

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
TEXT AMENDMENT TO THE FLATHEAD COUNTY ZONING REGULATIONS
STAFF REPORT FTZA 09-03
September 28, 2009

A report to the Flathead County Planning Board (Board) regarding Text Amendments to the Flathead County Zoning Regulations (Regulations). The purpose of these text amendments is to create a Large – Tract – Rural Zoning Use District (L-T-R) to include within the Regulations. Additional Text Amendments to the Regulations are proposed to reference and cross reference the L-T-R should it be approved and adopted as a Zoning Use District. A new definition is proposed to correspond with language in the L-T-R. Documents pertaining to these Text Amendments have been and are available for public review from 8:00 AM to 5:00 PM, Monday through Friday in the Flathead County Planning and Zoning Office, 1035 First Avenue West, Kalispell, MT 59901.

The Board will conduct a public hearing on October 21, 2009 regarding the L-T-R and related Text Amendments as required in the Section 2.08.020 of the regulations. The public hearing will be held in the Earl Bennett Health District Building Conference Room, 1035 First Avenue West, Kalispell, MT 59901. A recommendation from the Board will be forwarded to the Flathead County Commission who will hold a second public hearing before deciding whether to adopt the Text Amendments. This public hearing has not been scheduled.

REPORT UPDATES:

A. Planning Board Update: (Reserved for summary of Board public hearing and recommendation).

B. Commission Update: (Reserved for summary of Commission public hearing and action).

PROPOSED AMENDMENTS:

The primary text amendment would create a new use district classification to the Regulations. Specifically, a new zoning district classification, named Large-Tract-Rural (L-T-R), would be incorporated into the zoning regulations as Section 3.44. The new use district is intended to protect continued traditional natural resource based uses in rural locations, maintain public access for outdoor recreational uses while providing development flexibility for landowners in remote rural areas. It is recognized that these traditional resource uses generate noise, dust and heavy truck operation as part of the normal operations. As more intensive development occurs throughout the county traditional resource based uses (e.g. timber, agriculture, mineral resource activities, etc.) can become threatened due to nuisance and other implications of after-the-fact growth and development.

The base density unit in the L-T-R is one single family residence per 40 acres. This is the starting point; base density can be increased by good site location selection and site design. Density can also be increased by relocation development for anywhere within the L-T-R into a project site. Actual lot areas are dependent on meeting an average base density; that is lots can vary in size and area per the design. The development cap for a single family subdivision is an average of

one single family residential unit per 2.5 acres. The cap for an overall development plan (ODP) is one single family equivalent density per 1 acre. Landowners would have flexibility to develop single family residential subdivisions or develop planned communities by opting for ODPs.

Cross references to other Sections of the Regulations are required if the primary Text Amendment is approved. These include the following text amendments to:

- Section 2.06.045 to include L-T-R as an Administrative Conditional Use;
- Section 2.07.040(7) to include L-T-R for side yard setbacks;
- Section 3.01.020 to include L-T-R as a use district with a minimum base lot size of 40 acres;
- Section 3.03.020(3) to allow one primary use in L-T-R;
- Section 3.03.020(9) to include L-T-R as a non-residential zone for gravel extraction operations;
- Section 4.03.030 to include L-T-R for a camp or retreat center;
- Section 4.04.010 to include L-T-R for a caretaker's facility;
- Section 5.01.020(1) to include L-T-R for permitted accessory uses;
- Section 5.04.050 to include L-T-R for fencing;
- Section 5.06.020(2) to include L-T-R for home occupations;
- Section 5.11.040(1) to include L-T-R for signs;
- Section 5.13.100 to include L-T-R for cellular towers;
- Section 7.12.030 to exclude L-T-R from net lot easement computations.

A new definition is proposed which would add as Section 7.13.075:

“Mineral Extraction – Low impact: Low impact mineral extraction and rock picking includes weekday site mining operations that result in removal of less than 10,000 cubic yards of material. No more than 10 acres of active mining area is permitted at any given time (reclaimed areas excluded). Operational hours shall be confined to Monday through Friday 7:00 A.M. to 7:00 P.M. No on-site asphalt batching or concrete plant is permitted without a Conditional Use Permit.”

No new physical zoning districts will be created as result of these text amendments.

BACKGROUND INFORMATION:

A. Petitioner: Flathead County Planning and Zoning Office

B. Technical Assistance: Flathead County Planning Board, Regulatory Committee

C. General Character and Reason for Amendments:

The primary intent of this zoning district is to protect traditional natural resource based uses in rural areas of the County. The district also provides for public access for outdoor recreational uses (hunting, fishing, hiking, etc).

This district establishes these primary uses while providing landowners flexibility to develop their lands in ways that would not detract from the existing natural resource uses or place them at risk. The district establishes an average base residential density of one

single family residential unit per 40 acres. Landowners can create subdivision lots of any size as long as the average base density is met or develop planned communities as part of an ODP.

D. Sections Being Amended:

The primary text amendment would create the L-T-R Zoning use district as a new Section 3.44 in the regulations. If approved there would need to be references and cross references to other provisions of the Regulations, including:

- Section 2.06.045 to include L-T-R as an Administrative Conditional Use;
- Section 2.07.040(7) to include L-T-R for side yard setbacks;
- Section 3.01.020 to include L-T-R as a use district with a minimum base lot size of 40 acres;
- Section 3.03.020(3) to allow one primary use in L-T-R;
- Section 3.03.020(9) to include L-T-R as a non-residential zone for gravel extraction operations;
- Section 4.03.030 to include L-T-R for a camp or retreat center;
- Section 4.04.010 to include L-T-R for a caretaker’s facility;
- Section 5.01.020(1) to include L-T-R for permitted accessory uses;
- Section 5.04.050 to include L-T-R for fencing;
- Section 5.06.020(2) to include L-T-R for home occupations;
- Section 5.11.040(1) to include L-T-R for signs;
- Section 5.13.100 to include L-T-R for cellular towers;
- Section 7.12.030 to exclude L-T-R from net lot easement computations.

A new definition is proposed is proposed as Section 7.13.075:

“Mineral Extraction – Low Impact: Low impact mineral extraction and rock picking includes weekday site mining operations that result in removal of less than 10,000 cubic yards of material. No more than 10 acres of active mining area is permitted at any given time (reclaimed areas excluded). Operational hours shall be confined to Monday through Friday 7:00 A.M. to 7:00 P.M. No on-site asphalt batching or concrete plant is permitted without a Conditional Use Permit.”

Finding of Fact 1:

The primary intent of L-T-R is to establish a zoning use district available to landowners who are engaged in traditional resource based uses (i.e. timber production and harvesting, agriculture, extractive mineral activities, etc.) and desire to continue these activities.

EVALUATION BASED ON ZONING AMENDMENT CRITERIA:

Section 2.08.040 requires amendments to the Regulations to be evaluated against criteria identified in Section 2.08.040. Findings of Fact are needed based on the criteria.

This staff report evaluates the primary text amendment of creating “Section 3.44 Large-Tract-Rural Zoning District” to Text Amendment Criteria. If this district is approved, the text

amendments for reference and cross reference to other provisions are complimentary and considered housekeeping; needed to provide the continuity and appropriate connection to the Regulations as a whole. Likewise the new definition for “Mineral extraction – Low Impact” provides clarity for implementing the L-T-R Zoning District but should not create impact. In any event, if the L-T-R is not approved there is no need for the other text amendments.

1. Is the proposed zoning district designed in accordance with the master plan?

The Flathead County Growth Policy is founded on five fundamental community characteristics identified and valued by the residents of the County. These five characteristics were used to drive the development of the policy. Three of these principles (Pages 1 thru 3) provide guidance and support to the creation of the L-T-R:

- Promote a Diverse Economy – The second guiding characteristic discusses the need to establish and maintain a diverse economy geared towards seeking the “western rural lifestyle”. The proposed L-T-R’s primary intent is to protect the traditional natural resource uses and economy in rural areas of the County. These historic uses (including timber management, mineral resource extraction, etc.) have driven the economy of the County over the last 100 years. Recently, land and real estate speculation and eco-tourism resulting in area growth and development have encroached into the areas historically used for natural resource based businesses.
- Maintain the Identity of Rural Communities – The fourth guiding characteristic deals with preserving the rural lifestyle of the County. The ability to own land in a safe and quiet environment is greatly valued. This proposed zoning district sets up requirements where development would be required to provide buffers against adjacent lands. Larger scale planned communities as well as subdivisions could be developed within the district, however these developments would be expected to develop in ways to protect adjacent property owners. This would serve individuals purchasing into these developments as well as adjacent landowners.
- Properly Manage and Protect the Natural and Human Environment – Responsible management of the natural and human environment was a positive value most residents expressed during scoping meetings. Among the most important is the protection of cultural resources and heritage of the County, including the continued commercial use of timber harvesting.

The growth policy contains 50 Goals and several hundred policies. The text amendments would implement or partially implement the following Goals and Policies, although not exhaustive:

- 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. (Land Uses)

- P.2.1 Flathead County should create land use regulations that are directly linked to the vision outlined in the Growth Policy.
- 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. (Land Uses)
 - 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.3.4 Develop equitable and predictable impact-mitigation for converting rural timber and agriculture lands to residential real estate.
 - P.3.6 Identify and maintain benefits of private forest lands, including harvesting natural resources, water quality protection, wildlife habitat and traditional recreational values and ensure that conversion of private forest lands preserves as many of these benefits as is possible.
 - P.3.7 Adopt techniques that mitigate the threat to public health and safety created by various developments near the Wildland Urban Interface (WUI).
- 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 general welfare of neighbors and efficiently provide local services. (Land Uses)
 - P.8.1 Create reasonable, flexible and predictable development guidelines based on accurate, fair and reasonable criteria.
- G.9 Define, identify and list desirable characteristics of open space preservation.
 - P.9.2 Create regulatory incentives for the preservation and protection of open spaces during the development process.
 - P.9.3 Consider and develop specifications for various buffers to protect open spaces.
- G.12 Mineral resource extraction that is safe, carefully planned, environmentally sound and appropriately segregated from incompatible land uses. (Land Uses)
 - P.12.3 Create land use policies that segregate existing and future gravel extraction operations from incompatible land uses.

- P.12.5 Designate areas where mineral resource extraction is most appropriate and will have the least impact on other resources and land uses.
- G.19 To create partnerships with common interest groups and the people within our community. (Parks and Recreation)
 - P.19.4 Riparian buffers should be recognized for their recreational value and their ability to protect the quality of water along major streams and rivers in the County to enhance recreational opportunities, protect the quality of water (reduce erosion; surface runoff containing pesticides, fertilizers, etc.; stream bank depredation/defoliation; etc.) and their ability to protect the natural aesthetics of waterways.
- G.21 A healthy and vibrant Flathead County economy that provides diversity and living-wage job opportunities and is comprised of sustainable economic activities and private sector investment. (Flathead Economy)
 - P.21.2 Develop methods to enhance a sustainable agricultural and timber industry through community-based incentives.
 - P.21.6 Support the continuation of traditional and existing industries to maintain economic diversity.
- G.32 Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs. (Public Facilities and Services)
 - P.32.3 Subdivisions outside of existing rural fire districts should be annexed into the nearest district if possible.
- G. 42 Recognize and manage Flathead County’s rich heritage of hunting, fishing, timber, agricultural and mineral activities that provide economic benefits while utilizing and protecting our natural resources.
 - P.42.2 Encourage agricultural practices and uses which protect natural resources and allow for productive use.

Chapter 9 of the growth policy identifies Timberlands zoning as one implementation strategy. The L-T-R achieves the intent of a timberlands zoning district.

Finding of Fact 2:

The proposed text amendments comply with the Flathead County Growth Policy. The proposed L-T-R implements numerous goals and policies and three of the fundamental community characteristics and values identified by the residents of the County.

2. Is the requested text amendment designed to lessen congestion in the streets?

The establishment of the L-T-R should have little if no impact street congestion. Existing natural resource based uses are expected to continue into the future causing a similar amount of impact as is currently experienced. In the case of development, having a zoning district to provide land use parameters and public review should allow for traffic congestion impacts related to specific projects to be identified and adequately mitigated. These text amendments are intended to create a zoning use district to protect areas with timber and other resource based uses while providing landowners the ability to develop their lands in ways that are not in conflict with natural resource uses.

Finding of Fact 3:

While the L-T-R is not designed to lessen traffic congestion in the streets, having the zoning use district available to protect and promote natural resource based use areas should have a long term positive or at the very least a neutral impact to street congestion.

3. Does the requested text amendment give reasonable consideration to the character of the district?

These text amendments would apply to remote areas currently being used for timber production and other natural resource based uses. The text amendments recognize these uses and preserve the ability to continue these uses into the future if applied in these remote areas. The text amendments establish a zoning use district for landowners to opt into if they felt the desire to preserve and continue their resource related activities. However, it would not by itself create geographic zoning districts.

Finding of Fact 4:

These text amendments consider the character of the district in remote areas by protecting existing natural resource based activities and their continued existence. It would not create geographic zoning districts but would establish a zoning use district classification for future implementation.

4. Will the requested text amendment secure safety from fire, panic, and other dangers?

Provisions within the text amendments require wildfire fuels reduction, provides incentives for development within a rural fire district and no incentives for development outside of rural fire districts.

Finding of Fact 5:

This text amendment would help to secure development areas from fire and panic because of development requirements for wildfire fuels mitigation and providing incentives if located within a rural fire district.

5. Will the requested text amendment promote health and general welfare?

These text amendments set in place a zoning use district which could be implemented in rural areas of the County. This district would provide for compatible uses and intensities designed to protect existing natural resource based uses into the future. The uses and intensities are based on existing public service delivery including emergency response.

Finding of Fact 6:

These text amendments promote the health and general welfare because the amendments would provide land use guidance and direction in remote lands that currently have little guidance. The text amendments would establish compatible uses and intensities of uses based on public service delivery including emergency response.

6. Does the requested text amendment prevent the overcrowding of land?

The text amendments propose a base density of one single family home per 40 acres. Development density is also capped at one unit per 2.5 acres and one unit per one acre for subdivisions and overall development plans, respectively.

Finding of Fact 7:

The text amendments would prevent the overcrowding of land by establishing base development densities and density caps for subdivision and overall development plan development.

7. Does the proposed text amendment avoid the undue concentration of people?

The text amendments propose a base density of one single family home per 40 acres. Development density is also capped at one unit per 2.5 acres and one unit per one acre for subdivisions and overall development plans, respectively.

Finding of Fact 8:

The text amendment would avoid the undue concentration of people by establishing base development densities and density caps for subdivision and overall development plan development.

8. Does the text amendment provide for light and air?

The text amendment would provide for light and air by establishing base density of one single family home per 40 acres. Development density is also capped at one unit per 2.5 acres and one unit per one acre for subdivisions and overall development plans, respectively.

Finding of Fact 9:

The text amendments provide for light and air by establishing base development densities of one density unit per 40 acres and density caps for subdivision and overall development plan development.

9. Will the requested text amendment facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements?

The text amendments propose incentives to provide ample open space, encourages site development in proximity to county paved roads and in reasonable proximity to available public services including emergency response. The incentives for site design and open space are based partially with community /individual water and sewer and other public facilities.

Finding of Fact 10:

The text amendment will facilitate the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements because provisions within the proposed zoning use district directly require consideration for these requirements.

10. Does the requested text amendment give consideration to the particular suitability of the property for particular uses?

The text amendments acknowledge that in rural areas of the County the current natural resource based commercial uses, including timber production and harvesting, agriculture and mineral resource activities are primary uses and all other future uses in the district are designed to be compatible with these traditional resource uses. Remote or rural areas are usually too far for adequate public service delivery. These areas are more situated for continued timber production and other uses.

Finding of Fact 11:

These text amendments give consideration to suitability for remote areas by defining primary uses as the historic and current uses of timber harvesting, agriculture and mineral resource operations. Being logistically far away from available public services the area is best suited for these historic uses.

11. Does the requested text amendment have a view of conserving the value of property?

The text amendments provide protection and preservation of commercial natural resource based uses in rural areas of the County. There is also flexibility to transition to more intensive development uses which would not conflict the existing historic uses. The current natural resource based commercial uses, including timber production and harvesting, agriculture and mineral resource extraction are primary uses and all other future uses in the district are designed to be compatible with these traditional resource uses.

Finding of Fact 12:

The text amendment would conserve the value of property by providing protections for continued commercial natural resource based activities including timber management, agricultural uses and mineral resource operations.

12. Will the text amendment encourage the most appropriate use of land throughout the jurisdiction?

The primary use identified in the text amendments is to protect and preserve the current historic natural resource land use based activities (e.g. timber production) in remote and rural areas of the County. Public service delivery to these areas is logistically difficult and costly to provide for more intense land uses.

Finding of Fact 13:

The text amendments would encourage the most appropriate use of land by creating a zoning use district focused on preserving and protecting a landowner's right to continue commercial timber production, mineral resource extraction operations in rural and remote areas of the County.

Finding of Fact 14:

The text amendments meet the evaluation criteria required in Section 2.08.040. Creating a L-T-R zoning use district for inclusion in the Regulations would not result in any new geographic zoning districts but would create a zoning use district which could be used by landowners to preserve the ability to continue timber management and other commercial natural resource based activities in remote and rural areas of the County.

Recommendation:

Staff recommends approval of these text amendments.

