



Staff Report

To: Planning Commission
From: Aaron Qualls, Kootenai Contract Planner, aaron.qualls@scjalliance.com / 509.886.3265, ext. 325
Report: April 18, 2022
Meeting: April 28, 2022
Item: Zoning Amendments for Protection of the Rathdrum Prairie Aquifer – Workshop

General Information

Purpose:	<ol style="list-style-type: none"> 1. To consider additional restrictions within the Rathdrum Prairie Aquifer relating to density and waste disposal. 2. Evaluate proposed amendments under consideration for accordance with the Comprehensive Plan 3. Direct staff on next steps and/or materials preparation
Affected Areas:	Existing zones within the aquifer boundaries for which further density restrictions (less than a 5-acre minimum) would apply, include: <i>Ag-Suburban, Restricted Residential and High Density Residential</i> . All areas within the 1977 USGS Aquifer boundary would be subjected to additional waste disposal restrictions.
Comprehensive Plan Accordance:	Please see attached Comprehensive Plan analysis
Included in Staff Report:	<ol style="list-style-type: none"> 1. Background 2. Proposed Zoning Amendments 3. Planning Commission Next Steps
Attached:	<ol style="list-style-type: none"> 1. Kootenai County Comprehensive Plan Analysis 2. Rathdrum Prairie Aquifer Boundary Brief from DEQ 3. Emergency Ordinance No. 574

1. Background

As the primary source of water for more than half a million people in the region, the Rathdrum Prairie Aquifer is one of the most important resources in the County. Covering approximately 200 square miles in Idaho, it is part of the larger Spokane Valley-Rathdrum Prairie aquifer. The Rathdrum Prairie Aquifer is designated as a sole source aquifer by the U.S. Environmental Protection Agency, and it is the only aquifer within the State of Idaho classified as a *sensitive resource aquifer* (IDAPA 58.01.11.300.01.a) and therefore the highest level of protection is warranted (IDAPA 58.01.11.150.02).

This zoning amendment effort is intended to provide for long term protection of the Rathdrum Prairie Aquifer through density restrictions and by providing authority for County enforcement of standards pertaining to health, safety, private property protection and water quality. The proposed changes leverage the recently adopted emergency ordinance as a starting point for consideration.

Located primarily within Kootenai County (See Figure 1), the aquifer is under threat by current growth and development pressures. As of a 2010 study which assumes an annual average growth rate of 2.3%, population within the aquifer is projected to grow to 400,000 by the year 2060.¹ An increase of development to house and serve additional population typically brings impacts to aquifer water quality. New residential development, for example, may result in an increase in septic systems, fertilizer use, and stormwater quantities which are all known major causes of increased nitrate levels which, in turn, may have negative health impacts over the long term². According to a 2015 Trend Analysis conducted by the Idaho Department of Environmental Quality, several sampled wells indicate an increasing trend of human-caused constituents that pose a significant threat to drinking water standards³. By recent adoption on March 23, 2022 of a 182 day emergency ordinance, the Board of County Commissioners have determined that extensive use of *subsurface wastewater disposal* on parcels located over the Rathdrum Prairie Aquifer presents a threat to the public health by contamination. **The emergency ordinance expires at the end of day on September 25, 2022.**

Future urbanization of unincorporated areas within the boundaries of the aquifer is of principal concern to maintaining and/or improving water quality for the County and the broader region. Panhandle Health District currently recognizes the boundaries established by the state and since 1977 has allowed only one septic tank and drain filed for every five acres. Although Kootenai County has established a voter approved Aquifer Protection District where fees are charged annually to fund aquifer protection programs, the County's current minimum lot sizes, density, and waste disposal restrictions within the aquifer may be inconsistent with the level of protection warranted.

¹ SPF Water Engineering, LLC, AMEC Earth and Environmental, Idaho Economics (John Church), and Taunton Consulting. 2010. Rathdrum Prairie Aquifer Water Demand Projections. Prepared for the Idaho Water Resource Board.

² The Spokane Valley-Rathdrum Prairie Aquifer Atlas 2009 Update:
<https://www.spokaneaquifer.org/wp-content/uploads/2012/05/AquiferAtlas.pdf>

³ Trend Analysis of Selected Ground Water Constituents of the Rathdrum Prairie Aquifer, Kootenai County, Idaho. Ground Water Investigation Report DEQ-CRO-01-15.

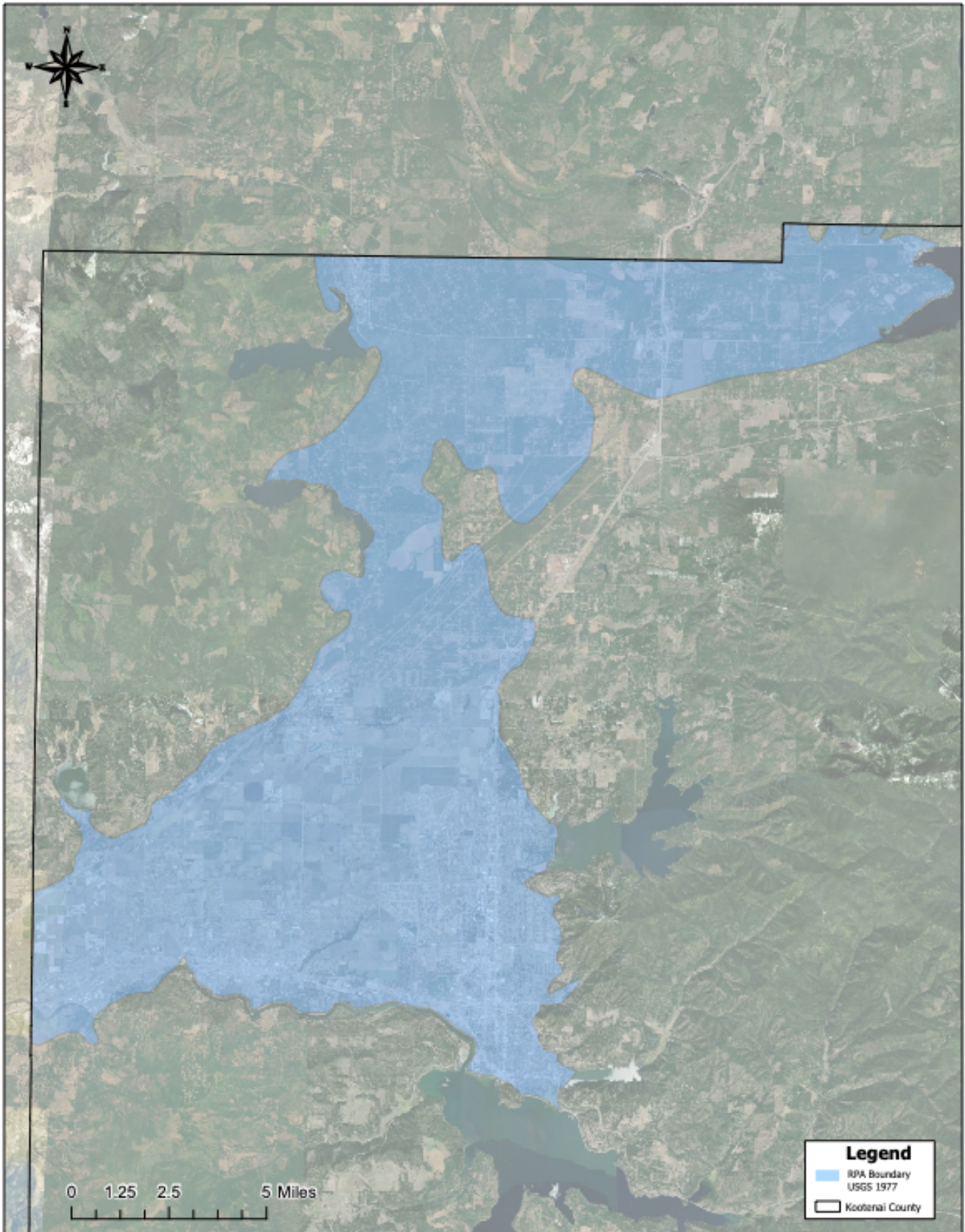


Figure 1 – USGS 1977 Rathdrum Prairie Aquifer within Kootenai County

2. Proposed Zoning Amendments

Purpose

The purpose of the amendments would be to place additional density and lot size restrictions for residential development (i. e. 5-acre minimums) within the 1977 USGS recognized boundaries of the Rathdrum Prairie Aquifer (RPA) to better protect water quality over the long term. Additional standards provide concurrent authority for the County to regulate prohibitions on waste to protect public health, private property, and drinking water supply.

Proposed Minimum *Parcel*⁴ Size Restrictions

The proposed minimum parcel size restrictions would apply only to three existing zoning districts and only within the Rathdrum Prairie Aquifer boundaries (*See Figures 2 and 3*). The three zones listed below are the only zoning districts in the county with a current minimum lot size less than 5 acres. It is also important to note that for any residential property not served by a sewer system and reliant on septic, the effects of the changes would be nominal at present, given the current restrictions in place by the Panhandle Health District.

Zone	Current Min. Lot Size / Max Density	Proposed Min. <i>Parcel</i> Size
Ag-Suburban	2-acre min. lot size	Minimum 5-acre parcel
Restricted Residential	8,250 SF min. lot size / In ACI of Hayden Lake: Max density is 1 Single-family unit per acre	Minimum 5-acre parcel
High Density Residential	Max density: 1 unit per 3,000 SF	Minimum 5-acre parcel

Density would be effectively regulated by the proposed waste disposal standards below which would only allow for one unit per 5-acre parcel. For those parcels that could be served by a community sewer system but would remain within the county jurisdiction (i. e. outside of any existing ACI), the commission may consider providing a path for smaller lot sizes such as through an exemption provision.

⁴ Kootenai County code defines a lot as “A platted parcel of land which has been legally created.” A parcel is defined as “Any portion of land that is separately described in a deed of conveyance. Parcel size shall be determined as set forth in section 8.4.1104 of this title [Title 8]”. The proposed change from “lot” to “parcel” provides for more consistency and clarity with other code references.

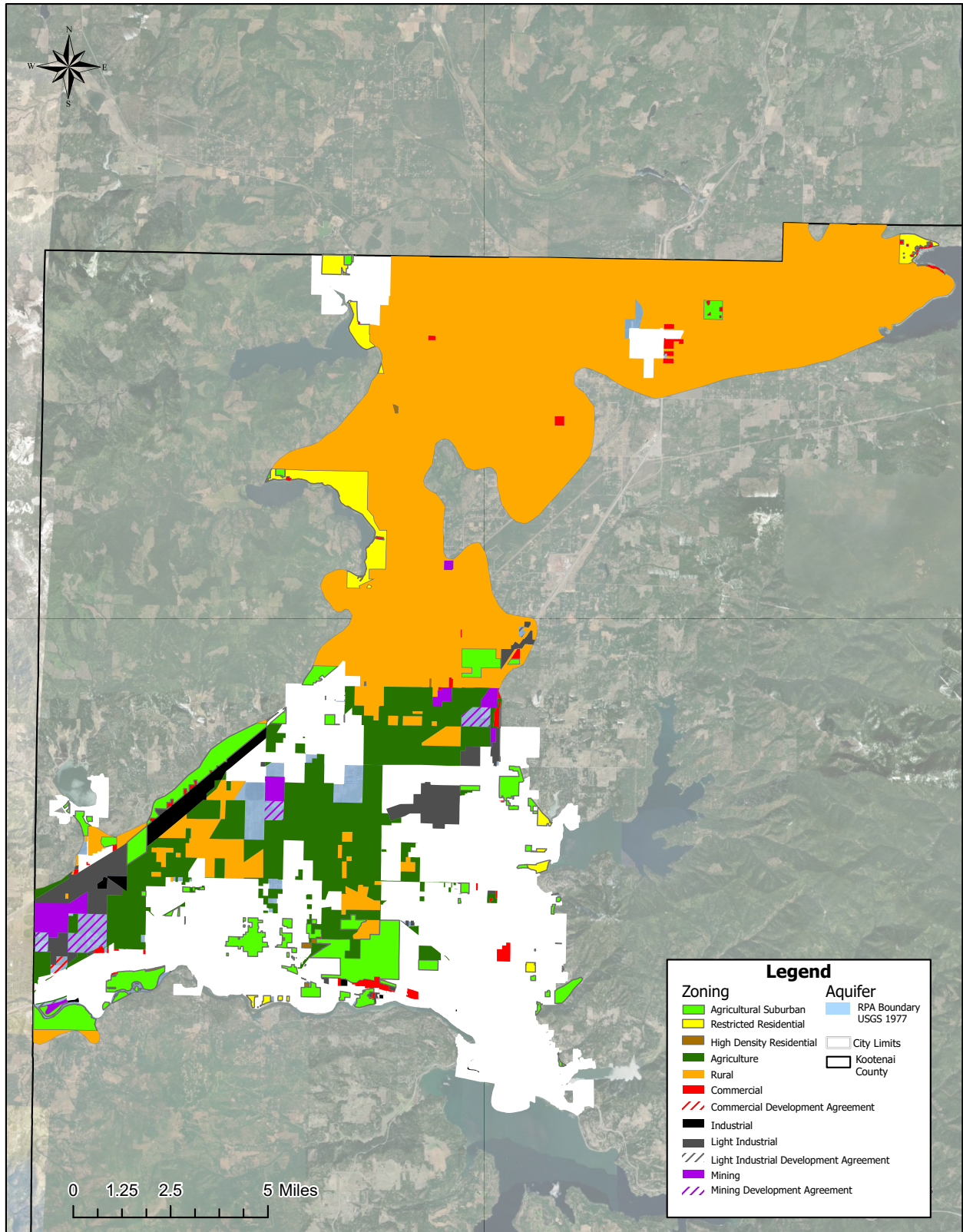


Figure 2 - Existing County Zoning within the Rathdrum Prairie Aquifer

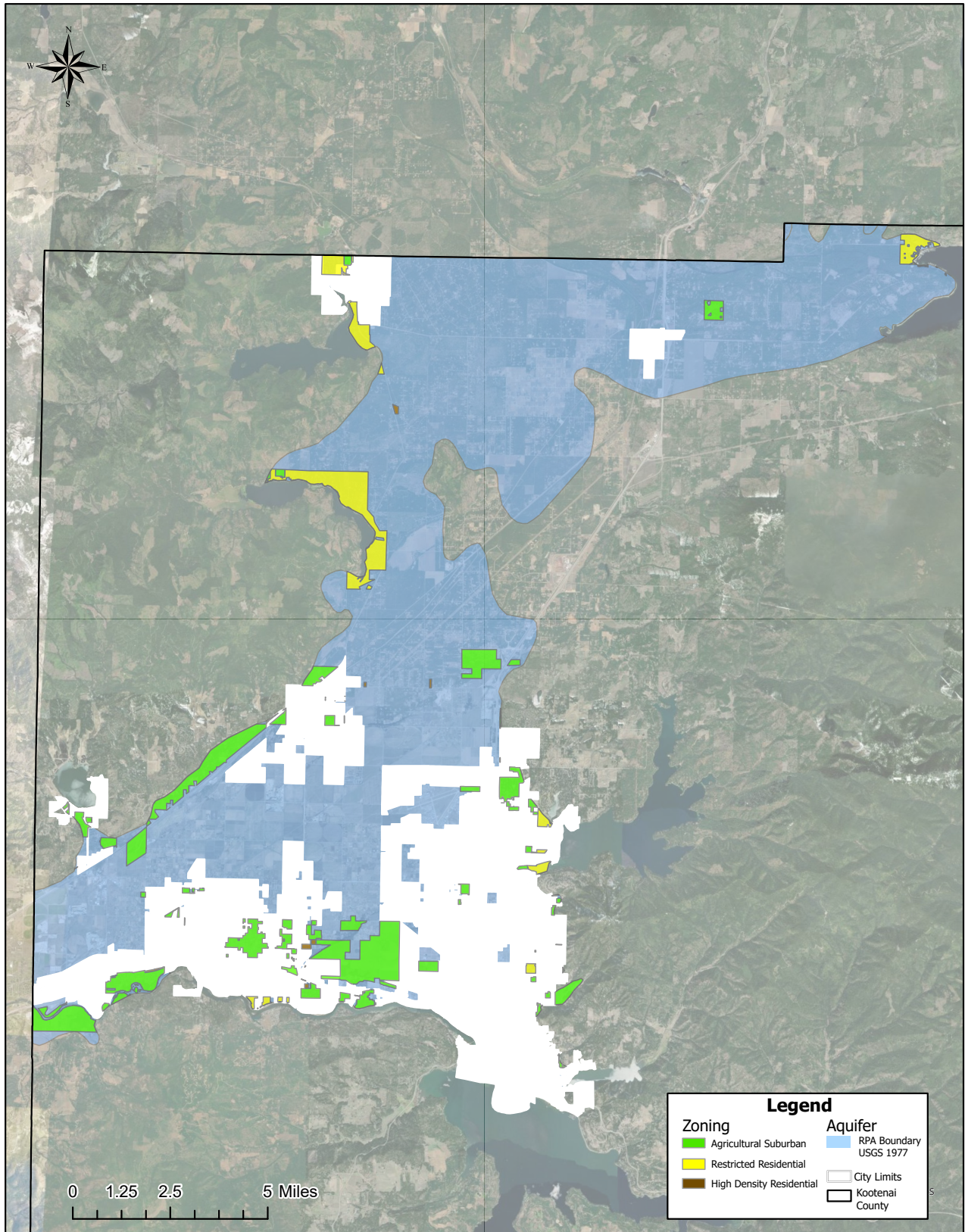


Figure 3 - Affected Zones by Density/Parcel Size Amendments

Proposed Waste Disposal Restrictions

The following amendments mirror Panhandle Health District's past practice. The proposed changes to Kootenai County Code will replace but not enlarge PHD's previous regulatory authority.

General Restrictions Proposed:

- Prohibition on Domestic sewage, septage, sanitary sewage, industrial waste, agricultural waste, sewage effluent, or human excreta open to the atmosphere or on the surface of the ground in such a manner so as to be a source of noxious or offensive odors, to be dangerous to health, or to be a public nuisance.
- Domestic sewage, sanitary sewage, septage, industrial sewage, industrial waste, agricultural waste, sewage effluent, or human excreta is not allowed to endanger any source or supply of drinking water, or cause damage to any public or private property.
- Raw or untreated sewage, septage, or industrial waste, or agricultural waste is not allowed in any body of water, water course, or any underground water drain, any storm water drain, channel, or other surface water drain.

Sewage Disposal Restrictions Proposed:

- Subsurface sewage disposal systems must be made in compliance with applicable DEQ and Panhandle Health District No. 1 (PHD) rules.
- Limitation of a single subsurface sewage disposal system for dwelling unit equivalent of one unit per not less than 5-acres.
- Grandfathering of parcels of land created after December 10, 1977.
- Allowance for the replacement of non-conforming subsurface sewage disposal systems where there is no increase of sewage loading.
- Installations of systems must be approved by DEQ where applicable.
- Requirement of connection to a collection and treatment system when available and upon notification by PHD.

Potential Additional Standards for Commercial/Industrial Uses

The commission may anticipate additional proposed standards for critical materials storage, handling and cleanup requirements at a future workshop or hearing, following a collaborative effort with County municipalities within the aquifer.

Areas of City Impact (ACIs)

Certain areas within the jurisdiction of the County and within the aquifer boundaries also fall within *areas of city impact* for which various agreements have been entered into by the County with the respective cities. The purpose of ACIs is to allow cities to anticipate areas of land that may become urban, served by urban services, and potentially annexed as encouraged by statute (ID Code §67-6502, §67-6526 and §50-222). These agreements may take various forms ranging from simple notification requirements for certain land use actions to adoption of development standards for consistency with city standards and comprehensive plans. As an example, Kootenai County has agreed not to allow subdivisions within certain ACIs unless they are served by municipal sewer and that zoning densities must be compatible with certain City's Comprehensive Plans. It is important to note that although an unincorporated area may exist within a City ACI, it remains subject to County zoning. Any zone changes proposed that may affect a City's ACI warrants notification and consideration of ACI agreements in place.

3. Planning Commission Next Steps

1. Advise staff as to whether a Comprehensive Plan Amendment may be needed in advance or in tandem with any zoning amendments proposed (*see Attachment 1 for analysis*). County staff and legal counsel have advised that a Comprehensive Plan amendment is not necessary, but it remains an option for consideration by the Planning Commission and the Board of County Commissioners.
2. Following a determination of the above, the Commission may direct staff to prepare ordinance language for a subsequent workshop and/or public hearing. Alternatively, the Commission may direct staff to provide additional research and/or outreach to affected agencies or stakeholders.
3. Once a hearing has been held on a proposed ordinance and/or any amendments to the Comprehensive Plan, the Commission may forward on a recommendation to the Board of County Commissioners.

Attachment 1
Comprehensive Plan Analysis



Aquifer Zoning Amendments - Comprehensive Plan Analysis

To: Kootenai County Planning Commission
From: Aaron Qualls, AICP, SCJ Alliance
Date: 4/11/22
Project: Zoning Amendments within the Rathdrum Prairie Aquifer
Subject: Comprehensive Plan Accordance and Consistency Scan

Purpose:

The purpose of this memo is to provide analysis of the Kootenai County Comprehensive plan to determine whether a plan update may be needed to implement zoning controls limiting density and/or parcel sizes and providing for waste disposal standards within the 1977 USGS Rathdrum Prairie Aquifer boundary.

Overview of Comprehensive Plans and Zoning:

The Local Land Use Act (LLUPA) of the State of Idaho requires that “zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan.” Idaho Code 67-6511(1). Principally, a Comprehensive Plan serves as a legal basis for enacting zoning regulations. Any amendments to zoning shall occur only “after considering the comprehensive plan.” Idaho Code §67-6511(2)(b). Case law heard by the Idaho Supreme Court has emphasized, however, that *zoning decisions do not have to strictly conform to the land use designations* within the comprehensive plan but that the governing board cannot ignore their comprehensive plan (Givens Pursley, 2021). Comprehensive plans, therefore, serve as a *general guide* for enacting zoning regulations.

Following is an analysis of select policies to determine whether the existing Kootenai County Comprehensive plan would support zoning amendments to limit density and/or parcel sizes in the Rathdrum Prairie Aquifer.

Element (a) – Property Rights

Objectives / Policies	Overlay Considerations	Supportive?
<p><u>Objective 2 (Zoning)</u> <i>Balance property rights with the responsibility to protect public health, safety and general welfare through zoning.</i></p>	<p>Aquifer protection satisfies both health and general welfare considerations</p>	<p>No conflict</p>
<p><u>Policy 2</u> <i>Avoid reductions in land use intensity (called "down-zoning") in any County initiated zoning map or development code text amendments, with the exceptions being a property owner's voluntary agreement to a change, or if there is a clear, useful and significant public purpose. The need for map and text amendments should either remedy existing nonconformities or at least not create new ones.</i></p>	<p>Protection of the sole source aquifer of the county through density limitations is a clear, useful and significant public purpose so long as factual findings are made in support.</p>	<p>Generally supportive</p>

Element (d) – Economic Development

Objectives / Policies	Overlay Considerations	Supportive?
<p><u>Policy 2</u> <i>Strengthen the County's economic base by adopting land use regulations that support recreation, natural resources, tourism, agriculture, and forest industries.</i></p>	<p>The support of natural resources lends general support to protecting the aquifer.</p>	<p>Generally supportive</p>

Element (e) – Land Use

Objectives / Policies	Overlay Considerations	Supportive?
<p><u>Objective 1A (Rural Character)</u> <i>Foster rural and community character by encouraging open space, public resources, forestry, agriculture, and low-intensity development.</i></p>	<p>Lower intensity development than currently allowed within some portions of the aquifer as well as the “encouragement” of public resources generally supports additional zoning controls.</p>	<p>Generally Supportive</p>
<p><u>Objective 7a (Development in or Adjacent to Public Resources)</u> <i>Establish, through a public process, regulations and practices that protect water quality and public resources.</i></p>	<p>This objective directly supports protection of the aquifer, so long as factual findings demonstrating the nexus between density and water quality are made a part of the record.</p>	<p>Supportive</p>
<p><u>Policy 6</u> <i>Development near public resources should be developed in a manner that minimizes potential conflicts by such means as clustering, adequate shoreline buffers, site disturbance and storm water control measures, standards for building above aquifers, in flood plains and on steep slopes and unstable soils where appropriate.</i></p>	<p>Whereas this is one of the few policies that directly addresses aquifers, it does not go so far as to support less density. It does, however, lend support to more controls with respect to septic systems.</p>	<p>Supportive</p>
<p><u>Policy 8</u> <i>Require development of a certain scale to estimate all groundwater and surface water needs including their source and quantity and the effect of water uses on surrounding land owners and the hydrologic system. Consider and, if warranted, establish regulations and procedures to require that development of a certain size demonstrates adequate water sufficiency by working with Idaho Department of Water Resources (IDWR), the Idaho Department of Environmental Quality (IDEQ) and elsewhere to develop</i></p>	<p>This provision punts to IDWR and IDEQ specifically with respect to groundwater and is not directly applicable to limiting density for aquifer water <i>quality</i> protection. Instead, it asks developments to verify adequate water <i>availability</i> and any potential effects on surrounding landowners.</p>	<p>Neutral</p>



<p><i>methodologies developers could use to estimate groundwater and surface water needs to determine if sufficient water will support the new development without negatively impacting surrounding land owners and the hydrologic system.</i></p>		
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Element (f) – Natural Resources

Objectives / Policies	Overlay Considerations	Supportive?
<p><u>Summary Statement</u> <i>“..The Board of County Commissioners believes that protecting natural resources is central to maintaining a resilient economy and high quality of life..”</i></p>	<p>As a sensitive resource aquifer (IDAPA 58.01.11.300.01.a), this summary statement is generally supportive.</p>	<p>Generally Supportive</p>
<p><u>Objective 3</u> Protect water quality and quantity.</p>	<p>Generally supportive and in accord with IDAPA 58.01.11.301.01.a</p>	<p>Generally Supportive</p>
<p><u>Policy 6</u> Work with appropriate agencies to develop methodologies developers could use to estimate groundwater and surface water needs to determine if sufficient water is available to serve developments without negatively impacting surrounding land owners and the hydrologic system.</p>	<p>Although the policy is related to the protection of groundwater resources and water availability, it is not directly applicable to limiting density or providing other standards for aquifer protection.</p>	<p>Neutral</p>

Element (o) – Implementation

Objectives / Policies	Overlay Considerations	Supportive?
<p><u>Policy 4</u> <i>Review comprehensive plan policies at a Planning Commission meeting in the first quarter annually, adjust implementation goals, and report these findings to the county</i></p>	<p>Indicates an opportunity for amending plan consistent with aquifer protection pursuant to plan’s implementation directives.</p>	<p>Neutral</p>

<i>commissioners, the public and public agencies.</i>		
<u>Policy 7:</u> <i>Periodically review/update the future land use map to display pertinent comprehensive plan policies.</i>	Indicates an opportunity for future land use map amendment.	Neutral

Appendix 11

Objectives / Policies	Overlay Considerations	Supportive?
<p><u>Philosophy and intent:</u> <i>The Rathdrum Prairie has the most capacity for dense development and also the greatest risk to harm our sole source aquifer. For this reason The Plan envisions that most of the new growth will happen inside the existing cities on the Rathdrum Prairie. The Plan also envisions protecting the undeveloped portion of the prairie to be reserved for future city annexation and to minimize the need for redevelopment, thus helping to preserve and protect the Rathdrum Prairie Aquifer.</i></p>	<p>Although not a specific policy, the intent of protecting the aquifer by directing growth into cities is clear.</p>	Supportive

Future Land Use Map

Objectives / Policies	Overlay Considerations	Supportive?
<p><i>...the Future Land Use Map has the potential to be supplemented at a later date with additional mapping efforts within specific planning areas, such as the Rathdrum Prairie or Villages, etc.</i></p> <p><i>The Future Land Use Map is most valuable as a planning tool to: ... 5)</i></p>	<p>This provision seems to support a land use map amendment which may happen concurrently with zoning amendments or subsequently. It further directs that zoning be <u>consistent</u> with the land use classification areas.</p>	Neutral



<p><i>Conserve the natural resources located within the County.</i></p> <p><i>To fully implement the Plan and its Future Land Use Map, the County must change, by ordinance, development regulations and zoning map consistent with the plans text and land classification areas.</i></p>		
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Land Use Designations Within Aquifer Boundaries and Existing Zoning

Land use Designation	Predominant Zoning
<p>Scenic. Large tracts of land set aside for public or private use. The focus of the designation is on environmental protection.</p>	<p>Ag-suburban – 2 acre min. Rural – 5 acre min</p>
<p>Resource/Recreation. Lands used to promote commercially viable or resource cultivation and/or to protect wetlands or other sensitive areas. <i>(Very little within aquifer)</i></p>	<p>Rural – 5 acre min</p>
<p>Country. Rural lands protect open space, the “rural lifestyle” and promote subdivisions that allow single family residential and non-residential uses. Cluster subdivisions are allowed with adequate design methods and environmental protections. Economic activities are also encouraged that do not require a full range of services.</p>	<p>Ag-suburban – 2 acre min. Agricultural – 5 acre min Rural – 5 acre min</p>
<p>Suburban. Parcels that promote the existing residential patterns.</p>	<p>Ag-suburban – 2 acre min Rural – 5 acre min</p>
<p>Shoreline. Parcels within 500 feet of bodies of water. The purpose of this designation is to protect the water, prevent erosion, and maintain the natural environment, including views of the shoreline.</p>	<p>Restricted Residential Zone – 8,250 SF</p>
<p>Transitional. Land designated for future annexation into an incorporated area. This land will remain undeveloped until adequate roads and services are in place. The Transitional designation gives the surrounding cities the ability to properly plan for growth in conformance with Area of City Impact (ACI) agreements with the County.</p>	<p>Various - See ACI agreements Some High Density Residential – 1 unit/3000 SF</p>
<p>Border. The land in this designation is adjacent to municipalities. Urban growth is encouraged, but only after it has been annexed into the adjacent city.</p>	<p>Various - See ACI agreements Some High Density Residential – 1 unit/3000 SF</p>

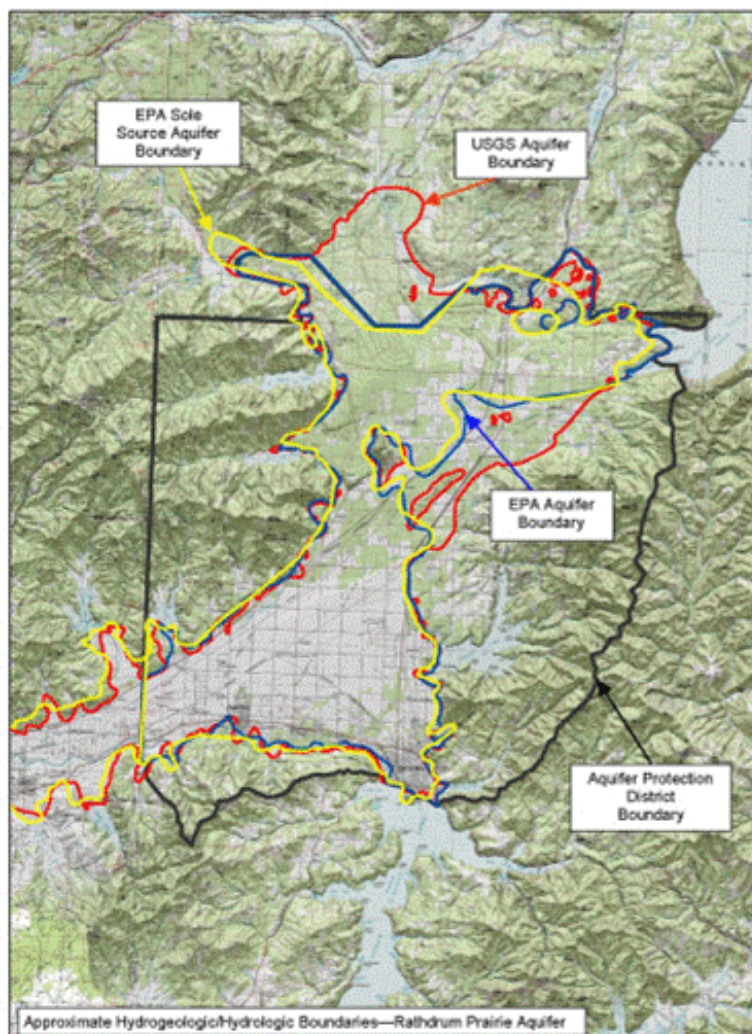
Attachment 2
Rathdrum Prairie Aquifer Boundary Brief from DEQ



Rathdrum Prairie Aquifer Boundary

In 1977, a petition request was submitted to the US Environmental Protection Agency (EPA) to designate the Rathdrum Prairie Aquifer as a sole source aquifer. On February 9, 1978, EPA granted the request (Federal Register Vol. 43, No. 28, Thursday, February, 9, 1978). EPA defines a sole-source aquifer as one that (1) supplies at least 50% of the drinking water in the area overlying the aquifer and (2) has no alternative drinking water source(s) that could physically, legally, and economically supply all those who depend on the aquifer for drinking water.

The map below shows three separate boundaries. The dark blue line shows the EPA aquifer boundary, the red line shows the US Geological Survey (USGS) aquifer boundary, and the yellow line shows the sole source aquifer boundary.



As seen on the map, the EPA aquifer boundary and the sole-source aquifer boundary are not always the same. Within the sole-source aquifer boundary, water on the surface of the land infiltrates, or seeps downward, to the ground water below, recharging the aquifer. The sole-source aquifer boundary excludes areas where recharge comes from sources other than the land surface. One such area is near the southern shore of Lake Pend Oreille, where most of the recharge to the Rathdrum Prairie Aquifer is from the lake and not from infiltration from the land surface.

The red line on the map shows where the aquifer boundary was recently defined by the USGS as part of a hydrogeological study of the aquifer in Idaho and Washington. The USGS boundary, which is based on geologic mapping conducted by the Idaho Geological Survey and USGS, is located largely where the glacial flood deposits are adjacent to surrounding bedrock.

The Idaho Department of Environmental Quality (DEQ) classified the Rathdrum Prairie Aquifer as a sensitive resource aquifer (IDAPA 58.01.11.300.01.a), following EPA's aquifer boundary (dark blue line) seen in the map above. Because of this classification, all activities that could impact the water quality of the Rathdrum Prairie Aquifer must be carried out so they maintain or improve existing quality of the ground water (IDAPA 58.01.11.301.01.a).

The Panhandle Health District also recognizes the EPA aquifer boundary and has adopted rules to allow only one septic tank and drainfield for every 5 acres over the aquifer to avoid impacting water quality. A map of the EPA aquifer boundary used by both DEQ and the Panhandle Health District is found at [Rathdrum Prairie Aquifer Reports and Publications](#).

In January 2007, Kootenai County established the Rathdrum Prairie Aquifer Protection District. The aquifer protection district boundaries correspond to the areas over the Rathdrum Prairie Aquifer and adjacent upland areas that contribute water to the aquifer. The upland areas are also known as critical aquifer recharge areas. Creation of the aquifer protection district allows Kootenai County to charge an annual fee to residences and businesses with the boundary. The money is used to fund aquifer protection programs and activities.

Attachment 3
Emergency Ordinance No. 574

RECORDING FEE: \$0.00

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ORDINANCE NO. 574
EMERGENCY ORDINANCE RE: SUBSURFACE SEWAGE DISPOSAL

AN **EMERGENCY** ORDINANCE OF KOOTENAI COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, RELATING TO REGULATION OF SUBSURFACE SEWAGE DISPOSAL; PROVIDING A MINIMUM PARCEL SIZE OF FIVE (5.00) ACRES FOR PARCELS LOCATED OVER THE RATHDRUM PRAIRIE AQUIFER IN THE AGRICULTURAL SUBURBAN, RESTRICTED RESIDENTIAL, AND HIGH DENSITY RESIDENTIAL ZONES, PROVIDING FOR PROHIBITED SEWAGE AND WASTE DISPOSAL CONDITIONS, PROVIDING REGULATIONS FOR SUBSURFACE SEWAGE DISPOSAL SYSTEMS OVER THE RATHDRUM PRAIRIE AQUIFER, AND PROVIDING ASSOCIATED DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-WAIVER OF ACTIONS REGARDING VIOLATIONS OCCURRING WHILE PRIOR ORDINANCES WERE IN EFFECT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Rathdrum Prairie Aquifer is part of the greater Spokane Valley-Rathdrum Prairie Aquifer which was designated as a sole source aquifer by the U.S. Environmental Protection Agency on Feb. 9, 1978; and

WHEREAS, this designation recognized that the Spokane Valley-Rathdrum Prairie Aquifer is the sole source of drinking water for over 600,000 people in Kootenai County, Idaho and Spokane County, Washington; and

WHEREAS, the Idaho Department of Environmental Quality (DEQ) has also designated the Rathdrum Prairie Aquifer as a sensitive resource aquifer; and

WHEREAS, Panhandle Health District No. 1 (PHD) has adopted administrative rules in accordance with the Idaho Administrative Procedure Act (IDAPA), Title 67, Chapter 52, Idaho Code, for the protection of water quality in the Rathdrum Prairie Aquifer, including rules regulating subsurface sewage disposal; and

WHEREAS, based on the designation of the Rathdrum Prairie Aquifer as a sensitive resource aquifer by DEQ, the County has established an aquifer protection district pursuant to Title 39, Chapter 5, Idaho Code, which provides funding for various aquifer protection and educational activities, including funding for PHD to apply and enforce its aquifer protection rules; and

WHEREAS, Kootenai County and PHD have a mutual interest in ensuring the continuing protections of the health and safety of its residents and desires to enact an ordinance to maintain existing rules pertaining to subsurface sewage disposal and establishing a minimum parcel size of five (5.00) acres for parcels located over the Rathdrum Prairie Aquifer in the Agricultural Suburban, Restricted Residential, and High Density Residential zones; and

WHEREAS, the Kootenai County Commissioners hereby finds that regulatory circumstances constitute an imminent peril to the public health, safety, or welfare necessitating immediate action to adopt and affirm subsurface sewage disposal rules, and PHD's authority to apply and enforce those rules, and to establish a minimum parcel size of five (5.00) acres for parcels located over the

Rathdrum Prairie Aquifer in the aforementioned zones, in an effort to continue to protect water quality in the Rathdrum Prairie Aquifer;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO:

SECTION 1. That Section 8.2.303, Kootenai County Code, shall be, and the same is hereby amended as follows:

8.2.303: PARCEL LOT SIZE AND, DENSITY AND SITE AREA: The minimum parcel lot size in the Agricultural Suburban zone, ~~except in conservation subdivisions~~, shall be two (2.00) acres, with the following exceptions:

A. Conservation subdivisions, which shall be subject to the standards set forth in section 8.6.602 of this title.

B. The minimum parcel size for parcels located over the Rathdrum Prairie Aquifer shall be five (5.00) acres.

SECTION 2. That Section 8.2.403, Kootenai County Code, shall be, and the same is hereby amended as follows:

8.2.403: PARCEL LOT SIZE AND DENSITY SITE AREA: The minimum parcel lot-size in the Restricted Residential Zone shall be 8,250 square feet, with the following exceptions:

A. The maximum density within the boundaries of Area of City Impact of the City of Hayden Lake shall be one (1) single family dwelling per acre.

B. The minimum parcel size for parcels located over the Rathdrum Prairie Aquifer shall be five (5.00) acres.

SECTION 3. That Section 8.2.503, Kootenai County Code, shall be, and the same is hereby amended as follows:

8.2.503: PARCEL SIZE AND DENSITY:

A. Except as otherwise provided in this ~~article-section~~, the maximum density in the High Density Residential zone shall be one (1) dwelling unit per 3,000 square feet.

B. The minimum parcel size for parcels located over the Rathdrum Prairie Aquifer shall be five (5.00) acres.

SECTION 4. That Title 8, Chapter 7, Kootenai County Code, shall be, and the same is hereby amended by the addition of a **NEW ARTICLE**, to be designated as Title 8, Chapter 7, Article 7.3, Kootenai County Code, and to read as follows:

Article 7.3
Subsurface Sewage Disposal

8.7.301: PROHIBITED CONDITIONS:

A. Domestic sewage, septage, sanitary sewage, industrial waste, agricultural waste, sewage effluent, or human excreta is not allowed to remain open to the atmosphere or on the surface of the ground in such a manner so as to be a source of noxious or offensive odors, to be dangerous to health, or to be a public nuisance.

B. Domestic sewage, sanitary sewage, septage, industrial sewage, industrial waste, agricultural waste, sewage effluent, or human excreta is not allowed to endanger any source or supply of drinking water, or cause damage to any public or private property.

C. Raw or untreated sewage, septage, or industrial waste, or agricultural waste is not allowed in any body of water, water course, or any underground water drain, any storm water drain, channel, or other surface water drain.

8.7.302: SEWAGE DISPOSAL ON PARCELS LOCATED OVER THE RATHDRUM PRAIRIE AQUIFER:

A. The provisions of this section shall apply to all subsurface sewage disposal systems installed on any parcel located over the Rathdrum Prairie Aquifer.

B. The Board of County Commissioners and the Board of Health have determined that extensive use of subsurface wastewater disposal on parcels located over the Rathdrum Prairie Aquifer presents a threat to the public health by contamination of the Rathdrum Prairie Aquifer, which has been designated as a sole source aquifer by the U.S. Environmental Protection Agency (EPA) and as a sensitive resource aquifer by the Idaho Department of Environmental Quality (DEQ). Therefore, it is the intent of the Board of County Commissioners to adopt regulations which continue to govern subsurface sewage disposal which shall apply to all parcels located over the Rathdrum Prairie Aquifer.

C. Subsurface Sewage Disposal System Regulations.

1. All installations of subsurface sewage disposal systems must be made in compliance with applicable DEQ and Panhandle Health District No. 1 (PHD) rules.

2. A subsurface sewage disposal system for one (1) dwelling equivalent may be installed in accordance with paragraph (1) of this subsection if the system is on a single parcel of land of five (5.00) acres or larger in surface area and the total loading for that parcel does not exceed one (1) dwelling equivalent per five (5.00) acres, except where one (1) system is replacing another. Every parcel of land created after December 20, 1977, except as otherwise permitted

in this section, shall maintain the dwelling equivalent(s) allowed for the original parcel of land existing on that date.

3. No subsurface sewage disposal system may be installed on any parcel of land of less than five (5.00) acres in surface area except under the following conditions:

a. A subsurface sewage disposal system for a single dwelling equivalent shall be permitted on parcels of land less than five (5.00) acres in size which were acquired or established prior to December 20, 1977, provided that such parcels comply with all other rules governing individual subsurface sewage disposal systems; or

b. Where one (1) subsurface sewage disposal system is replacing another with no increase in sewage loading.

4. On all developments subject to the provisions of subparagraph (a) of paragraph (3) of this subsection, all installations shall be done in coordination with local government planning, and approved by DEQ where applicable.

5. Upon notification by the PHD Health Officer, the owner of any parcel of land utilizing a subsurface sewage disposal system shall disconnect such system from any buildings on that parcel of land and connect the building sewer from the buildings to a collection and treatment system whenever it becomes available for service to that parcel.

8.7.303: AUTHORITY FOR ENFORCEMENT:

A. The County and PHD shall have the power to apply and enforce the provisions of this article, which shall include those powers expressly set forth in this article and any powers necessarily implied from those provisions.

B. Nothing in this article shall be construed as requiring any particular application of this article, nor any particular permitting or enforcement action, nor any expenditure of funds.

C. Nothing in this article shall be construed as limiting the legal remedies that may be sought by the County or PHD for a violation of any provision of this article.

SECTION 5. That the following new definition shall be, and the same is hereby added to Section 8.9.102, Kootenai County Code, as follows:

BOARD OF HEALTH: The Board of Health of Panhandle Health District 1 (PHD).

SECTION 6. That the following new definition shall be, and the same is hereby added to Section 8.9.104, Kootenai County Code, as follows:

DWELLING EQUIVALENT: The total sewage loading from a single family dwelling. When applied to structures or facilities other than housing units, a dwelling equivalent shall be equal to two-hundred and fifty (250) gallons per day or be equal to twenty (20) persons using a non-residential facility on forty (40) hour per week basis, with no wastewater generation except from restrooms.

SECTION 7. That the following new definition shall be, and the same is hereby added to Section 8.9.204, Kootenai County Code, as follows:

HEALTH OFFICER: The Director of PHD, or any agent or employee thereof whose duties include enforcement of any provision of this article.

SECTION 8. That the following definition contained in Section 8.9.402, Kootenai County Code, shall be, and the same is hereby amended as follows:

RATHDRUM PRAIRIE AQUIFER: A groundwater aquifer located beneath the Rathdrum Prairie and the Purcell Trench in portions of northern Kootenai County and southern Bonner County. For purposes of this title, the Rathdrum Prairie Aquifer shall be defined as is that portion of the larger Spokane Valley-Rathdrum Prairie Aquifer, as originally defined by the USGS map depicting the boundaries of the Spokane Valley-Rathdrum Prairie Aquifer identified and designated under the authority of Section 1424(e) of the Safe Drinking Water Act (PL 93-523) at 43 F.R. 5566-67 (Feb. 9, 1978), which is located in Idaho situated in Kootenai County. It has been recognized by the U.S. Environmental Protection Agency as a sole source aquifer under Federal law, and by the Idaho Department of Environmental Quality as a sensitive resource aquifer under Idaho law.

SECTION 9. That the following new definition shall be, and the same is hereby added to Section 8.9.403, Kootenai County Code, as follows:

SEWAGE LOADING: The total liquid volume of sewage produced on any given parcel of land and expressed as gallons per day.

SECTION 10. If any section, subsection, sentence, clause, phrase or portion of this chapter is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 11. Neither the adoption of this Ordinance nor the repeal of any ordinance shall, in any manner, affect the prosecution for violation of such ordinance committed prior to the effective date of this Ordinance or be construed as a waiver of any license or penalty due under any such ordinance or in any manner affect the validity of any action heretofore taken by the Kootenai County Board of Commissioners or the validity of any such action to be taken upon matters pending before the Kootenai County Board of Commissioners on the effective date of this Ordinance.

SECTION 12. This Ordinance shall take effect and be in full force upon its passage, approval, and publication in one (1) issue of the *Coeur d'Alene Press*, and shall remain in effect for a period of one hundred eighty-two (182) days thereafter.

ADOPTED this 22nd day of March, 2022.

**KOOTENAI COUNTY
BOARD OF COMMISSIONERS**



Chris Fillios, Chairman - Signed 3/24/2022



Leslie Duncan, Pro tem - Signed 3/23/2022

**ATTEST:
JIM BRANNON, CLERK**



Teri Johnston, Deputy Clerk - Signed 3/24/2022

Publication Date: March 29, 2022



Bill Brooks, Commissioner - Signed 3/24/2022

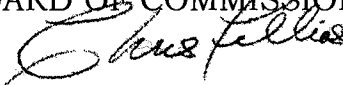
NOTICE OF ORDINANCE ADOPTION

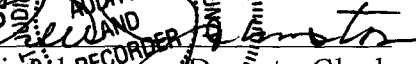
The Board of Commissioners of Kootenai County, Idaho hereby gives notice of the adoption of Kootenai County Ordinance 574. The full text of the ordinance addresses the following subject:

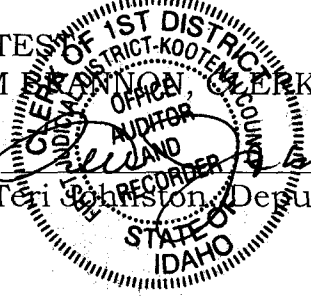
AN **EMERGENCY** ORDINANCE OF KOOTENAI COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, RELATING TO REGULATION OF SUBSURFACE SEWAGE DISPOSAL; PROVIDING A MINIMUM PARCEL SIZE OF FIVE (5.00) ACRES FOR PARCELS LOCATED OVER THE RATHDRUM PRAIRIE AQUIFER IN THE AGRICULTURAL SUBURBAN, RESTRICTED RESIDENTIAL, AND HIGH DENSITY RESIDENTIAL ZONES, PROVIDING FOR PROHIBITED SEWAGE AND WASTE DISPOSAL CONDITIONS, PROVIDING REGULATIONS FOR SUBSURFACE SEWAGE DISPOSAL SYSTEMS OVER THE RATHDRUM PRAIRIE AQUIFER, AND PROVIDING ASSOCIATED DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-WAIVER OF ACTIONS REGARDING VIOLATIONS OCCURRING WHILE PRIOR ORDINANCES WERE IN EFFECT; AND PROVIDING AN EFFECTIVE DATE.

The full text of Ordinance 574 is available at the Kootenai County Commissioners Office, 451 N. Government Way, Coeur d' Alene, ID 83814, weekdays, from 9:00 a.m. to 5:00 p.m.

KOOTENAI COUNTY
BOARD OF COMMISSIONERS


Chris Fillios, Chairman

ATTEST
JIM BROWN, CLERK
By 
Teri Johnston, Deputy Clerk



Publication Date: March 29, 2022