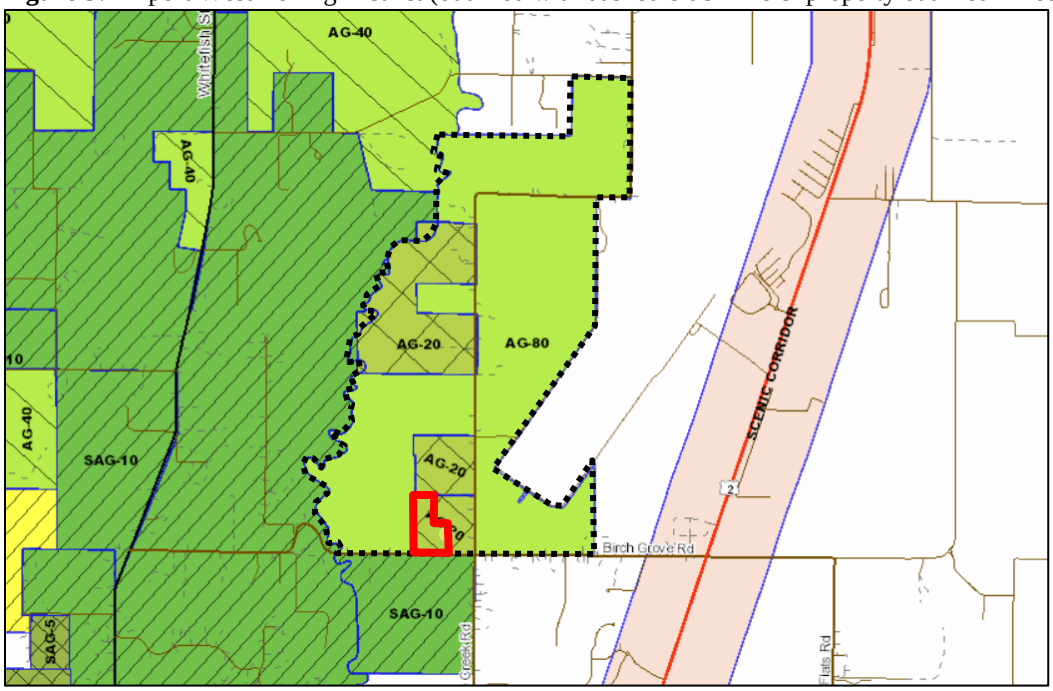


E. Adjacent Zoning and Character of the Overall Zoning District

The subject property is located within the Airport West Zoning District and bordered by suburban agricultural and agricultural zoning (see Figure 2) and to the east of the property is un-zoned land. The property is bordered on the north and east by 'AG-20 Agricultural,' on the south by 'SAG-10 Suburban Agricultural' and on the west by 'AG-80 Agricultural.' The character of the area surrounding the property is agricultural with rural residential. Also in the vicinity of the subject property is Glacier Park International Airport.

Lots within a half mile of the property vary in size from 0.2 acres to 145.3 acres. The properties to the southeast of the subject property range in size from 0.2 acres to 16.1 acres and average 4.01 acres. The three properties directly to the east range in size from 0.8 acres to 145.6 acres and the properties to the west range in size from 1.5 acres to 60.8 acres with four of the six tracts under 4.0 acres. Northwest of the property the range in lot size is 2.7 acres to 71.9 acres, with the majority of the lots over 20 acres in size. To the southwest the properties are 1.0 to 30.1 acres, with the average lot size 13.32 acres. On the north side of the subject property lots are approximately 20.0 to 40.0 acres in size with the average lot size 26.5 acres, and the tract to the northeast, which is part of the airport, is 90.5 acres.

Figure 5: Airport West Zoning District (outlined with dashed black line & property outlined in red)



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 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.

SAG-5 zoning classification would allow for several uses that are dissimilar to what is allowed within the current AG-20. The uses allowed in the AG-20 zone that are not permitted in the SAG-5 zone are more agricultural in nature. However, the proposed SAG-5 zone has similar uses to what is allowed within the neighboring SAG-10. The character of the overall zoning district is agricultural with limited rural residential and an international airport. The proposed zoning map amendment, if approved, would allow for uses that are similar to uses that are allowed on properties to the south in the existing SAG-10 zone. The proposed zoning would allow uses that do not significantly differ from the prevailing uses in the area.

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

Using standard ArcGIS software staff determined that the subject property is located within an AG-20 zoning district approximately 79.4 acres in size. The area of the proposed zoning map amendment is 19.386 acres or 24.4% of the existing AG-20 district. South of the subject property is a SAG-10 zoning district which is approximately 3,481 acres in size, to the east and west is an AG-80 district of 782 acres. To the north of the property is another AG-20 district that is 144 acres. If the zone change is approved the total SAG-5 district would apply to one land owner and would be approximately 19.386 acres, smaller than the other neighboring district in the vicinity.

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 subject property is currently owned by a single landowner. SAG-5 zoning classification would allow for several uses that are dissimilar to what is allowed within the current AG-20. According to the application, "Approving this zone change will blend with surrounding neighborhoods and is not considered a special benefit." The proposed SAG-5 zone has similar uses to what is allowed within in the neighboring SAG-10. Most of the uses allowed with a conditional use permit in SAG-5, are also allowed with a conditional use permit in the SAG-10 except 'Recreational facility, high impact' and 'Recreational vehicle park.' And all of the permitted uses within the SAG-5 are permitted in the neighboring SAG-10. Therefore the zoning map amendment would appear not be at the expense of the surrounding landowners or the general public and thus is not special legislation.

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.

Finding #1: The proposed zoning map amendment from AG-20 to SAG-5 does not appear to constitute spot zoning because the proposed zone change would allow for similar uses to what is currently permitted and exist in the adjacent SAG-10.

F. Public Services and Facilities

Sewer:	N/A
Water:	N/A
Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyTel
Schools:	Kalispell School District
	Flathead High School District
Fire:	Evergreen 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 property on April 21, 2014. Legal notice of the Planning Board public hearing on this application was published in the April 27, 2014 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 will include information on the general character of the proposed change, and 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 March 13, 2014:

- Bonneville Power Administration
  - Reason: BPA has requested that anytime agency referrals are sent they receive a copy.
- Montana Fish, Wildlife, and Parks
  - Reason: Increased development as a result of the zoning map amendment may impact wildlife in the area.
- 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.
- Flathead County Sheriff
  - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing services.
- Flathead County Solid Waste
  - Reason: The type and amount of solid waste resulting from uses permitted within the proposed zone change could have an impact on existing public services.
- Glacier Park International Airport
  - Reason: The subject property is located adjacent to the airport.
- Flathead County Weeds and Parks Department
  - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing public services.
- Kalispell School District
  - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing school services.

- Flathead High School District
    - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing school services.

- Evergreen 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

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. 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 May 14, 2014 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).

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 Weed, Parks and Recreation
    - Comment: "It is the landowners' responsibility to control noxious weeds on their land – MCA Section 7-22-2116. A noxious weed is legally defined as 'any exotic plant species that may render land unfit for agriculture, forestry, livestock, wildlife or other beneficial uses, or that may harm native plant communities.' Most noxious weeds thrive when soil is disturbed. Some can grow from root parts, as well as seeds that become exposed. […]." Letter dated 3/20/14.

- Flathead City-County Health Department
    - Comment: "The proposed development may require further sanitation review. The property owners are requesting the zone change in order to further subdivide the property. Further subdivision of the property, creating parcels less than 20 acres, would require subdivision review through the Sanitations in Subdivisions Act and compliance with Montana Department of Environmental Quality subdivision rules and regulations as well as the Flathead County Sewage Treatment System Regulations." Letter dated 3/17/14.

- Flathead County Road & Bridge Department
    - Comment: "At this point the County Road Department does not have any comments on this request." Letter dated 3/18/14.

IV. EVALUATION OF PROPOSED AMENDMENT

A. Build Out Analysis

Once a specific zoning designation is applied in a certain area, landowners have 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 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

The proposed zoning map amendment would change the zoning designation on the subject property from 'AG-20 Agricultural.' AG-20 is defined in Section 3.06 FCZR as, '*A district to protect and preserve agricultural land for the performance of a wide range of agricultural functions. It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development.'* The following is a list of permitted uses in an 'AG-20 Agricultural' 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. Fish hatchery.
10. Home occupation.
11. Homeowners park and beaches.
12. Kennel.
13. Nursery, landscaping materials.
14. Park.
15. Produce stand.
16. Public transportation shelter station.
17. Public utility service installation.
18. Ranch employee housing.
19. Stable, riding academy, rodeo arena.

The following uses are listed as conditional uses in an 'AG-20 Agricultural' zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Airport.
2. Animal Farm
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. Communication tower/mast.
10. Community center building operated by a non-profit agency.
11. Contractor's storage yard.*
12. Dwelling, family hardship.*
13. Electrical distribution station.
14. Extractive industry.
15. Feed and seed processing and cleaning.
16. Feed lot: cattle, swine, poultry.
17. Radio and television broadcast studio.
18. Recreational facility, low-impact.
19. School, primary and secondary.
20. Temporary building or structure.*
21. Water and sewage treatment plant.
22. Water storage facility.

The bulk and dimensional requirements in the AG-20 zoning requires a setback for the principal structure from boundary lines of 20 feet from the front, rear, side and side-corner. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet from the rear and side. Additionally there are provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. 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.

The maximum allowable building height is 35 feet for all structures (agricultural buildings are exempt) and the permitted lot coverage is 20%. The subject property is approximately 19.386 acres and a minimum lot area of 20 acres is allowed under the current AG-20 zoning. The property cannot be subdivided further under the current zoning.

ii. Proposed Zoning

As previously stated, the applicant is proposing 'SAG-5 Suburban Agricultural' zoning. SAG-5 is defined in Section 3.08.010 FCZR as, '*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 following is a list of permitted uses in an SAG-5 zone:

1. Agricultural/horticultural/silvicultural use.
2. Class A and Class B manufactured home.
3. Cluster housing.
4. Day care home.
5. Dwelling, single-family.
6. Guest house.

7. Home occupation.
8. Homeowners park and beaches.
9. Nursery, landscaping materials.
10. Park and publicly owned recreational facility.
11. Produce stand.
12. Public transportation shelter station.
13. Public utility service installation.

The following uses are listed as conditional uses in an SAG-5 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. Cellular tower.
8. Cemetery, mausoleum, columbarium, crematorium.
9. Church and other place of worship.
10. Community center building operated by a non-profit agency.
11. Community residential facility.**
12. Contractor's storage yard.*
13. Dwelling, family hardship.*
14. Electrical distribution station.
15. Extractive industry.
16. Golf course.
17. Golf driving range.
18. Kennel, commercial.*
19. Manufactured home park.
20. Recreational facility, high-impact.
21. Recreational facility, low-impact.
22. Recreational Vehicle Park
23. School, primary and secondary.
24. Stable, riding academy, rodeo arena.
25. Temporary building or structure.*
26. Water and sewage treatment plant.
27. Water storage facility.

The bulk and dimensional standards under SAG-5 zoning requires a setback from the boundary line of 20 feet for the front, rear, side and side-corner yards for the principal structure. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner yards and 5 feet from the rear and side yards. The zoning designation also allows for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. 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.

The proposed SAG-5 zoning has a minimum lot area of 5 acres. The maximum allowable building height is 35 feet for all structures and the permitted lot coverage is 25%. The subject property totals 19.386 acres therefore under the proposed SAG-5 zoning 2 additional lots could be created.

In summary, the bulk and dimensional requirements are similar in AG-20 and SAG-5 with the exception of minimum lot size and permitted lot coverage. The requested zone change from AG-20 to SAG-5 has the potential to increase density, by allowing two additional lots through subsequent divisions. The SAG-5 zone allows for a variety of different uses from what is currently allowed under the existing AG-20.

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 (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 'Agricultural.' The proposed Suburban Agricultural zoning classification would appear to contrast with the current 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, rather than maps in the document.

Following is a consideration of goals and policies which appear to be applicable to the proposed zone change, to determine if the proposal complies with the Growth Policy:

- ***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.*

- ***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.*
    - The SAG-5 designation allows for agriculture and allow a flexibility of private land use.

- ***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.*
    - Five acre lots would not require public water and sewer and Birch Grove Road is a County collector capable of handling increased traffic. Additionally, negative responses from service providers have been provided.

- ***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.*
    - The SAG-5 designation allows for agriculture and forestry and provides the land owner with more flexibility when it comes to a minimum lot area.

- ***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 SAG-5 designation would allow for densities of 1 dwelling units per 5 acres and would not require public water, sewer and storm water services.

- ***G.31** – Growth that does not place unreasonable burden on the school district to provide quality education.*
    - No comments were received from the Flathead High School District and Kalispell School District therefore it appears the proposal would not adversely impact area school districts.

- ***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 in Section B.ii.1 and B.ii.2 below.

Finding #2: The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request, even though the 'Agriculture' land use designation identified by the Designated Land Use Map does not appear to be compatible with the proposed zoning, the map only portrays zoning which was

established at the time the map was created and is not a future land use map, public water and sewer service are not required and Birch Grove Road is a County collector capable of accommodating increased traffic associated with the proposal.

ii. Whether the proposed map amendment is designed to:

1. Secure safety from fire and other dangers;

The subject property is located within the Evergreen Fire District and the nearest fire and emergency response center is located approximately 1.0 mile east of the property on Birch Grove Road. The applicant states, "According to Ben Covington, with Evergreen Fire Rescue the proposed zone change will not impact the district. Response times are approximately 7 minutes and Evergreen Fire Rescue has unmanned substation on Birch Grove." The Evergreen Fire Department would respond in the event of a fire or medical emergency.

The subject property is not located within County Wide Priority Area or the Wildland Urban Interface and the property is primarily an open field with trees located on the front of the property and near the structures. Therefore, the proposed map amendment would appear to secure safety from fire.

The property is located on Birch Grove Road a paved two lane County road within a 60 foot easement and classified as a collector. Birch Grove Road appears adequate to provide ingress and egress for emergency services.

The subject property is located on FEMA FIRM Panel on 30029C1420G and is designated as Zone X, areas determined to be outside the 0.2% annual chance floodplain.

Finding #3: The proposed map amendment would secure safety from fire and other dangers because the property is located one mile from the nearest fire station, not located in a WUI and mapped as Zone X an area determined to be outside the 0.2% annual chance floodplain.

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

The subject property is located within the Evergreen Fire District and the nearest fire and emergency response center is located approximately 1.0 mile east of the property on Birch Grove Road. The Evergreen Fire Department would respond in the event of a fire or medical emergency and the Flathead County Sheriff's Department provides police services to the subject property. The application states, "The property fronts on Birch Grove Road which is paved County Collector that links Highway 2 on the east side to Whitefish Stage on the west. Birch Grove provides convenient and safe access to the property." Birch Grove Road appears adequate to provide ingress and egress for emergency services which would help to ensure adequate public health and safety.

The SAG-5 zoning classification would allow for uses dissimilar to what is allowed within the current AG-20. Within the AG-20 zone 'Dairy products processing, bottling, and distribution,' 'Fish hatchery,' and 'Ranch employee housing' are permitted uses but not allowed in SAG-5. Three uses are permitted in AG-20 that are allowed with a Conditional Use Permit (CUP) in SAG-5, they include:

- 'Cellular tower,'
- 'Kennel,' and
- 'Stable, riding academy, rodeo arena.'

There are five uses allowed in the AG-20 with a CUP that are not allowed in the SAG-5, these are:

- 'Animal farm,'
- 'Communication tower/mast,'
- 'Feed and seed processing and cleaning,'
- 'Feed lot: cattle, swine, poultry,' and
- 'Radio and television broadcast studio.'

There are seven uses allowed in the SAG-5 with a CUP that are not allowed in the AG-20 they include:

- 'Aircraft hangars when in association with properties within or adjoining an airport/landing field,'
- 'Community residential facility,'
- 'Golf course,'
- 'Golf driving range,'
- 'Manufactured home park,'
- 'Recreational facility, high impact,' and
- 'Recreational vehicle park.'

The proposed SAG-5 zone has similar uses to what is allowed within in the neighboring SAG-10. All of the permitted uses within the SAG-5 are permitted in the neighboring SAG-10. Most of the uses allowed with a conditional use permit in SAG-5, but not allowed in the AG-20, are also allowed with a conditional use permit in the SAG-10 except 'Recreational facility, high impact' and 'Recreational vehicle park.' 'Recreational facility, high impact' and 'Recreational vehicle park' would both require a conditional use permit within the SAG-5 zone. Given the properties location along a County collector and that further review would be required both uses seem appropriate.

Finding #4: The proposal would not have a negative impact on public health, public safety and general welfare because the property is served by the Flathead County Sheriff and the Evergreen Fire Department which is located 1.0 mile from the subject property, future development would be similar to uses already in the area and the SAG-5 zone would allow for similar uses to the neighboring SAG-10 zone.

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

It is anticipated that actual future development would include subdivision review, at which time specific impacts to transportation, water and sewer services, would be considered and mitigated as determined to be appropriate. However, family transfers would be exempt from subdivision review. This zone change request is also an opportunity to assess if the property and public infrastructure could handle impacts associated with the proposed zone change.

Access to the subject property is currently via Birch Grove Road which is a paved two lane County collector located within a 60 foot easement. Recent traffic counts by the Flathead County Road and Bridge Department, from July 2012, indicate 966 average daily trips (ADT) on Birch Grove Road west of Trumble Creek Road. The property could be split into two additional lots, likely generating two single family homes. Using standard trip generation of 10 ADT per single family dwelling, the proposed zone change has the potential to generate an additional 20 ADT. The proposed zone change could contribute to an increase of 2.0% ADT on Birch Grove Road.

Comments received from the Flathead County Road and Bridge Department stated, "At this point the County Road Department does not have any comments on this request." It is anticipated that because traffic would only increase by 2.0% on Birch Grove Road and the Road and Bridge Department has no comment, the proposal would still facilitate the adequate provision of transportation.

The subject property is currently serviced by individual sewer and water systems and future development will also utilize individual water and sewer systems. The application states, "There is an existing house with a drainfield on the property. The septic system application (approved 10/26/95 Permit #95-1633N) for the house. Ground water was 66 inches. Water wells are good in this area." 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, "The proposed development may require further sanitation review. The property owners are requesting the zone change in order to further subdivide the property. Further subdivision of the property, creating parcels less than 20 acres, would require subdivision review through the Sanitations in Subdivisions Act and compliance with Montana Department of Environmental Quality subdivision rules and regulations as well as the Flathead County Sewage Treatment System Regulations." Further subdivision of the property into parcels less than 20 acres would require Sanitations in Subdivisions Act review regardless of whether it is reviewed under the Montana Subdivision and Platting Act.

The subject property is located within the Kalispell School District and Flathead High School District. Kalispell Elementary Schools have seen a increase of 22% in student enrollment over the last ten years and a increase of 2% between 2012 and 2013. Flathead High School has seen an increase of 13% in student enrollment over the last ten years and a decline of 2% between 2012 and 2013. No comments were received from the Kalispell School

District or the Flathead High School District. It is anticipated that the school would have capacity should any growth occur as a result of the proposed zoning map amendment, as only two additional lots could be created and no comments were received from the school districts.

The zoning map amendment would change the current 20-acre minimum lot size to a smaller 5-acre minimum lot size, it is anticipated subsequent future development would require review and parkland would not be required at that time because the lots created would be greater than five gross acres in size. There are numerous parks, natural areas, and recreational opportunities within a short drive and the property is not likely to effect the adequate provision of parkland.

Finding #5: The proposed zoning map amendment would facilitate the adequate provision of transportation because the existing infrastructure appears adequate to accommodate the proposed zone change, Birch Grove Road is a two lane County collector with low traffic volumes capable of accommodating impacts of the proposed zoning map amendment and the County Road Department had no comments regarding this proposal.

Finding #6: The proposal appears to not hinder the adequate provision of water, sewer, schools and parks because the applicant will utilize individual septic systems and wells which will require future review from the Montana Department of Environmental Quality and the Flathead City-County Health Department, the proposal may generate school children which would likely not impact schools, no comments were received from the school districts 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;

The proposed zoning map amendment has the potential to increase development density on the subject property. The bulk and dimensional requirements for the proposed AG-20 zone are the similar to the bulk and dimensional requirements for SAG-5 with the exceptions being minimum lot size and permitted lot coverage. The SAG-5 zoning allows for four times the density of the existing AG-20 zoning and the lot coverage for SAG-5 is 25% versus 20% for AG-20.

Any new structures on additional lots created as a result of this proposed zone change would be required to meet the setbacks, maximum height, permitted lot coverage and minimum lot area requirements of the SAG-5 classification. The proposed SAG-5 zoning sets a maximum building height of 35 feet for all structures, the permitted lot coverage is 20% and the minimum lot area is 5 acres. The setback requirements in the proposed SAG-5 require a minimum of 20 feet for the front, rear, side and side-corner yards for principal structures and 20 feet for the front and side-corner yards and 5 feet for the side and rear yards for accessory structures. These bulk and dimensional requirements

within the SAG-5 designation have been established to ensure a reasonable provision of light and air.

Finding #7: The proposed zone change would provide the reasonable provision of light and air to the subject property because future development would be required to meet all bulk and dimensional requirements within the proposed SAG-5 designation including; setbacks, maximum height and permitted lot coverage requirements, and 5 acre lots will not restrict the adequate provision of light and air.

2. **The effect on motorized and non-motorized transportation systems;**
Access to the subject property is currently via Birch Grove Road which is a paved two lane County collector located within a 60 foot easement. Recent traffic counts by the Flathead County Road and Bridge Department, from July 2012, indicate 966 average daily trips (ADT) on Birch Grove Road west of Trumble Creek Road. The property could be split into two additional lots, likely generating two single family homes. Using standard trip generation of 10 ADT per single family dwelling, the proposed zone change has the potential to generate an additional 20 ADT. The proposed zone change could contribute to an increase of 2.0% ADT on Birch Grove Road. Comments received from the Flathead County Road and Bridge Department stated, "At this point the County Road Department does not have any comments on this request." It is anticipated that because traffic would only increase by 2.0% on Birch Grove Road and the Road and Bridge Department has no comment, the effects on motorized transportation would be minimal.

Currently, there are no existing bike/pedestrian facilities located along Birch Grove Road adjacent to the subject property, potential future development may result in the placement of a bike/pedestrian trail along the Birch Grove Road as it is identified in the Flathead County Trails Plan as part of a proposed connector. There appears to be adequate space for a future bicycle and pedestrian trail on the subject property, if it was deemed appropriate in the future.

Finding #8: It is anticipated that the proposed zoning map amendment would have minimal effect on the motorized and non-motorized transportation systems because Birch Grove Road is a County collector capable of handling the potential 2.0% increase in traffic, the Road and Bridge Department has no comment regarding the proposal and adequate space appears available for a future proposed bike/pedestrian facility along Birch Grove Road, if it was deemed appropriate in the future.

3. **Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);**
The location of the proposed zoning map amendment is not directly adjacent to any city. The nearest municipality is the City of Kalispell which is located approximately 2.3 miles southwest of the subject property. The downtown core of the City of Kalispell is located approximately 6.4 miles away, to the

south. The Kalispell Growth Policy Future Land Use Map, adopted by the City of Kalispell in 2009, extends to the south side of Birch Grove Road (see Figure 6 on page 21). The subject property is located on the north side of Birch Grove Road and therefore not included in the future land use map.

Finding #9: The proposed zoning map amendment would not affect urban growth in the vicinity of Kalispell because the map amendment is located outside the area of influence of the City of Kalispell.

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

The character of the area surrounding the property is rural residential and agricultural. Glacier Park International Airport is located a tenth of a mile from the property boundary. An agency referral was sent to Glacier Park International Airport, but no comment has been received to date. The application states, "The property to the south is farm and pasture with zoning of SAG-10 and tracts of 2 to 40 acres in size. The property to the north is farmed with zoning of AG-20 and tracts 1 to 20 acres in size. The properties to the west are farmed and zoned AG-80 with tracts of 20 to 40 acres in size."

Lots surrounding the subject property vary in size from 0.2 acres for the smallest lot to 145.6 acres for the largest and the average lot size is 13.3 acres. To the northwest properties range in size 2.7 acres to 71.9 acres, with the average lot size 30.6 acres. The three properties to the north average 26.5 acres. The lot to the northeast is part of the airport and 90.5 acres. Three lots to the east are 0.8 acres, 19.2 acres and 145.6 acres. The 145.6 acres lot is also part of the airport. The lots to the southeast range in size from 0.2 to 16.1 acres, with the majority of lots between 1.0 and 5.0 acres in size. Properties to the southwest and west range in size from 1.0 acres to 60.8 acres, with an average lot size of 14.9 acres. 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 5 acres. A 5 acre lot would be smaller than the average lot size in the area with the exception of the lots to the southeast.

The SAG-5 zoning classification would allow for uses dissimilar to what is allowed within the current AG-20. Within the AG-20 zone 'Dairy products processing, bottling, and distribution,' 'Fish hatchery,' and 'Ranch employee housing' are permitted uses but not allowed in SAG-5. Three uses are permitted in AG-20 that are allowed with a Conditional Use Permit (CUP) in SAG-5, they include:

- 'Cellular tower,'
- 'Kennel,' and
- 'Stable, riding academy, rodeo arena.'

There are five uses allowed in the AG-20 with a CUP that are not allowed in the SAG-5, these are:

- 'Animal farm,'
- 'Communication tower/mast,'

- ‘Feed and seed processing and cleaning,’
- ‘Feed lot: cattle, swine, poultry,’ and
- ‘Radio and television broadcast studio.’

There are seven uses allowed in the SAG-5 with a CUP that are not allowed in the AG-20 they include:

- ‘Aircraft hangars when in association with properties within or adjoining an airport/landing field,’
- ‘Community residential facility,’
- ‘Golf course,’
- ‘Golf driving range,’
- ‘Manufactured home park,’
- ‘Recreational facility, high impact,’ and
- ‘Recreational vehicle park.’

The proposed SAG-5 zone has similar uses to what is allowed within in the neighboring SAG-10. All of the uses permitted within the SAG-5 are permitted in the neighboring SAG-10. Most of the uses allowed with a conditional use permit in SAG-5 but not allowed in the AG-20, are also allowed with a conditional use permit in the SAG-10 except ‘Recreational facility, high impact’ and ‘Recreational vehicle park.’ A ‘Recreational facility, high impact’ and ‘Recreational vehicle park’ would both require a conditional use permit within the SAG-5 zone. Given the properties location along a County collector and that further review would be required both uses could be appropriate.

Finding #10: The character of the district appears suitable for the proposed zoning map amendment because the uses permitted and conditionally permitted within the proposed SAG-5 zoning are similar to what is currently allowed and existing in the neighboring SAG-10 zoning.

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

According to the applicant, “The permitted and conditionally permitted uses of the proposed Zoning designation of SAG-5 are almost identical to that of the existing AG-20 zoning classification. The primary difference between the two zoning designations is the density where the proposed zoning designation has a minimum lot size of 5 acres per lot and the existing zoning designation has a minimum lot size of 20 acres per lot.” That does not appear to be true as the SAG-5 zoning classification would allow for several dissimilar uses than what is allowed within the current AG-20, as previously stated.

The definition of SAG-5 states, ‘*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 property is not adjacent to an urban area but would still allow for agricultural uses similar to what already exists in the area.

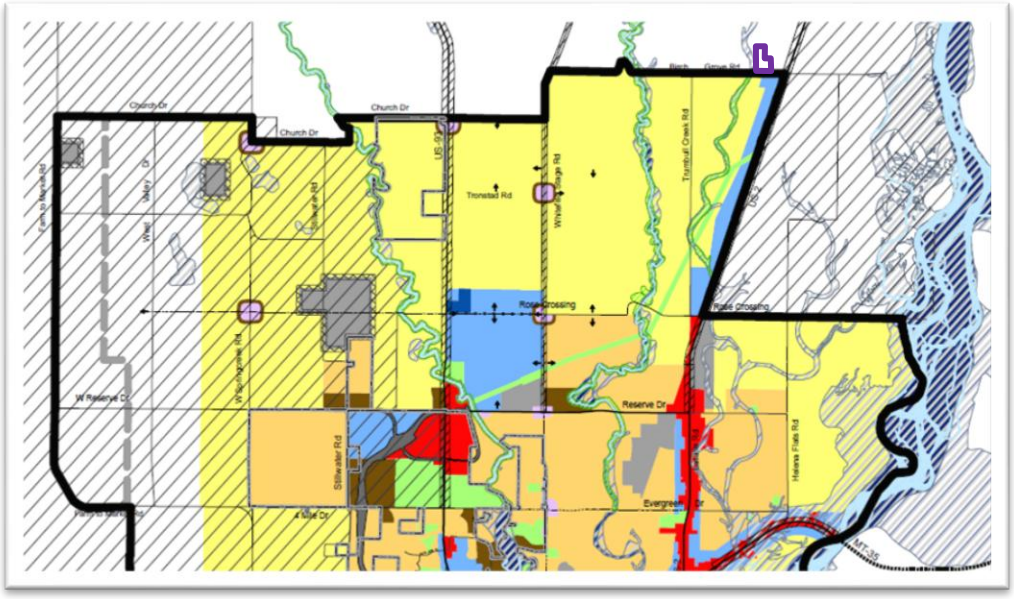
The adjacent properties are generally open fields with a few of the neighboring properties developed with single family residence and an airport. Tracts to the east by the airport are un-zoned, the un-zoned lands could have many land uses including uses not permitted within the SAG-5 designation. The proposed SAG-5 zone has similar uses to what is allowed within in the neighboring SAG-10. All of the uses permitted within the SAG-5 are permitted in the neighboring SAG-10. Most of the uses allowed with a conditional use permit in SAG-5 but not allowed in the AG-20, are also allowed with a conditional use permit in the SAG-10 except 'Recreational facility, high impact' and 'Recreational vehicle park.' A 'Recreational facility, high impact' and 'Recreational vehicle park' would both require a conditional use permit within the SAG-5 zone. Given the properties location along a County collector and that further review would be required both uses could be appropriate. Allowing the requested zoning amendment on the subject property appears to conserve the value of buildings and encourage the most appropriate use of the land throughout the jurisdictional area.

Finding #11: This zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land because SAG-5 would allow for uses similar to what is permitted and what exists in the neighboring SAG-10.

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

The location of the proposed zoning map amendment is not directly adjacent to any city. The nearest municipality is the City of Kalispell which is located approximately 2.3 miles southwest of the subject property and the downtown core is located approximately 6.4 miles away, to the south. The Kalispell Growth Policy Future Land Use Map, adopted by the City of Kalispell in 2009, extends to the south side of Birch Grove Road (see Figure 6 below). The subject property is located on the north side of Birch Grove Road and therefore not included in the future land use map.

Figure 6: Northern portion of City of Kalispell Growth Policy Future Land Use Map (Property outlined in purple)



Finding #12: Consideration has been given to the City of Kalispell's Growth Policy and zoning ordinance, however the subject property is outside the city limits and outside the plan area it is not possible for the proposed zoning map amendment to be compatible with zoning ordinance of Kalispell because no documents exist that would provide guidance on compatibility.

V. SUMMARY OF FINDINGS

1. The proposed zoning map amendment from AG-20 to SAG-5 does not appear to constitute spot zoning because the proposed zone change would allow for similar uses to what is currently permitted and exist in the adjacent SAG-10.

2. The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request, even though the 'Agriculture' land use designation identified by the Designated Land Use Map does not appear to be compatible with the proposed zoning, the map only portrays zoning which was established at the time the map was created and is not a future land use map, public water and sewer service are not required and Birch Grove Road is a County collector capable of accommodating increased traffic associated with the proposal.

3. The proposed map amendment would secure safety from fire and other dangers because the property is located one mile from the nearest fire station, not located in a WUI and mapped as Zone X an area determined to be outside the 0.2% annual chance floodplain.

4. The proposal would not have a negative impact on public health, public safety and general welfare because the property is served by the Flathead County Sheriff and the Evergreen Fire Department which is located 1.0 mile from the subject property, future development would be similar to uses already in the area and the SAG-5 zone would allow for similar uses to the neighboring SAG-10 zone.

5. The proposed zoning map amendment would facilitate the adequate provision of transportation because the existing infrastructure appears adequate to accommodate the

proposed zone change, Birch Grove Road is a two lane County collector with low traffic volumes capable of accommodating impacts of the proposed zoning map amendment and the County Road Department had no comments regarding this proposal.

6. The proposal appears to not hinder the adequate provision of water, sewer, schools and parks because the applicant will utilize individual septic systems and wells which will require future review from the Montana Department of Environmental Quality and the Flathead City-County Health Department, the proposal may generate school children which would likely not impact schools, no comments were received from the school districts and there are numerous parks, natural areas, and recreational opportunities in the vicinity.
7. The proposed zone change would provide the reasonable provision of light and air to the subject property because future development would be required to meet all bulk and dimensional requirements within the proposed SAG-5 designation including; setbacks, maximum height and permitted lot coverage requirements, and 5 acre lots will not restrict the adequate provision of light and air.
8. It is anticipated that the proposed zoning map amendment would have minimal effect on the motorized and non-motorized transportation systems because Birch Grove Road is a County collector capable of handling the potential 2.0% increase in traffic, the Road and Bridge Department has no comment regarding the proposal and adequate space appears available for a future proposed bike/pedestrian facility along Birch Grove Road, if it was deemed appropriate in the future.
9. The proposed zoning map amendment would not affect urban growth in the vicinity of Kalispell because the map amendment is located outside the area of influence of the City of Kalispell.
10. The character of the district appears suitable for the proposed zoning map amendment because the uses permitted and conditionally permitted within the proposed SAG-5 zoning are similar to what is currently allowed and existing in the neighboring SAG-10 zoning.
11. This zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land because SAG-5 would allow for uses similar to what is permitted and what exists in the neighboring SAG-10.
12. Consideration has been given to the City of Kalispell's Growth Policy and zoning ordinance, however the subject property is outside the city limits and outside the plan area it is not possible for the proposed zoning map amendment to be compatible with zoning ordinance of Kalispell because no documents exist that would provide guidance on compatibility.

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 most 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: EKM