

**BLAINE COUNTY COMMISSION**  
PUBLIC HEARING on November 29, 2022 at 1:30pm

**REGARDING:**

An application by TVIV Quigley, LLC, to rezone a portion of the Mountain Overlay District.

Staff Report

Date: November 13, 2022

By: Allison Kennedy

**REQUESTED ACTION:** Public hearing and consideration of an application by TVIV Quigley, LLC, to remove a portion of mapped Mountain Overlay District (MOD) lying northwest of Quigley Road that is less than 25% slope. The property is located adjacent to the City of Hailey and within the Hailey Area of City Impact (ACI) within Sections 2, 3, 10 & 11, T2N, R18E, BM, Blaine County.

**APPLICABLE REGULATIONS:**

- Idaho Code, Title 67, Chapter 65, Local Land Use Planning Act
- Title 8, Chapter 1, Comprehensive Plan & Comprehensive Plan Land Use Map
- Title 9, Zoning Regulations, including Chapter 21 Mountain Overlay District (M), Chapter 26, Reclassification of a Zoning District (Rezone), and Chapter 31, Amendments.

**I. GENERAL BACKGROUND, NOTICE AND EXHIBITS**

1. The application was received on February 24, 2022
2. **Procedural history:** The Planning & Zoning Commission held public hearings on May 26 & June 9. A recommendation was made June 9, 2022. The signed Findings of Fact & Conclusions of Law were sent electronically to the Board on September 29, 2022 which is more than 30 days prior to the November 29, 2022 rezone hearing.
3. **NOTICE** of the November 29, 2022, hearing before the Planning & Zoning Commission was provided pursuant to § 9-26-3 and § 9-31-4(D), Blaine County Code, and Idaho Code §67-6509 and § 67-6511, as follows:

**Notice** of this public hearing was:

4. **Notice** of the November 29, 2022, public hearing was:
  - i. published in the Idaho Mountain Express on November 9, 2022;
  - ii. sent by first class mail on to all property owners within 300 feet of the external boundaries of these lots on October 25 & November 14, 2022;
  - iii. sent to all political subdivisions on November 14, 2022;
  - iv. sent to Area of City Impact September 29, 2022 & October 25, 2022
  - v. sent to public water system owners on October 17, 2022; and,
  - vi. posted on subject property on October 26, 2022 as evidenced by affidavits in file, which is more than seven days prior to the hearing.
  - vii. Published a box ad in the Idaho Mountain Express on November 16, 2022

Pursuant to I.C. 67-6512 and Zoning Ordinance regulations, the Commission shall review the above notice procedure and make a finding regarding adequacy of notice.

► **MOTION AS TO NOTICE:** Upon a motion by \_\_\_\_\_, a second by \_\_\_\_\_, and a vote of \_\_\_ to \_\_\_, the Board determines notice is in compliance with State and County code.

5. Any disclosures (i.e. conflicts of interest, site visits or *ex parte* communications)?

*Ex parte* contacts involve a decision-maker’s receipt of any information pertaining to an open application on a quasi-judicial matter. (ie: emails, phone calls, conversations) The undisclosed receipt and consideration of *ex parte* information denies interested persons their right to review and respond to this off the record information, resulting in a due process violation and more generally, an unfair process.

6. EXHIBITS attached to this report include:

**A Exhibits —Application Materials**

**A-1 Application**

**A-2 MOD Rezone Map Exhibit**

**A-3 Vicinity Map**

**A-4 Responses to Criteria**

**B Exhibits – Agency Comment**

**B-1: None requested**

**C Exhibits —Additional Information**

**C-1: Existing MOD from GIS**

**C-2: P&Z Commission Findings & Recommendation**

**D Exhibits —Public Comments**

**See Comment letters D-1 through D-72 in corresponding Subdivision Application**

**Background:** The applicant was asked by Land Use and Building Services staff to apply for a rezone to the Mountain Overlay District to better reflect the 25% slope line and associated buffer to the northwest and along Quigley Road where proposed Lots 1-6 of Quigley Ranch Subdivision are located within their subdivision application. The existing Mountain Overlay District line would require each new owner of these lots to apply for a Site Alteration Permit to build below the actual MOD line. Re-zoning this specific portion of the mapped Mountain Overlay District would make for a cleaner process for new development, should these proposed lots be approved. The applicant has identified the MOD Buffer to begin close to below the 15% slope line to make for a more conservative district line in regards to this re-mapped zone. The 15% slope line is what is used as the proposed MOD boundary. (See Exhibit A-2)

**Planning & Zoning Recommendation:**

The Planning & Zoning Commission recommended approval (5-0 vote) of the rezone on June 9, 2022 with the added recommended condition of approval:

1. The modified MOD line (Exhibit A-2) within Lot 1 of the Quigley Ranch Subdivision shall follow the *5,445' east-west contour with the purpose to omit the creation of patchwork and the pocket between the deep 15% line. This more contiguous MOD line coincides with 9-21-2 Statement of Intent and Purpose A: Any future proposals to rezone the mapped boundary of the mountain overlay district should not create a patchwork that excludes saddles, ridges, knolls, summits, or pockets or islands of flatter land between and including the applicable lowest slopes within the mapped district and the summit of the hillside.*

**II. GENERAL AMENDMENT CRITERIA**

***Idaho Code §67-6511 and Blaine County Code §9.31.4***

**A. Idaho Code §67-6511(a) and Blaine County Code §9.31.4 (A):**

*Commission shall evaluate the facts and circumstances of the proposed to determine:*

- *The nature and extent of the amendment;*
- *The reasons therefor;*
- *Whether it is in accordance with the Comprehensive Plan;*
- *The effects on potable water sources; and,*
- *The impacts of the proposal upon the delivery of services by any political subdivision providing services, including school districts, within the County.*

**►Staff comment:**

Extent: The nature and extent of the MOD rezone is to accurately reflect the 15% & 25 % slope lines to allow landowners and Blaine County to understand where disturbance may occur.

Applicant Comments: The existing MOD boundary does not currently follow the 25% slope line as was intended in its creation; therefore, there was a mistake in the original delineation of the MOD boundary. The proposed boundary roughly follows the 15% slope line.

Reasons: The reasons for the rezone application are to clean up all six proposed lots at one time to accurately reflect the on-the-ground MOD as it differs from the existing mapped MOD line.

Accordance with Comp Plan: See criteria (A) under the rezone criteria of §9-26-4, below. It appears that the proposal to rezone the land to a R-5 & R-10 zoning district without the MOD overlay is in accordance with the current Comprehensive Plan and Land Use Map.

Effects on potable water sources: See also criteria §9-26-4 (B)-9 below.

Delivery of services: Delivery of services shall remain the same with this modest shift of the MOD line to accurately reflect the actual slopes.

**B. Idaho Code §67-6511(b) and Blaine County Code §9.31.4 (B):**

*If the proposal is in conformance with the Plan and it is found that the proposal will not result in demonstrable adverse impacts upon the delivery of services, the Commission may recommend adoption of the amendment.*

► **Staff comment:** The Commission found the proposal to modify the boundaries of this portion of the MOD in accordance with the Comprehensive Plan, Chapter 5- Natural Environment: Resources, Hazard areas, and Conservation. Specifically the core values of uninterrupted scenic vistas and natural hillsides.

**C. Idaho Code §67-6511(c) and Blaine County Code §9.31.4 (C):**

*If the proposal is not in conformance with the Plan, or will result in demonstrable adverse impacts upon the delivery of services, the Commission may consider whether it is appropriate to amend the Comprehensive Plan. Notice procedures provided in Idaho Code Section 67-6509 must be adhered to in recommending an amendment to the Comprehensive Plan.*

► **Staff comment:** If the Board finds that the proposal is not in conformance with the Plan, potential amendments to the Plan may be discussed. The Commission found conformance with the Plan and that no demonstrable adverse impacts are foreseen with the proposed rezone.

<b>III. REZONE CRITERIA</b>
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**Zoning Ordinance §9-26-4**

**(A) *In acting upon an application for a Reclassification or a Reclassification with a Development Agreement, the Commission shall first determine whether the proposal is in accordance with the Comprehensive Plan Text and Map.***

► **Staff comment:** Staff recommends that this application is in accordance with the Comprehensive Plan. Following is the relevant text portion of Chapter 8, Land Use (Hailey & Bellevue Canyons Subarea): Desired Outcomes Policy Statement; H/BC-1 (Area of City Impact): *c. no hillside development.*

Chapter 5, Natural Environment, includes the following policy statements:

***Desired Outcome: Strong local regulations and policies continue to protect our natural environment.***

***Policy Statements:***

C-1: *Continue analysis of environmental assets in the land use planning and decision-making process. Enlist assistance from agencies and local experts to clarify, refine and improve the County's regulations.*

C-2: *Base land use decisions on good science, including inventory and monitoring.*

The reclassification will help determine an accurate depiction of hillside as defined in the Mountain Overlay Mapping Ordinance 2007-02, Chapter 21, Mountain Overlay District which states: *WHEREAS, Blaine County's Comprehensive Plan states that Blaine County's mountains and hillsides have the highest degree of visibility, and the scars created from the roads or buildings distract from the scenic quality. Due to these limitations, present county zoning regulations prohibit development on lands in excess of twenty five percent (25%) slope. Cut, fills, and access roads or slope areas create a visual blight that deteriorates the natural quality of the scenic view.*

It appears that the proposal is in accordance with the Comprehensive Plan as written.

**(B) *If the application is determined to be in accordance with the Comprehensive Plan Text and Map, the Commission shall then consider, at least, the following criteria:***

► **Staff comment:** The criteria below are to be considered if the proposal is determined to be in accordance with the Comp Plan. (Not all of these criteria have to be satisfied for the rezone request to be granted. The ordinance says that the Commission shall *consider* them.)

**1. *Whether there was a mistake in the original zoning.***

► **Staff comment:** There appears to be a mistake in the GIS mapped MOD and Buffer line in this area, based on actual topographic data and identified 25% and 15% slope areas. **The proposed boundary roughly follows the 15% slope line.**

**2. *Whether there has been a change in the surrounding neighborhood since the existing zoning was adopted.***

► **Staff comment:** N/A No change to date. Proposed future change with subdivision application.

**3. *Whether this or any adjoining property has been designated a "special planning area" on the Blaine County Zoning Map.***

► **Staff comment:** N/A

**4. *To what extent the public health, safety, or general welfare may be adversely affected by the Reclassification.***

► **Staff comment:** No adverse impact anticipated.

**5. Whether present zoning classifications are in conformity with existing uses of adjacent property.**

► **Staff comment:** The present zoning is MOD, R-5, R-10 and Avalanche. The existing uses of adjacent property include: Quigley Road and open space. The adjacent property is utilized as R-5 active agriculture. This rezone application coincides with a change of use from agricultural to residential. Quigley Rd. is proposed to be moved outside of the existing and proposed MOD line.

**6. Whether central water and sewer services are available.**

► **Staff comment:** N/A not relevant to the MOD rezone.

**7. Whether the relevant sections of Chapter 31 regarding a map amendment have been satisfied.**

► **Staff comment:** Amendment criteria of Chapter 31 are reviewed above. Other relevant sections of Chapter 31 include the following related to additional notice requirements:

*9-31-4 (D)(2) Additional Notice Requirements For Zoning District Amendments: Where a proposed amendment to this title includes a proposal to rezone property or change a zoning district boundary, the following additional notice of public hearing shall be provided:*

- a. Posting Of Notice: A notice sign, as provided by the administrator, shall be posted on the premises not less than one week prior to the hearing. Where possible, the posting location should be on or near the property line closest to a public thoroughfare or, if no such thoroughfare exists, on or near the property line of the nearest adjoining property not owned by the applicant, of which neither the applicant nor the government has a proprietary interest.*
- b. Mailing Of Notice: Notice of the time, date and place of the public hearing and a summary of the proposal shall be provided by mail to all property owners and purchasers of record within the land being considered; within three hundred feet (300') of the external boundaries of the land being considered; and within any additional area including a wellhead protection area that may be impacted by the proposed change as determined by the commission. When the land being considered is located in a wellhead protection area, notice shall be provided to all affected potable water source owners.*

These additional notice requirements are met as follows: See above notice dates under I. General Background, Notice, and Exhibits.

**8. Whether a development agreement that includes more strict regulations than those applicable to the proposed zoning district generally should be required as a condition of rezoning the subject parcel. See §9-26-8 for the additional requirements that apply to a Reclassification with a Development Agreement.**

► **Staff comment:** A development agreement is not proposed.

**9. When the rezone is located within a wellhead protection area, it may only be granted if best management practices will be taken to mitigate the risk of contamination of public water systems and potable water sources.**

► **Staff comment:** N/A The subject property is not within a wellhead protection area.

**10. Additional criteria for proposed light industrial rezones...**

► **Staff comment:** N/A. Not in light industrial.

**11. Mountain Overlay District (MOD) Rezones: Boundary modifications are of a topographic nature and therefore may impact more than one parcel or an area greater than identified in the current application. In addition to considering the general rezone standards set forth above in this section, before approving any rezone application for the mountain overlay district (including any land in the SC1), with or without a development agreement and after a site visit and a review of all pertinent materials, the board shall find that each of the following required standards are met:**

**a. The rezone is in accordance with the intent and purposes of the MOD regulations described in chapter 21 of this title; and**

► **Staff Comment:** The purpose section states: “The mapping of the mountain overlay district provides landowners with a more certain basis for determining the location of lands within the district and affords more certainty than the definitional approach used previously within this code. Any future proposals to rezone the mapped boundary of the mountain overlay district should not create a patchwork that excludes saddles, ridges, knolls, summits, or pockets or islands of flatter land between and including the applicable lowest slopes within the mapped district and the summit of the hillside. “

The application meets and exceeds this standard; however the proposed MOD line within proposed Lot 1 of the Quigley Ranch Subdivision needs to be modified to omit the creation of patchwork and should omit the pocket between the deep 15% line and create a more linear line within the beginning of proposed Lot 1 boundary to ~150’ within the lot with the purpose to connect that line to meet the intent of the MOD as described within this purpose statement. Added as recommended Condition Number 1.

b. *The rezone consists of one of the following:*

(1) *All land of less than twenty five percent (25%) slope contiguous to land outside of MOD where the MOD boundary was created by slopes falling within the floodplain overlay or riparian setback district, or the bank of a river or stream named in the national hydrography data set attached as exhibit AA, dated July 8, 2010, to the ordinance codified herein, or*

(2) *All land of less than twenty five percent (25%) slope contiguous to land outside of MOD where the MOD boundary was exclusively created by the isolated artificial slopes falling within the right of way or thirty feet (30') from the centerline of a manmade road cut; or*

(3) *All land of less than twenty five percent (25%) slope contiguous to land outside of MOD, within a discrete drainage, traversed by a dedicated, paved and accepted county road or a road designated as eligible for improvement under a county approved master plan.*

► **Staff comment:** All lands below 25 & 15% slope to be included within a rezoned MOD and MOD Buffer. The rezone is adjacent to the existing Quigley Rd., a County road.

**12. If the applicant or landowner with respect to an application for a rezone under this chapter is the state of Idaho, or any agency, board, department, institution, or district thereof. . .**

► **Staff comment:** N/A. The landowners are private.

#### IV. DECISION OPTIONS AND POSSIBLE CONDITIONS:

► **SUGGESTED MOTION:** I move to find the proposed rezone application by TVIV Quigley, LLC, is / is not in accordance with the Comprehensive Plan, and will / will not negatively impact potable water or the delivery of services, and I recommend approval as proposed / approval with modifications / denial of the proposed rezone, subject to the following conditions.

Recommended condition of approval:

1. The modified MOD line (Exhibit A-2) within Lot 1 of the Quigley Ranch Subdivision shall follow the **5,445' east-west contour with the purpose** to omit the creation of patchwork and the pocket between the deep 15% line. This more contiguous MOD line coincides with 9-21-2 Statement of Intent and Purpose A: ***Any future proposals to rezone the mapped boundary of the mountain overlay district should not create a patchwork that excludes saddles, ridges, knolls, summits, or pockets or islands of flatter land between and including the applicable lowest slopes within the mapped district and the summit of the hillside.***