



CITY OF DONNELLY  
P.O. Box 725  
169 Halferty Street  
Donnelly, ID 83615  
Telephone (208) 325-8859

**AGENDA**  
**SPECIAL CITY COUNCIL**  
**MEETING**  
**Monday, May 4<sup>th</sup>, 2026, at 5:30pm**  
**Donnelly Community Center**

**CALL TO ORDER**

**ROLL CALL**

**PLEDGE OF ALLEGIENCE**

**NEW BUSINESS (Action Items)**

**AB 26-23 REQUEST FOR RECONSIDERATION AND POTENTIAL COUNCIL AMENDMENT TO THE FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR CASE NUMBERS 2026-AN-1, 2026-RZ-1 & 2026-CUP-1, ORIGINALLY APPROVED AND EXECUTED ON MARCH 16, 2026 (MORE COMMONLY KNOWN AS BOULDER CREEK).**

- The request for reconsideration was submitted to the city of Donnelly on March 30, 2026, prior to the statutory deadline for submittal, and was subsequently amended by the applicant on April 10, 2026, eleven days after the statutory deadline for submittal. According to the request submitted by Julia Thrower, with MOUNTAIN TOP LAW PLLC, the alleged “Affected Persons” making the request are as follows: Evelyn Adams, Daniel Bade, Melva Bade, Tony Cassetta, Victoria Casetta, Larry Eld, Susan Dorris, Rex Frazier, Jeff Higgins, Dan Margolis, Lynne Margolis, Bill Pilcher, Dan Steiner and Dee Verti.

**AB 26-24 MARCH 30, 2026, PROTEST OF FEES FOR REQUESTED RECONSIDERATION OF CITY COUNCIL ACTION ON FILE NUMBERS 2026-AN-1, 2026-RZ-1 & 2026-CUP-1 (MORE COMMONLY KNOWN AS BOULDER CREEK) SUBMITTED BY JULIA THROWER, WITH MOUNTAIN TOP LAW PLLC.**

**ADJOURNMENT:**

Any person needing special accommodation to participate in the above noticed meeting should contact the City Clerk’s Office at Donnelly 208-325-8859, at least 24 hours in advance of the meeting date.

Julia Thrower  
MOUNTAIN TOP LAW PLLC  
614 Thompson Avenue  
McCall, ID 83638  
T: 208.271.6503  
E: jthrower@mtntoplw.com

*Attorney for Affected Persons*

**BEFORE THE CITY COUNCIL FOR THE CITY OF DONNELLY**

IN THE MATTER OF:

APPLICATION FOR AN ANNEXATION,  
REZONING WITH A DEVELOPMENT  
AGREEMENT AND A CONDITIONAL  
USE PERMIT FOR A PLANNED UNIT  
DEVELOPMENT, CURRENTLY  
CALLED BOULDER CREEK, FOR  
REUBAN ORTEGA, AN INDIVIDUAL,  
AND FREEDOM MANAGEMENT  
GROUP LLC, WITH MANAGING  
MEMBER JOE CRITCHFIELD

**[CORRECTED] REQUEST FOR  
RECONSIDERATION**

**CASE NOS. 2026-AN-1, 2026-RZ-1,  
AND 2026-CUP-1**

Pursuant to Idaho Code § 67-6536(b) and Donnelly Unified Development Code (DDC) § 18.05.090, the following "Affected Persons," by and through their undersigned counsel, hereby submit this Request for Reconsideration of the City of Donnelly's approval of applications 2026-AN-1, 2026-RZ-1, and 2026-CUP-1 for the Boulder Creek project:

Evelyn Adams  
Daniel Bade  
Melva Bade  
Tony Cassetta  
Victoria Cassetta  
Larry Eld  
Susan Dorris  
Rex Frazier  
Jeff Higgins  
Dan Margolis  
Lynne Margolis  
Bill Pilcher  
Dan Steiner  
Dee Verti

## INTRODUCTION

On March 16, 2026, the Donnelly City Council approved the Findings of Fact and Conclusion of Law for applications 2026-AN-1, 2026-RZ-1, and 2026-CUP-1 (the Boulder Creek project, or Project). The approval annexed a parcel into the city, rezoned the newly annexed parcel to Rural Residential with a development code and a northern parcel from R4 to Compact Residential, and approved a conditional use permit for the two parcels that includes ~~88-97~~ apartment buildings, three short-term rentals, a recreational cabin park with 14 cabins, and an event center.

The Affected Persons file this request for reconsideration because the approvals are in violation of the DDC, are not based on substantial evidence, are arbitrary and capricious, and an abuse of discretion. The Affected Persons request that the City vacate the approvals in their entirety.

## ISSUES FOR RECONSIDERATION

### **I. Application for Annexation and Rezone 2026-AN-1 and 2026-RZ-1**

In order to approve a rezone, DDC § 18.55.010(F) requires that the City Council make the following specific findings:

1. The proposed zoning district(s) are in compliance with the comprehensive plan;
2. Adequate public facilities exist, or are expected to be provided, to serve any and all uses allowed on this property under the proposed zoning district(s);
3. The proposed zoning district(s) are compatible with the existing or planned uses in the surrounding area; and
4. No nonconforming uses will be created with the zoning district(s) proposed.

Such findings must be based on substantial evidence and not be arbitrary and capricious, or an abuse of discretion. Idaho Code (I.C.) § 67-5279. Here, the City's approval of the rezone for both the north and south parcels fails to meet the mandatory criteria set forth in DDC § 18.55.010(F). Specifically, the City reached conclusions that are internally inconsistent and unsupported by substantial evidence in the record.

#### **A. The rezone of the southern parcel lacks a factual basis for Comprehensive Plan compliance.**

Under DDC § 18.55.010(F)(1), a rezone must be in compliance with the comprehensive plan. While the Comprehensive Plan is a "guiding document" rather than a strict regulatory one, zoning ordinances (and amendments to them) must be "in accordance with" the policies set forth

in that plan. I.C. § 67-6511. “[T]o be valid the rezoning decision must be supported by adequate findings of fact to support a conclusion that the zoning amendment was in accordance with the plan.” *Love v. Bd. of Cnty Comm’rs of Bingham Cnty*, 105 Idaho 558 (1983).

Here, the City’s approval of the annexation and rezone of the southern parcel from Public Use/Open Space (PU/OS), as designated on the future land use map, to Rural Residential with development agreement (RR-DA) is not in accordance with the Comprehensive Plan. The City rationalizes this deviation from the future land use map as follows:

*The proposed zoning designation of RR-DA (Rural Residential with a development agreement) for the southern is consistent with the comprehensive plan and future land use map designation of Public Use, Parks, and Open Space because, although RR is not shown on the Zoning Compatibility Matrix, the proposed use will be restricted with a development agreement to provide for pathways, and preservation of the Special Flood Hazard Area and wetland areas, in alignment with the comprehensive plan and Donnelly City Code.*

The City’s justification that the development agreement, which requires that pathways be provided and wetlands be preserved, makes the rezone consistent is an arbitrary rationalization. Although I.C. § 67-6511A authorizes the City to enter into development agreements as a condition of rezoning, *see also* DDC § 18.60.010, the legal weight of a development agreement is typically used to limit or restrict uses further than the base zone—not to authorize something the zone specifically forbids, as is the case here with the RR zone allowing commercial entertainment centers.<sup>1</sup> While Idaho courts give local governments some wiggle room in applying the Comprehensive Plan, a rezone that fundamentally changes the character from public use/open space to a private, commercial event center exceeds the City’s discretion.

Additionally, the City failed to “make a[ny] factual inquiry into whether the requested zoning ordinance or amendment reflects the goals of, and takes into account those factors in, the comprehensive plan in light of the present factual circumstances surrounding the request” with respect to rezoning both the northern and southern parcels. *Taylor v. Canyon Cnty. Bd. of Comm’rs*, 147 Idaho 424, 438, 210 P.3d 532, 546 (2009) (“The [comprehensive] plan is required to have the following fourteen components . . . [T]he land use map is merely one subpart of a component of the [ ] comprehensive plan.”). This failure applies to both the rezone of the northern parcel from R4 to Compact Residential, and the southern parcel.

For example, policies in the Comprehensive Plan state that “[d]evelopment that places an excessive burden on the City’s infrastructure, and/or intensifies traffic congestion to a level of service that is not acceptable by the City will justify rejection . . .” and that “[u]pon re-zoning, potentially negative impacts are to be adequately mitigated.” *See* Comp. Plan at p. 26. The impacts from a significant increase in car traffic on existing traffic and the safety of pedestrians and cyclists on Eld Lane were blatantly ignored as no traffic impact study was ever performed,

---

<sup>1</sup> Notably, the RR zone does *not* permit or conditionally permit a recreational cabin park, which the City impermissibly allowed when approving the CUP. On the flip side, had the City zoned the southern parcel as PU/OS, as designated on the future land use map, the commercial entertainment center would have been a prohibited use. *See* DDC § 18.10.030.

and a study is never contemplated. *See e.g.*, FFCL at p. 17 (Conditions on Development 4.8 requiring a traffic study only on the *intersection* of Eld Lane and Highway 55). There is thus insufficient evidence for the City to make such findings.

Additionally, the Comprehensive Plan's policy regarding compatible transitions between residential and commercial use. The City rightly points out that the future land use map designates the area on the north side of Eld Lane as commercial, but it failed to explain how rezoning the south side of Eld Lane to residential will provide a "compatible transition . . . between higher intensity use of commercial and the lower intensity use of Residential." *See* Comp. Plan at pp. 27-28.

If a local government cannot reasonably find that a rezone request is in accordance with the Comprehensive Plan, as is the case here, Idaho law requires that the City amend the Comprehensive Plan first before approving the rezone. I.C. § 67-6511(c). By attempting to skip the Plan amendment process and jumping straight into a rezone with a development agreement, the City committed a procedural error that invalidates this decision. *See Price v. Payette Cnty. Bd. of Comm'rs*, 131 Idaho 426, 430, 958 P.2d 583, 587 (1998).

**B. The City failed to find that adequate public facilities exist.**

DDC § 18.55.010(F)(2) requires a finding that adequate public facilities exist or are expected to be provided. The City's findings here are a legal fiction rather than substantial evidence. The City explicitly notes there is insufficient municipal water capacity and that it is "unknown as to when sufficient capacity will be available." Staff Report at p. 2. Moreover, the recreational cabin park and event center will be serviced by a yet unapproved well. *Id.* at p. 16 (Conditions on Development 4.12). The City's findings here are a legal fiction rather than substantial evidence. A finding of adequacy cannot be based on purely speculative future improvements. By approving a rezone where the timeline for water availability is "unknown," the City has failed to provide a reasoned basis for compliance with its own code.

**C. The compatibility finding ignores the actual impact of density.**

DDC § 18.55.010(F)(3) requires a finding that the proposed zoning district is compatible with the existing or planned uses in the surrounding area. First the City incorrectly concluded that the existing residential homes located north of the proposed development are within an area that has "an R-8 zoning district." The current zoning map designates these parcels as R4; the future land use map designates these parcels as general commercial, which on the compatibility matrix allows for Commercial or Public Use/Open Space purposes. There is no current or future R8 designation for those parcels; thus the City's compatibility finding is arbitrary.

Second, the City failed to consider how an anticipated additional 700+ daily car trips from the proposed development down a single unpaved access road is compatible with and appropriate for the character of the area.

Third, the City failed to consider and find how the traffic, noise, and safety impacts of allowing a commercial event center in a residential area with one access road is compatible with the area. According to the City's compatibility matrix, *see* Comp. Plan at p. 25, these commercial uses are

not compatible with the surrounding residential zoning districts (R4 on the north side of Eld Lane and R8 on the south side of Eld Lane), the Public Use/Open Space designation of the southern parcel in the future land use map, Comp. Plan. p. 24, or with the rezone of the southern parcel to Rural Residential.

**D. The recreational cabins are nonconforming uses within the RR-DA zone.**

DDC § 18.55.010(F)(4) requires that no nonconforming uses will be created with the zoning district proposed. Although there are currently no nonconforming uses on the southern parcel under the rezone to RR-DA, approving the recreational cabin park, which is neither a permitted or conditionally permitted use in the RR zone, will create a non-conforming use.

**II. Application for Conditional Use Permit 2026-CUP-1**

In order to approve a conditional use permit, DDC § 18.40.030 requires the City to find adequate evidence showing that such use at the proposed location:

- A. Will, in fact, constitute a conditional use as established in this title for the zoning district involved;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and/or this title;
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
- D. Will not be hazardous or disturbing to existing or future neighboring uses;
- E. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of

excessive production of traffic, noise, smoke, fumes, glare or odors;

- H. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and
- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

**A. A recreational cabin park is not a permitted or conditional use in the RR zone in violation of DDC 18.40.030(A).**

DDC § 18.40.030(A) requires that an approved use “constitutes a conditional use as established” in the DDC “for the zoning district involved.” DDC § 18.10.030 establishes which uses are permitted or are conditionally permitted for different land use designations. The "Official Schedule of District Regulations Table and Text" indicates that although "commercial entertainment facilities (outdoor)" are conditionally permitted uses in an RR zone, recreational cabin parks are prohibited. Approval of the recreational cabin park is thus in direct conflict with the DDC.

**B. The City failed to make findings that the conditional use will be in accordance with the Comprehensive Plan.**

DDC § 18.40.030(B) requires that the conditional use “be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan.” As discussed above, *supra* Section I.A, the City failed to make the required findings that the rezoning, to begin with, was in accordance with the Comprehensive Plan.

**C. The City failed to account for traffic impacts and thus cannot make the requisite findings under DDC § 18.40.030(C)-(H).**

- i. The City’s decision is arbitrary and capricious.

Here, the City cannot make a reasoned decision that the Project will not cause traffic congestion or safety issues because the facts supporting that decision are not yet available. Although the City calculated the Average Daily Traffic (ADT) from the Project and referenced a standard from the Ada County Highway District, this is insufficient.

First, the City claims that the apartments and recreational cabins will each generate 6.65 ADT, the existing home and short-term rentals will each generate 9.52 ADT, and the event center will generate 100 trips per event without reference to any data, standards, or studies from where it bases its calculations on.

Second, the City references the Ada County Highway District for standards on how much traffic is appropriate for a collector street without explanation of how this standard is applicable or

appropriate to use for Valley County or Donnelly. These standards are designed for Idaho's most populous and urbanized region and frequently cited in Boise-area planning and zoning hearings, such as in Eagle and Meridian. They are built for a high-density, interconnected grid system where traffic is distributed across multiple parallel routes where several collectors or arterials nearby can absorb traffic overflow. While these standards provide a convenient technical baseline, they fail to account for the unique rural environment of Donnelly and Eld Lane in particular. Although the transportation map identifies Eld Lane as a future collector, it is in reality now an unpaved road that does not connect to any other collector or arterial streets and is not a multi-use corridor providing for safe travel for pedestrians and bicyclists.

Relying on Ada County Highway District's technical standards to determine traffic impacts in a rural context is fundamentally arbitrary and capricious, as it lacks a rational connection between the metric used and the reality of Donnelly's small-town environment. By reflexively adopting an unrelated agency's manual, the City failed to account for critical local variables, such as seasonal traffic surges, the absence of alternative transit routes, and the heightened safety risks to pedestrians in a community where "collectors" often serve as primary residential corridors. To ignore these site-specific geographic constraints in favor of a one-size fits all urban number constitutes a failure to exercise independent, reasoned discretion, resulting in a decision that is untethered from the actual public health, safety, and welfare of the local community.

ii. The City's decision was not based on substantial evidence.

The City's approval of this large-scale project must be supported by substantial evidence in the record. I.C. § 67-6279. By deferring the traffic impact study as a condition of approval, the City failed to make the required mandatory findings regarding infrastructure capacity and public safety. This procedural shortcut bypasses the public's right to scrutinize the Project's impacts, and results in a decision that is not based on substantial evidence, is arbitrary and capricious, is an abuse of discretion, violates due process rights, violates Donnelly City Code, and cannot be legally sustained.

Deferring the traffic impact study until after approval (to the design review process) turns the planning process on its head. Instead of the study informing the "right to build" decision, the approval of the conditions use permit was made first without the traffic impact study, and the traffic impact study will be used later to justify it. By pushing the study to the Design Review phase, the City has approved the use without knowing if the infrastructure can support it. Since Design Review typically focuses on aesthetics and site layout rather than the fundamental right to build, *see* DDC § 18.15.020, the City put the cart before the horse, and is choosing to hope for a manageable outcome rather than ensuring one through rigorous pre-approval analysis. The City thus failed to base its decision on substantial evidence; its decision is arbitrary and capricious; and is an abuse of discretion.

Moreover, deferring the traffic impact study to a later, post-approval process also results in a deprivation of due process. The Planning & Zoning Commission, the City Council, and the public are denied the opportunity to weigh the Project's true cost against its purported benefits. Now that the Project is approved without a traffic impact study, the public will not have standing to challenge the approval based on its traffic impacts.

DDC § 18.40.030 provides that the City *shall* review the particular facts and circumstances of each proposed condition use in terms of the following standards and *shall* find adequate evidence showing that such use at the proposed location prior to approval of a conditional use permit. The Donnelly City code is not a suggestion; it is a set of mandatory findings that creates a condition precedent for approval that, by failing to require a traffic impact study before approval, failed to meet.

Without a traffic impact study, the City has not shown that the Project will be “served adequately by . . . highways [and] streets.” DDC § 18.40.030(E). Approval of the Project without a study assumes the existing street infrastructure is “adequate” for the new anticipated ADT. By bypassing the traffic impact study, the City has ignored its duty to verify that the public infrastructure can handle the specific density of the proposed development.

Without a traffic impact study, the City failed to establish adequate evidence that the Project will not be detrimental to the general welfare for reasons of “excessive production of traffic.” DDC § 18.40.030(G). Adequate evidence cannot be satisfied by arbitrary reference to other jurisdictions’ standards, lack of site-specific analyses, and unsupported conditions of approval determined by staff in a vacuum. Without a traffic impact analysis, the City cannot factually determine whether the traffic produced is “excessive” (either for Eld Lane or Highway 55) for the site where the development is proposed. Therefore, finding of compliance with Standard G is unsupported by substantial—or any—evidence.

Without a traffic impact study, the City failed to determine that vehicular approaches be designed “as not to create an interference with traffic on surrounding public thoroughfares.” DDC § 18.40.030(H). “Interference” is a technical metric involving sight distances, turn lane lengths, and other factors. A large-scale development introduces a volume of turning movements that can fundamentally alter the safety of existing public roads. In the absence of a traffic impact study, there is no professional analysis of turning movements at peak hours, sight-distance hazards, or queuing lengths that might block through-lanes. Again, unsupported conditions of approval can not adequately substitute for actual evidence to support the approval.

Approving a large-scale development without a traffic impact study constitutes a failure to follow Idaho law and its own Code.

- iii. The City’s reasoned statement approving the conditional use permit is inadequate under I.C. § 67-6535(2).

Based on the foregoing discussion, the City’s Findings of Fact and Conclusions of Law is legally insufficient because they do not meet Idaho Code § 67-6535(2)’s requirement that an “approval . . . be . . . accompanied by a reasoned statement.” *Veterans Park Neighborhood Assoc. v. City of Boise*, 175 Idaho 194, 564 P.3d 350, 364 (2025).

//

**D. The Project is in violation of DDC § 18.40.030(E) because it will not be adequately served by water.**

DDC § 18.40.030(E) mandates that new development must be “adequately served by essential public facilities and services, including water.” The City has admitted that there is currently insufficient municipal water capacity to issue building permits for the proposed ~~88-97~~-unit apartment building, 14 recreational cabins and 3 short-term rental units. The decision explicitly acknowledges this deficiency and, instead of demonstrating current adequacy, attempts to address the gap with (a) a temporary well connection for a subset of units and (b) reliance on a future municipal project to expand water system capacity. This approach conflicts with DDC’s requirement for adequacy.

Adequacy under § 18.40.030(E) is a present-tense, project-wide requirement, not a future promise. A development cannot be considered “adequately served” when the governing body admits that water capacity is currently insufficient and no municipal service is available to the approved development. The City’s acknowledgement that it cannot issue building permits due to inadequate water capacity confirms noncompliance with § 18.40.030(E).

Additionally, the decision approves a temporary well connection for the recreational cabins and short-term rentals, contingent upon approvals from the Idaho Department of Water Resources, the Southwest District Health Department, and the Donnelly Rural Fire Protection District. This condition does not satisfy § 18.40.030(E) for several reasons.

First, a temporary, privately controlled or non-municipal water source for some units does not establish that the entire development is adequately served by essential public facilities and services “including water.” The Code’s adequacy requirement applies to the *entire* development; providing temporary alternative water for a fraction of the development does not resolve the shortfall for the remaining units.

Second, the temporary well connection is not currently effective or approved. It is expressly conditioned on third-party approvals that have not yet been obtained. A condition precedent to service is not service. Where water availability turns on speculative, future regulatory approvals of the well, the project cannot be deemed “adequately served” at the time of approval.

Third, the record acknowledges that municipal capacity is insufficient even for building permits. A temporary well for certain units does not resolve the lack of municipal capacity necessary to support construction, testing, fire flow, and ultimate occupancy across the project, including the ~~88-97~~-unit building. The City cannot satisfy a City Code adequacy standard with an interim, partial, and contingent measure.

Furthermore, reliance on a not-yet-constructed municipal improvement injects uncertainty into an adequacy determination that the Code treats as a threshold finding. The City’s plan assumes that (a) the future project will be timely completed, (b) it will deliver the necessary capacity for all project components, and (c) all intervening technical, regulatory, and funding risks will resolve favorably. Such assumptions are speculative and cannot substitute for the Code’s requirement of present adequacy.

Conditioning building permits or certificates of occupancy on later water availability also creates practical and legal risks that underscore the inadequacy of the approval. If the future capacity project is delayed or yields less capacity than projected, the development may be partially built but uninhabitable, burdening public health, safety, and welfare—the very concerns animating DDC § 18.40.030(E). The City’s own acknowledgement that it cannot issue building permits due to current capacity constraints confirms that the necessary adequacy showing has not been made at any stage of the development lifecycle.

Finally, to comply with § 18.40.030(E), the City was required to make supported findings that essential services, including water, adequately serve the development. The decision simultaneously (a) acknowledges insufficient municipal water capacity to issue building permits and (b) deems the project approvable based on temporary and future measures. These findings cannot be reconciled. A conclusion of adequacy cannot rest on evidence of current insufficiency coupled with conditions shifting provision of essential service to uncertain future events and third-party approvals.

Because the City’s own decision document establishes present inadequacy, there is no substantial evidence supporting a contrary adequacy finding. The approval therefore fails § 18.40.030(E).

**E. There is insufficient evidence that the proposed development will be adequately served by police and fire protection, and schools.**

DDC § 18.40.030(E) also requires a finding that a proposed development be adequately served by police and fire services, and schools. The only statement about schools is that the “Comprehensive Plan identifies that the schools are currently operating below capacity.” Staff Report at p. 5. However, the City provides no analysis of the *actual current* capacity, the number of expected increase in the student population from the proposed development, the cumulative impact on the student population from already entitled but yet to be built developments that will be serviced by the McCall Donnelly School District, and how that will impact school capacity.

Similarly with police and fire services. This project will produce an undue burden upon the City. The City has no code enforcement or law enforcement employed by the City. Currently, the Northwest Passage apartments in town, approximately 40 units, have generated 252 calls to the Valley County Sheriff in the last six years (2019-Jan. 2026). Managers and owners have been generally unresponsive to noise, parking, speeding, domestic violence, etc. This project is twice as populated, and there is no mechanism by which the City can ensure that management will be more responsive and responsible to its tenants and neighbors. Other than stating that “the Owner has been working with the Donnelly Rural Fire Protection District regarding the district’s requirements for access and fire flows,” Staff Report at p. 12, there is no evidence presented and no findings made regarding whether the police and/or fire can adequately serve another 100 residential units, a recreational cabin park, and an event center.

**F. The Event Center is not compatible or harmonious with the existing character of the neighborhood.**

As discussed above, the entire rezone of the southern parcel to RR-DA is not in accordance with the future land use map, and the City failed to make any findings of how it is in accordance with

the Comprehensive Plan. By extension, then, the City failed to adequately find that commercial event center is harmonious or compatible with the existing character of the neighborhood on Eld Lane.

### III. Violation of International Fire Code Section D106

The development includes a total of 101+15 dwelling units (88-97 apartments, 14 recreational cabins, three short-term rentals, and an existing home) and a commercial event center. Under International Fire Code (IFC) Appendix D, Section D106, multiple-family residential projects with more than 100 dwelling units require two separate and approved fire apparatus access roads, unless *all* buildings are equipped with approved automatic sprinkler systems.<sup>2</sup> As explained below, the project exceeds the 100-unit threshold, and the City cannot rely on the D106.2 exception to waive the requirement for a second access road where a significant portion of the project remains unsprinkled.

IFC Appendix D, Section D106 establishes a mandatory baseline for fire apparatus access to multiple-family residential developments exceeding 100 dwelling units. The text requires two separate and approved fire apparatus access roads serving such projects, ensuring redundant ingress and egress for emergency responders and safeguarding occupant life safety and property protection. The dual-road requirement is not discretionary; it is a prescriptive standard triggered by the dwelling-unit threshold, reflecting the elevated risk profile and response complexity associated with higher-density residential occupancies. Compliance thus hinges on the provision of two distinct access routes that are each designed, constructed, and maintained to the “approved” standard applicable to fire apparatus access roads, including, at minimum, conformity with approved dimensions, load-bearing capacity, turning geometry, grade, and unobstructed clearance.

Section D106 provides a limited exception to the two-road mandate for projects where there are more than 100 and up to 200 dwelling units: a single approved fire apparatus access road may be permitted only where *all* buildings within the development are equipped throughout with approved automatic sprinkler systems. The exception is expressly conditioned on universal sprinkler coverage—across every building—without carve-outs for particular structures or mixed-use components.

~~To start, the City’s staff report clearly states that the project contains over 100 dwelling units: “The Owner is proposing 101 dwelling units (One existing home, 97 new apartments and three short-term rental units).” Staff Report at p. 4.~~

Second, the fundamental issue is that the City failed to classify or consider the recreational cabins when applying IFC Section D106 to the project. Although DDC § 18.05.130 exempts recreational cabins from density calculations, *it does not exempt such units from application of*

---

<sup>2</sup> IFC Appendix D, Section D106 requires multiple-family residential projects having more than 100 dwelling units be equipped throughout with two separate and approved fire apparatus access roads. Exception is “[p]rojects having up to 200 dwelling units may have a single approved fire apparatus access road when *all buildings, including non-residential occupancies*, are equipped throughout with approved automatic sprinkler systems . . .” (emphasis added).

the IFC, which Donnelly has adopted as its own code. For life-safety hazards, the IFC does classify all structures and if a structure provides independent sleeping, cooking, or sanitation, it is counted as a unit that increases the load on emergency services.

DDC § 18.05.130 defines recreational cabins as “a temporary living quarter, ranging from 400 square feet to 1,000 square feet, . . . designed for leisure, vacation, or temporary recreational purposes . . . to offer . . . temporary *living quarters* . . .” with no permanent residency.” The IFC defines residential “groups” in Chapter 3 (Section 310) of the International Building Code (IBC), which is adopted by reference in the IFC to define the use and occupancy of buildings. Group R-1 “occupancies containing sleeping units where the occupants are primarily *transient* in nature.” IBC § 310.2. Based on DDC § 18.05.130’s definition of recreational cabins, and the IFC’s building classifications, the 14 recreational cabins are residential units that should have been added to the ~~88-97~~ apartments, 3 short-term rentals, and existing home, increasing the residential unit count to ~~101+15~~ dwelling units.<sup>3</sup> Because the Project does not have sprinkler systems for the recreational cabins (or the short-term rentals), it cannot benefit from IFC Section D106.2’s exemption from providing secondary access.

Moreover, the event center further necessitates the secondary access road. Under IBC Section 303, an event center is an Assembly Group A occupancy.<sup>4</sup> When mixed with a high-density residential development, the convergence of transient guests, residents, and event-goers creates a “high-load” environment. To allow a single point of ingress and egress for ~~101+15~~ residential units *plus* a high-occupancy event center—without requiring universal sprinklers—is a deviation from the IFC that places both the public and emergency responders at risk.

#### **IV. Procedural Violations**

DDC § 18.05.060(B)(b)(i) states that the neighborhood “meeting shall be on a Saturday between 10 -7, or on a weekday between 6-8pm. Meeting shall not be on a holiday, a holiday weekend or the day before or after a holiday weekend.” This provision was violated. Neighborhood meeting was held on December 22, during Christmas week, 3 days before Christmas.

DDC § 18.05.080(C) allows a temporary certificate of occupancy to be approved by Administrator for a period not to exceed 6 months, if administrator finds that assurances have been given to the city, acceptable by the administrator, that any safety-related conditions have been satisfactorily completed and any other applicable regulatory conditions will be complied with within the six-month period.” This mandate was violated in several ways: (1) The intersection at Eld lane (safety issue) was not required to be completed before the recreational cabins are occupied; (2) the crosswalk for the employees’ children was not required to be completed within that 6-month window; (3) The widening of Eld Lane will not be required to be completed within that 6 month window.

---

<sup>3</sup> Although the applicant claims that the recreational cabins are for “day-use” only, the IFC classifications are based on the structure’s capability—whether it contains sleeping units—and not intended or actual use.

<sup>4</sup> IBC 303.1 defines Assembly Group A as “includ[ing], among others, the use of a building or structure, or a portion thereof, for the gathering of persons for purposes such as civic, soil or religious functions; recreation, food or drink consumption or awaiting transportation.

### AFFECTED PERSONS

I.C. § 67-6521 allows "affected persons"—those with real property interests adversely impacted by a land-use decision—to challenge permits, rezonings, or variances. It ensures property owners can appeal decisions made by local zoning commissions or governing boards. The above-listed persons are "affected persons" because they have a *bona fide* interest in real property that will be adversely affected by the approval of the Boulder Creek annexation, rezone, and conditional use permit. Each person owns real property on Eld Lane that abuts the parcels subject to the approvals.

Each person's real property interests will be adversely affected by the noise; excess traffic; increased disturbance and decreased safety due to lack of adequate police services; increased fire risk due to lack of adequate fire protection services; and an overall result in a decrease in property values. *See* Exhibit A.

### CONCLUSION

For the foregoing reasons, the City Council should vacate its approval of 2026-AN-1, 2026-RZ-1, 2026-CUP-1.

Date: ~~March 30, 2026~~ April 10, 2026

MOUNTAIN TOP LAW PLLC

---

Julia Thrower  
*Attorney for Affected Persons*

67-6535. APPROVAL OR DENIAL OF ANY APPLICATION TO BE BASED UPON EXPRESS STANDARDS AND TO BE IN WRITING. (1) The approval or denial of any application required or authorized pursuant to this chapter shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county. Such approval standards and criteria shall be set forth in express terms in land use ordinances in order that permit applicants, interested residents and decision makers alike may know the express standards that must be met in order to obtain a requested permit or approval. Whenever the nature of any decision standard or criterion allows, the decision shall identify aspects of compliance or noncompliance with relevant approval standards and criteria in the written decision.

(2) The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

(a) Failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of same, on appeal.

(b) Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. **Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied.** A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

(3) It is the intent of the legislature that decisions made pursuant to this chapter should be founded upon sound reason and practical application of recognized

principles of law. In reviewing such decisions, the courts of the state are directed to consider the proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision making. Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision. Every final decision rendered concerning a site-specific land use request shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code. An applicant denied an application or aggrieved by a final decision concerning matters identified in section 67-6521(1)(a), Idaho Code, may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance, seek judicial review under the procedures provided by chapter 52, title 67, Idaho Code. An appeal shall be from the final decision and not limited to issues raised in the request for reconsideration.

**BEFORE THE DONNELLY CITY COUNCIL**

AMENDMENT TO THE FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR CASE NUMBERS 2026-AN-1, 2026-RZ-1 & 2026-CUP-1, ORIGINALLY APPROVED AND EXECUTED ON MARCH 16, 2026 (MORE COMMONLY KNOWN AS BOULDER CREEK).

The Council finds that the amendments shown in strike through and underlined text herein are needed to correct language inconsistent with the original record, which does not change the original decision.

**IN THE MATTER OF AN APPLICATION FOR )  
AN ANNEXATION, REZONING WITH A )  
DEVELOPMENT AGREEMENT AND )  
A CONDITIONAL USE PERMIT FOR A )  
PLANNED UNIT DEVELOPMENT, CURRENTLY )  
CALLED BOULDER CREEK, FOR REUBAN )  
ORTEGA, AN INDIVIDUAL, AND FREEDOM )  
MANAGEMENT GROUP, LLC, WITH )  
MANAGING MEMBER JOE CRITCHFIELD )**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
CASE NUMBERS 2026-AN-1, 2026-RZ-1 & 2026-CUP-1**

The above-entitled applications for annexation, rezone with a development agreement, and conditional use permit for a planned unit development came before the Donnelly City Council for their action on January 26, 2026, at which time public testimony was taken. The public hearing was continued to February 9, 2026, with public testimony to be limited and restricted to the possible need for a secondary access, at which time public testimony was taken in relation to the possible need for a secondary access and the public hearing was closed. Mayor Dorris recused herself and stepped down from both hearings due to a potential conflict of interest due to her residence being located adjacent to the subject property. The Donnelly City Council, having heard and taken oral and written testimony, and having duly considered the matter, makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT:**

**A. PROJECT OVERVIEW:**

**SITE:**

The subject site consists of two (2) parcels which total approximately 22.83 acres and are identified as Valley County parcel numbers RPD00000151350 and RP16N03E151340. The northern parcel is located within the Donnelly city limits. The southern parcel is not.

The northern parcel consists of approximately 10.71-acres and contains a small area within a special flood hazard area and includes wetlands associated with Boulder Creek. The parcel is bordered on the north and west by Eld Lane. The parcel contains an existing dwelling and accessory structures located adjacent to Eld Lane. The remaining portion of the parcel contains portions of Boulder Creek, mature trees and natural vegetation.

The southern parcel consists of approximately 12.12-acres with a majority of the parcel located

within a special flood hazard area and includes wetlands associated with Boulder Creek. There are mature trees and natural vegetation located throughout the site.

NOTE: Staff and the Owner have worked together to obtain a site layout with no residential dwelling units proposed within the special flood hazard area, even though allowed outside of the floodway per Donnelly City Code.

The Owner acknowledged, by entering into a Hold Harmless Agreement with the City, that there is insufficient municipal water capacity for any building permits to be issued and that it is unknown as to when sufficient capacity will be available, but that the City has entered into a public private partnership with another developer to have a 600,000 gallon water tank constructed.

The Owner is extending all central services to the site. Development of sewer, water, drainage, paved streets and other services will be provided at the developer's expense. The Owner has also been working with the Donnelly Rural Fire Protection District regarding the district's requirements for access and fire flows.

The Owner will provide a public easement and pathway south of the Boulder Creek, extending from the east property line to the west property line.

#### ACCESS:

Access will be from Eld Lane, a city planned collector, which will be developed abutting the subject property in accordance with the Donnelly City Code. Eld Lane accesses Highway 55. The intersection of Eld Lane and Highway 55 will need to be upgraded to ensure safety and will therefore be conditioned within the development agreement.

#### ANNEXATION/REZONE/DEVELOPMENT AGREEMENT REQUEST:

The Owner is requesting an annexation of the southern parcel, which is contiguous with City of Donnelly's municipal city limits. The Owner is also requesting to rezone the properties from R-4 (Residential) and MU (Multiple Use – Valley County designation) to R-8-DA (Residential with a development agreement) and RR-DA (Rural Residential with a development agreement).

The rezone areas will be based on the areas associated with the proposed parcel split and parcel line adjustments, Record of Survey for Freedom Management, LLC & Reuben Ortega, ~~that was attached hereto~~ to the staff report. Parcels 1, 2 and 3 are proposed for R-8-DA and Parcel 4 is proposed for RR-DA.

#### CONDITIONAL USE PERMIT REQUEST:

The Owner is requesting conditional use permit approval for a planned unit development. The Owner proposes a planned unit development based on the proposed uses of multi-family dwellings, recreational cabin park, short-term rental or vacation rental, and commercial entertainment facility (outdoor).

The proposed development is planned to consist of four (4) separate development areas. Those areas are proposed to be developed as follows:

Area 1 – Maintain the existing residential dwelling.

Area 2 – Construct 14 recreational cabins and 3 short-term rentals/vacation rentals.

Area 3 – Construct 14 multi-family buildings (97 residential apartments) and a club house.

Area 4 – Construct an outdoor commercial entertainment facility, outdoor vendor area, and gathering area. The area will also have a greenbelt public pathway. The area will be designed in conformance with the Donnelly City Code, Section 18.35, Flood Damage Prevention and will provide for enhancement of the existing wetland areas.

**B. APPLICATION SUBMITTAL:**

The application for this item was received by the City of Donnelly on December 26, 2025, and was accepted as complete, in accordance with Donnelly City Code Section 18.05.050 on, January 5, 2026.

**C. NOTICE OF PUBLIC HEARING:**

In accordance with Title 67, Chapter 65, Idaho Code, and Donnelly City Code, requests for agencies' reviews were transmitted on January 5, 2026, the notice of this public hearing was mailed to property owners within three hundred (300) feet of the subject property on January 5, 2026, and the notice was published in the area newspaper on January 8, 2026, and January 15, 2026; In accordance with Donnelly City Code, the Owner held a neighborhood meeting on December 22, 2025, and posted the site on January 16, 2026.

**D. HISTORY OF RELEVANT PREVIOUS ACTIONS:**

None, except that the north portion of the property was annexed into the city prior to 1977.

**E. COMPANION APPLICATIONS:**

All applications are inclusive herein, except for a Lot Split and Lot Line Adjustment Application to be approved administratively, and recorded, as stipulated within the development agreement.

**F. DEVELOPMENT AGREEMENT:**

The Owner has submitted a development agreement to define and limit the uses and residential density of the site. Staff is proposing the development agreement be modified with conditions on development to be placed within the development agreement.

**G. COMPREHENSIVE PLAN LAND USE MAP AND ZONING MAP DESIGNATIONS:**

	<b>COMP PLAN DESIGNATION</b>	<b>ZONING DESIGNATION</b>	<b>LAND USE</b>
<b>Existing</b>	Compact Residential and Public Lands/ Open Space	R-4 – North parcel MU – South parcel (County)	Existing dwelling and vacant land
<b>Proposed</b>	No change	R-8-DA – North Parcel RR-DA – South Parcel	Planned Unit Development with the existing dwelling, a recreational cabin park with 14 cabins/casitas, 3 short-term rental units, 97 apartments and an outdoor commercial entertainment facility.
<b>North of site</b>	Commercial	R-8	Single-family dwellings
<b>South of site</b>	Neighborhood residential	MU (County)	Single-family dwelling and a vacant land
<b>East of site</b>	Commercial and Public Lands/Open Space	R-4 and C - Commercial	Single Family dwelling and vacant land

	COMP PLAN DESIGNATION	ZONING DESIGNATION	LAND USE
West of site	Industrial	LI - Light Industrial	Wastewater Treatment Plant

H. AREA OF CITY IMPACT DATA: The property planned for annexation is within the area of city impact.

I. SITE DATA:

Total Acreage of Site:

Approximately 22.83 acres

Total Acreage of Area 1, 2 and 3 is 10.11 acres.

The majority of this entire area is outside of the special flood hazard area and may be utilized to calculate a maximum density at eight dwelling units per acre if the council approves the requested rezone, equating to a total of 80.88 dwelling units maximum.

Total Acreage of Area 4 is 12.70 acres.

4.96 acres of Area 4 is within the "FLOODWAY" and is NOT eligible for density calculations.

7.74 acres of Area 4 is with the floodplain but outside if the floodway and, per City Code, may be calculated at one dwelling unit per acre for maximum density, equating to a total of 7.74 dwelling units maximum.

Maximum Density Calculation per City Code:

10.11-acres at eight dwelling units per acre maximum = 80.88 dwelling units

7.74-acres at one dwelling unit per acre maximum = 7.74 units

Maximum number of dwelling units - 88.62 rounded to 88; Therefore, a maximum of 88 dwelling units could be considered by the City Council per city code if the requested annexation and rezones are approved. The Owner is proposing 101 dwelling units (One existing home, 97 new apartments and three short-term rental units).

NOTE: Per Donnelly City Code, "The number of units permitted for the Recreational Cabin Park shall be as determined by the city council as a part of the conditional use permit and the units shall not be considered dwelling units for density calculations.

Total Open Space:

Approximately 18.14-acres (79%) inclusive of a mix of natural vegetation and landscaped areas, where 15 percent is required by Donnelly City Code.

J. DESIGN FEATURES:

Other than the design features detailed herein, and conditioned within the conditions of approval, the site and elevation design features will be required to be reviewed in detail with the submittal of design review applications for the project.

K. AVAILABILITY AND ADEQUACY OF UTILITIES AND SERVICES:

The Owner acknowledged, by entering into a Hold Harmless Agreement with the City, that there is insufficient municipal water capacity for any building permits to be issued and that it is unknown as to when sufficient capacity will be available, but that the City has entered into a public private partnership with another developer to have a 600,000 gallon water tank constructed. The Owner is extending all central services to the site. Development of sewer, water, drainage, streets and other services will be provided at the developer's expense. The Donnelly Comprehensive Plan identifies that the schools are currently operating below capacity. The Owner has been working with the Donnelly Rural Fire Protection District regarding the

district's requirements for access and fire flows. The project will connect with the North Lake Recreational Sewer and Water District infrastructure to provide wastewater facilities.

L. SPECIAL ON-SITE FEATURES:

Areas of Critical Environmental Concern

Evidence of Erosion: *No, other than the Boulder Creek water flow*

Fish Habitat: *Yes – Boulder Creek*

Mature Trees: *Yes*

Riparian Vegetation: *Yes – Located adjacent to Boulder Creek*

Steep Slopes: *Yes - Located adjacent to Boulder Creek*

Stream/Creek: *Yes – Boulder Creek*

Unique Animal Life: *Unknown*

Unique Plant Life: *Yes – Riparian vegetation located adjacent to Boulder Creek*

Unstable Soils: *Unknown – development subject to engineering analysis prior to construction.*

Wildlife Habitat: *Yes –along Boulder Creek*

Floodplain: *Yes*

*Located adjacent to Boulder Creek – FIRM Panel #16085C1302C, and includes a floodway area.*

M. AGENCY RESPONSES RECEIVED:

January 23, 2026, letter from ITD

January 21, 2026, letter from Donnelly Rural Fire District

January 21, 2026, letter from Donnelly Elementary School

February 2, 2026 , Email from Donnelly Rural Fire Distract

N. PUBLIC CORRESPONDENCE RECEIVED:

Submitted for the January 26, 2026, meeting

1. Email from Dan Margolis 192 Eld Lane, dated January 14, 2026
2. Letter from Kate & John Farmer 138 Eld Lane, dated January 14, 2026
3. Letter from Susan Dorris 163 Eld Lane, dated January 20, 2026
4. Email from Corrin Floyd 320 Payette Street, dated January 26, 2026
5. Email from Erin Fanning, dated January 24, 2026

Submitted for the February 9, 2026, meeting

1. Letter from Susan Dorris 163 Eld Lane, dated February 9, 2026 (received February 4, 2026)
2. Email from Evelyn Adams 204 Eld Lane, dated February 3, 2026
3. Email from Blake Miller, dated February 5, 2026
4. Letter from Bill Pilcher 301 Eagle Lane, dated February 5, 2026
5. Letter from Denyce Verti, dated February 5, 2026

**STAFF ANALYSIS PROVIDED TO THE CITY COUNCIL:**

A. COMPREHENSIVE PLAN PROVISIONS OF SPECIAL INTEREST REGARDING THIS PROPOSAL:

CHAPTER 3 PROPERTY RIGHTS, III POLICIES:

- a. Land use development regulations are to be designed to protect the health, safety, and welfare of the community, and to avoid any unnecessary conditions, delays, and costs.

- b. The protection and preservation of private property rights are to be a strong consideration in the development of land use policies and implementation standards and regulations and as required by law.

CHAPTER 4 - POPULATION AND COMMUNITY PROFILE, *III POLICIES*:

- c. Provide a variety of housing opportunities for differing population needs ranging from single family residential to multi-family uses.

CHAPTER 5 - LAND USE:

The Donnelly Comprehensive Plan Future Land Use Map designates the north parcel as **Compact Residential**:

COMPACT RESIDENTIAL: This designation is intended to provide a diverse mix of housing types with a maximum residential density of eight (8) dwelling units per acre to encourage compact development. Cottage or home-based businesses are encouraged in Compact Residential Districts provided there are no nuisance characteristics.

The Donnelly Comprehensive Plan Future Land Use Map designates the south parcel as **Public Lands and Open Space**:

**PUBLIC USE, PARKS, OPEN SPACE:** Suitable primarily for the development of such uses as golf courses, parks, recreation facilities, greenways, schools, cemeteries, and public service facilities such as government offices. All development within this land use is encouraged to be designed to accommodate the different needs, interests, and age levels of residents and visitors in matters concerning both recreation and civil activities.

Open space should be designed to capitalize on and expand the open space areas around natural features and environmentally sensitive areas. Priorities for preservation include: the most sensitive resources – floodways and floodplains (including riparian and wetland areas), locally significant features, and scenic viewpoints. Fragmentation of open space areas should be minimized so that resource areas are able to be managed and viewed as an integrated network. Open space areas along the Boulder Creek should be designed to function as part of a larger area open space network.

LAND USE, *II OBJECTIVE(S)*:

- b. Implement the Future Land Use Map and land use policies as the official guide for development.
- c. Encourage land uses that are in harmony with existing resources, scenic areas, natural resources and wildlife areas, and surrounding land uses.

LAND USE, *III POLICIES*:

- b. Development that places an excessive burden on the City's infrastructure, and/or intensifies traffic congestion to a level of service that is not acceptable by the City will justify rejection unless mitigation measures are provided that are acceptable by the City Council, or City Council and Valley County Commission for Area of City Impact developments processed through the County.
- e. Housing projects proposing multiple units are to vary in size and price point to offer a variety of housing options for residents of the city.

h. Upon re-zoning, potentially negative impacts are to be adequately mitigated, as to be determined by the City Council.

i. Where feasible, open space is to be provided to protect the rural character of the area and preserve environmentally sensitive areas.

*ADDITIONAL LAND USE POLICIES:*

c. Multi-use development that enhances quality of life elements, providing not only residential units but also employment, education and commercial opportunities are encouraged.

CHAPTER 7 – HOUSING:

*I. HOUSING GOAL(S):*

a. Provide an inventory of housing that meets the needs and lifestyle of current and future residents of the city.

*II. HOUSING OBJECTIVE(S):*

a. Maintain a viable inventory of housing that is affordable to all City residents.

*III. HOUSING POLICIES:*

- a. Encourage affordable and workforce housing within close proximity to shopping and services.
- b. Projects that create additional employment opportunities are encouraged.
- c. Commercial and industrial projects that may significantly increase the City's population will be encouraged to include housing components.
- d. Encourage Multi-Residential and Multi-Use projects to include housing units at various price points, as well as opportunities for both ownership and rental.
- e. Identify priority areas for affordable and workforce housing that are co-located with city services or within walking distance to city services.
- f. Participate in regional discussions regarding affordable and workforce housing needs.

CHAPTER 8 – TRANSPORTATION, *III POLICIES:*

- d. Prioritize resurfacing of gravel streets to pavement to reduce maintenance and environmental degradation caused by poor drainage and dust.
- p. Seek funding and implement the Donnelly Pathways Plan.
- s. Implement applicable sections of the Street Classification Map as development occurs, (*Eld Lane is shown as a collector*).

CHAPTER 9 - NATURAL RESOURCES, *III POLICIES:*

- a. Priority wetlands and stream banks should be identified and restored to reduce run-off and sedimentation.
- c. Secondary and access roads in the city should be paved to reduce erosion.
- k. All new development and redevelopment projects should provide open space and architectural features that break up building surface and allow for scenic viewsheds.

CHAPTER 11 - PUBLIC SERVICES, UTILITIES, AND SCHOOLS, *III POLICIES:*

- a. The city should consider the impact of additional development on all current and projected public services, facilities and utilities when reviewing project applications.
- m. Work with Valley County to provide adequate levels of police and the Donnelly Rural Fire Protection District provide adequate fire services for maximum efficiency in law enforcement and firefighting services.

CHAPTER 12 - PARKS AND RECREATION, *III POLICIES:*

- a. Enhance the City's quality of life by expanding social, recreational, educational and cultural programs.
- b. The city should support recreational business and development by supporting parks and recreational facilities, as well as maintaining public information.
- c. New and planned bike and pedestrian paths should link to parks and recreational facilities.

CHAPTER 14 - HAZARDOUS AREAS, *III POLICIES:*

- a. The city should discourage development in the 100-year floodplain.
- g. Where possible, protect and restore wetland functionality and stabilize stream and riverbanks.
- m. Continue to participate in FEMA's National Flood Insurance Program and maintain accurate flood plain mapping for the city.

B. ZONING CODE PROVISIONS OF SPECIAL INTEREST REGARDING THIS PROPOSAL:

ZONING DISTRICTS: Donnelly City Code, Section 18.05.010: Districts, established, purposes and restrictions:

R RESIDENTIAL DISTRICT: To provide regulations and districts for various residential neighborhoods. Gross density in an R district shall be determined according to the numeral following the R. The numeral designates the maximum number of dwelling units per acre. Multifamily, attached single family and two-family units/developments are prohibited in R-1, R-2, R-3 and R-4 zoning districts. Centralized water and sewer facilities are required for all development applications submitted after the effective date hereof in all districts except for the RR zone.

RR RURAL RESIDENTIAL DISTRICT: To provide for the transition of agricultural land no longer used for extensive agricultural purposes into residential areas, while preserving agricultural uses compatible with residential development. Gross density shall not exceed one single-family dwelling unit per 10 acres.

FLOODWAY DENSITY: Donnelly City Code, Section 18.35.040, Provisions for flood hazard reduction, Subsection B.16 Density:

Land designated as floodway shall be excluded when calculating residential density and in no case shall the residential density within a floodplain, outside of the floodway area, exceed one dwelling unit per acre.

USE DEFINITIONS: Donnelly City Code, Section 18.05.130: Definitions define the proposed uses as follows:

PLANNED UNIT DEVELOPMENT

A project controlled by one owner, partnership, or corporation, and characterized by a unified site design which may include multiple uses, involving varying the normal zoning requirements and restrictions so that the maximum long-range benefit can be gained and the unique features of the

site preserved and enhanced.

#### DWELLING, MULTIFAMILY

A dwelling consisting of three or more dwelling units with varying arrangements of entrances and party walls, commonly referred to as apartments. Multifamily housing may include public housing.

#### RECREATIONAL CABIN PARK

A recreational cabin park is a tract of land that includes cabins, casitas, and/or other temporary living quarters, ranging from 400 square feet to 1,000 square feet, not to exceed 1,000 square feet, designed and operated for leisure, vacation, or temporary recreational purposes. Use as permanent living quarters is prohibited. These parks are to offer facilities for a variety of non-permanent guests, providing cabins, casitas or similar recreational structures as temporary living quarters instead of recreational vehicles. The number of units permitted shall be as determined by the city council as a part of the conditional use permit and the units shall not be considered dwelling units for density calculations.

#### SHORT-TERM RENTAL OR VACATION RENTAL

Any individually or collectively owned single-family house or dwelling unit or any unit or group of units in a condominium, cooperative or timeshare, or owner-occupied residential home that is offered for a fee and for less than 30 days. "Short-term rental" or "vacation rental" does not include a unit that is used for any retail, restaurant, banquet space, event center, hotel/motel type lodging, or another similar use.

#### COMMERCIAL ENTERTAINMENT FACILITIES

Any profitmaking activity which is generally related to the entertainment field such as motion picture theaters, performing arts theaters, sports stadiums and arenas, amusement parks, bowling alleys, billiard parlors, poolrooms, dance halls, ice/roller skating rinks, health/fitness clubs, recreation clubs, arcades, nightclubs, cocktail lounges and similar entertainment activities.

**REZONE FINDINGS REQUIRED BY COUNCIL:** Donnelly City Code, Section 18.55.010.F, For approval of zoning districts, the city council must find the following: (*Staff comments in italics – see Council findings under the Conclusion of Law section of these findings.*):

1. The proposed zoning districts are in compliance with the comprehensive plan:

*The area of the plan with the proposed zoning designation of R-8-DA (Residential with a development agreement) is consistent with the comprehensive plan and the land use designation of Compact Residential.*

*The southern parcel is contiguous with City of Donnelly's municipal city limits and therefore can be annexed.*

*The area of the plan with the proposed zoning designation of RR-DA (Rural Residential with a development agreement) is consistent with the comprehensive plan and future land use map designation of Public Use, Parks, and Open Space because, although RR is not shown on the Zoning Compatibility Matrix, the proposed use will be restricted with a development agreement to provide for pathways, and preservation of the Special Flood Hazard Area and wetland areas, in alignment with the comprehensive plan and Donnelly City Code.*

2. Adequate public facilities exist, or are expected to be provided, to serve any and all uses allowed on this property under the proposed zoning districts:

*The Owner acknowledged, by entering into a Hold Harmless Agreement with the City, that there is insufficient municipal water capacity for any building permits to be issued and that it*

*is unknown as to when sufficient capacity will be available, but that the City has entered into a public private partnership with another developer to have a 600,000 gallon water tank constructed.*

*The Owner is extending all central services to the site as regulated by the conditions of approval. Development of sewer, water, drainage, streets and other services will be provided at the developer's expense. The Donnelly Comprehensive Plan identifies that the schools are currently operating below capacity. The Owner has been working with the Donnelly Rural Fire Protection District regarding the district's requirements for access and fire flows.*

3. The proposed zoning districts are compatible with the existing or planned uses in the surrounding area:

*The site is designed to be harmonious and appropriate in appearance with the existing and intended character of the area as regulated by the conditions of approval. A majority of the site is bordered by vacant parcels. The existing residential homes located north of the proposed development are located within an area which is shown as Commercial on the Donnelly Comprehensive Plan Future Land Use Map and have an R-8 zoning district, the same as being requested by the Owner in the location of the existing homes, except with no development agreement limiting uses and layout.*

*Furthermore, the proposed zoning designation of RR-DA (Rural Residential with a development agreement) is consistent with the comprehensive plan and future land use map designation of Public Use, Parks, and Open Space because, although RR is not shown on the Zoning Compatibility Matrix, the proposed use will be restricted with a development agreement to provide for pathways, and preservation of the Special Flood Hazard Area and wetland areas, in alignment with the comprehensive plan and Donnelly City Code.*

4. No nonconforming uses will be created with the zoning districts proposed:

*No nonconforming use will be created with the zoning districts proposed.*

**PLANNED UNIT DEVELOPMENT FINDINGS REQUIRED BY COUNCIL:** Donnelly City Code, Section 18.40.010.C: Objective. To guide land development and construction to achieve the following, *(Staff comments in italics – see Council findings under the Conclusion of Law section of these findings.):*

1. A maximum choice of living environments by allowing a variety of housing and building types, lot dimensions, yards, building setbacks and area requirements:

*The proposed development will provide multifamily dwellings, cabins/casitas and vacation housing to provide a variety of housing as identified within the Donnelly Comprehensive Plan as regulated by the conditions of approval. The site is designed in conformance with the density, dimensional standards and setbacks required as regulated by the conditions of approval.*

2. A more useful pattern of open space and recreation areas and, if permitted as part of the project, more convenience in the location of accessory commercial uses, office uses and services;

*The site will contain substantial open space located within and adjacent to the Special Flood Hazard Area. The site is proposed with pathways and an outdoor commercial entertainment facility to provide a place where residents and tourists may recreate or enjoy music within the natural environment as regulated by the conditions of approval.*

3. A development pattern which preserves and utilizes natural topography and geologic features, scenic vistas, trees and other vegetation, and prevents the disruption of natural drainage patterns;

*The site is designed to preserve natural topography and natural drainage areas as regulated by the conditions of approval. Approximately 18.14-acres (79%) inclusive of a mix of natural vegetation and landscaped areas are proposed for the site which far exceeds the 15 percent minimum required per code. The Owner is also aware they will be required to mitigate for any proposed changes to the natural environment.*

4. A more efficient use of land than is generally achieved through conventional development resulting in substantial savings through shorter utilities and streets; and

*The site is designed to take advantage of the areas which are conducive to the construction of dwellings and cabins. The natural areas will be designed to accommodate a commercial entertainment facility (outdoor) while preserving the Special Flood Hazard Area and the wetlands as regulated by the conditions of approval.*

5. A development pattern in harmony with the objective for land use density, transportation and community facilities as presented in the comprehensive plan.

*The development is designed to be in conformance with the Donnelly Comprehensive Plan in regard to density, transportation and the extension of community infrastructure as regulated by the conditions of approval.*

6. A development pattern that provides for the integrated and harmonious design of buildings, and for adequate and properly arranged facilities for internal traffic circulation, landscaping and such other features and facilities as may be necessary to make the project attractive and efficient from the standpoint of the adjoining and surrounding noncommercial areas.

*The site is designed to allow for internal traffic circulation and parking so as to not be a burden on the adjacent street as regulated by the conditions of approval. The building design, orientation of buildings, and landscaping will be subject to design review approval.*

**CONDITIONAL USE PERMIT FINDINGS REQUIRED BY COUNCIL: Donnelly City Code, Section 18.40.030: Standards for conditional uses, (Staff comments in italics – see **Council findings under the Conclusion of Law section of these findings.**):**

- A. Will, in fact, constitute a conditional use as established within Donnelly City Code for the zoning district involved:

*A planned unit development, multifamily dwelling and recreational cabin park requires approval of a conditional use permit within the R-8 (Residential) zoning district. Commercial Entertainment Facilities (outdoor) requires approval of a conditional use permit within the RR (Rural Residential) district.*

- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or Donnelly City Code:

*The site is designed to be in conformance with the goals and policies of the comprehensive plan relative to the density, providing a variety of housing options, located adjacent to a future collector (Eld Lane), protection of floodplain areas, and natural resources (wetlands) as regulated by the conditions of approval.*

*The site is designed in conformance with Donnelly City Code relative to density, setbacks, and conditional permitted uses as regulated by the conditions of approval.*

- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area:

*The site is designed to be harmonious and appropriate in appearance with the existing and intended character of the area as regulated by the conditions of approval. A majority of the site is bordered by vacant parcels. The existing residential homes located north of the proposed development are located within an area which is shown as Commercial on the Donnelly Comprehensive Plan Future Land Use Map and have an R-8 zoning district, the same as being requested by the Owner in this location, except with no development agreement limiting uses and layout.*

- D. Will not be hazardous or disturbing to existing or planned future neighborhood uses:

*The area where the multifamily dwellings are proposed is bordered to the north by Eld Lane and residential uses with a commercial comprehensive plan land use designation and an R-8 zone and industrial uses to the west. The area where the commercial entertainment facility is proposed is bordered by the proposed development, vacant parcels, and one (1) parcel with a residential dwelling. Also, the areas bordering the area where the commercial entertainment facility is proposed are shown to be, Public Lands and Open Space (northeast), Mixed Use (east), Neighborhood Residential (south) and Industrial (west) on the Donnelly Comprehensive Plan Future Land Use Map.*

- E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services:

*The Owner acknowledged, by entering into a Hold Harmless Agreement with the City, that there is insufficient municipal water capacity for any building permits to be issued and that it is unknown as to when sufficient capacity will be available, but that the City has entered into a public private partnership with another developer to have a 600,000 gallon water tank constructed.*

*The Owner is extending all central services to the site as regulated by the conditions of approval. Development of sewer, water, drainage, streets and other services will be provided at the developer's expense. The Donnelly Comprehensive Plan identifies that the schools are currently operating below capacity. The Owner has been working with the Donnelly Rural Fire Protection District regarding the district's requirements for access and fire flows.*

- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community:

*The costs of the extension of all public facilities and services will be borne by the developer and must be approved at the time of installation and before acceptance by the City of Donnelly and the Donnelly Rural Fire Protection District as regulated by the conditions of approval.*

- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors:

*It is not anticipated that these uses or activities will be detrimental to the surrounding properties upon completion of the site work as regulated by the conditions of approval. The development will be served by internal drives connected to Eld Lane at four (4) separate points of ingress/egress. Eld Lane extends to State Highway 55. The Owner understands that there will be conditions of approval to address any noise and traffic associated with the commercial entertainment facility.*

- H. Will have vehicular approaches to the property which are designed as not to create an interference with traffic on surrounding public thoroughfares:

*Access to the development will be from Eld Lane (future collector) which has access to State Highway 55. The Owner understands they will be required to widen and improve Eld Lane abutting the property to address the additional traffic associated with the proposed uses and to reconstruct Eld Lane at Highway 55 for safety as conditioned by the development agreement. The design and construction of the roadways and entrances will be as regulated by the conditions of approval.*

- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance:

*The Owner is working with an environmental engineer and hydraulic engineers to address the Special Flood Hazard Area and the wetland areas located within the site. The Owner will be required to conform with Donnelly City Code associated with any development within the Special Flood Hazard Area. The Owner will also be required to obtain any permits associated with any proposed changes to the wetland areas.*

C. STAFF DISCUSSION FOR ASSURING CONFORMITY WITH THE COMPREHENSIVE PLAN AND COMPLIANCE WITH DONNELLY CITY CODE:

- See staff comments in italics above addressing Rezone with Development Agreement application compliance with Donnelly City Code, Section 18.55.010.F, Approval of Zoning Districts.
- See staff comments in italics above addressing PUD application compliance with Donnelly City Code, Section 18.40.010.C: PUD Objectives.
- See staff comments in italics above addressing CUP application compliance with Donnelly City Code, Section 18.40.030, CUP standards.
- The Owner acknowledges that there is insufficient municipal water capacity for any building permits to be issued and that it is unknown as to when sufficient capacity will be available.
- To not exceed the maximum density for the Property one existing home, 84 multi-family units and 3 short-term rental or vacation rentals equating to 88 dwelling units should be the maximum permitted. In accordance with Donnelly City Code, the units within the Recreational Cabin Park shall not be considered dwelling units for density calculations.
- To reduce the density to 88 dwelling units, the two multifamily buildings within the center area where the clubhouse and open space is located should be removed. That area should then be designed with common-area amenities to be reviewed and approved with the design review application for the site.
- To mitigate noise between floors and units, for residential buildings comprising more than one dwelling unit, first floors should be insulated from second floors, second floors should be insulated from third floors, and so forth, and common walls between units should be insulated. The insulation method should be reviewed and approved by the Donnelly Unified Development Code Administrator prior to issuance of building permits.
- Along with the submittal for the design review application for the apartments, the Owner should submit a "Public Safety and Security Plan" to be reviewed and approved by the city.
- Prior to the submittal of a design review application for the first phase of development, the Owner should conduct a traffic impact assessment (TIA) by a professional engineer to identify traffic impacts for the intersection of Eld Lane and Highway 55 the Highway 55/Eld Lane intersection.

Eld Lane at Highway 55 increases in elevation from about 8 to 10 feet headed west from Highway 55. This dangerous grade approach to the intersection should be reconstructed.

- Prior to the submittal of the first design review application, the Owner should provide a public pathway easement, with pathway easement and construction details, to be approved by the city council, south of Boulder Creek extending the full length of the property from east to west. The pathway should be constructed and approved by the city prior to the issuance of the first occupancy permit for the development.
- A temporary connection of the planned Residential Cabin Park, consisting of 14 cabins, to the existing onsite well, until the Owner can connect to the municipal water system, should be approved subject to Idaho Department of Water Resources (IDWR), Southwest District Health Department (SWDH), and Donnelly Rural Fire Protection District (DRFPD) approvals.
- Eld Lane is a collector street with sixty-eight feet (68') of right-of-way required (Thirty-four feet from centerline). Prior to submittal of the first design review application, the Owner should dedicate to the city, property south and east of the centerline to provide for thirty-four feet (34') of right-of-way.
- Prior to submitting the first design review application, the Owner should submit a wetland study of the property for review and approval by the city.
- The Development of the Property, as conditioned by the Development Agreement, should include a completion date.
- The pathway on the east side of the short-term rentals should be removed due to its obscure location and the pathway south of 163 Eld Lane should be removed or relocated closer to Boulder Creek since the creek area is a pleasing amenity.
- The Commercial Entertainment Facility use should be regulated to limit its intensity.

D. STAFF ANALYSIS PROVIDED FOR THE FEBRUARY 9, 2026, CONTINUED HEARING:

- 2018 International Fire Code:

D106.1 Projects Having More Than 100 Dwelling Units

Multiple-family residential projects having more than 100 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads.

Exception: Projects having up to 200 dwelling units shall have not fewer than one approved fire apparatus access road where all buildings, including nonresidential occupancies, are equipped throughout with approved automatic sprinkler systems installed in accordance with Section 903.3.1.1 or 903.3.1.2.

NOTE: *The apartments will be constructed with an automatic sprinkler system.*

- Average Daily Traffic (ADT) analysis for the proposed development:

Eld Lane is a planned collector.

For reference the Ada County Highway District Section 7207.3.1 states, Average Daily Traffic

(ADT) on new and existing local streets should typically be less than 2,000.

Collector roads are allowed significantly more Average Daily Traffic, from 3000 ADT and higher depending on Traffic Impact Studies.

Estimated Average Daily Traffic (ADT) for development as conditioned = 766 ADT:

84 apartments and 14 casitas – 98 units at 6.65 average daily trips per unit = 652 ADT

Exiting home and three short term rentals – 4 units at 9.52 average daily trips per unit = 14 ADT

With the events area limited to 30 parking spaces, 60 trips per event plus event coordinators etc. = potential of 100 trips per event.

*NOTE: At the hearing on January 26, 2026, one of the project representatives stated that the casitas will be used for work force housing until the apartments are built. This could add about 50 ADT.*

- The access to the Chalet RV park on the east side of Highway 55 is only about 30-feet south of Eld Lane, possibly requiring turning conflict barriers by the Idaho Transportation Department, to be determined with the Traffic Impact Analysis.

The attached correspondence relating to the possible need for a secondary access was received prior to the staff report being provided for the February 9, 2026, City Council meeting:

February 2, 2026, email from Jerry Holenbeck, Donnelly Rural Fire District Fire Marshall confirming that, “The current site master plan addresses IFC 2018 fire department access requirements to Eld Lane.”

February 2, 2026, email from Rex Frasier and Evelyn Adams, 204 Eld Lane, providing written testimony in alignment with the subject matter of the public hearing, “The public hearing to discuss the possible need for a secondary access”.

February 3, 2026, another email from Evelyn Adams, 204 Eld Lane providing more written testimony in alignment with the subject matter of the public hearing, “The public hearing to discuss the possible need for a secondary access”.

February 4, 2026, letter from Susan Dorris, 163 Eld Lane, providing written testimony in alignment with the subject matter of the public hearing, “The public hearing to discuss the possible need for a secondary access”.

February 5, 2026, email from Blake and Monica Miller- Owners/Operators of Chalet Family Campground, providing written testimony in alignment with the subject matter of the public hearing, “The public hearing to discuss the possible need for a secondary access”.

#### **PUBLIC HEARING OF THE CITY COUNCIL:**

- A. A public hearing on the applications for annexation, rezone with a development agreement, and conditional use permit for a planned unit development came before the Donnelly City Council for their action on January 26, 2026, at which time public testimony was taken. The public hearing was continued to February 9, 2026, with public testimony to be limited and restricted to the possible need for a secondary access, at which time public testimony was taken in relation to the possible need for a secondary access and Council President Davenport closed the Public Hearing at 6:39 pm. The City Council then deliberated and then acted on the

applications.

- B. Oral testimony in favor of the applications was presented to the City Council by the applicant and their representative.
- C. Oral testimony in opposition to the applications was presented to the City Council by 10 individuals at the first hearing and 5 individuals at the second hearing.
- D. Oral testimony neither in favor nor opposed to the applications was presented to the City Council by one person at each hearing.
- E. A summary of the concerns expressed within the written and verbal testimony follows. The council considered all of the public testimony and provided conditions of approval to assure consistency with the guidance provided within the Comprehensive Plan and to assure compliance with the Donnelly Unified Development Code regarding the concerns expressed.
  - 1. Compatibility with adjacent properties
  - 2. Safety of Eld Road and its intersection of Eld Road and Highway 55
  - 3. Secondary access and fire department regulations
  - 4. Negative impacts to the Boulder Creek and floodplain area
  - 5. Dust, noise and lighting impacts
  - 6. Pedestrian access to the school and crossing Highway 55
  - 7. Quality of life
  - 8. Property values
  - 9. Mental anguish

#### **CITY COUNCIL DECISION:**

After consideration of all application documents and public testimony, the Council entered into deliberation on February 9, 2026, and the City Council then voted 4 to 0 to approve applications **2026-AN-1, 2026-RZ-1 & 2026-CUP-1** for annexation, rezone with a development agreement, and conditional use permit for a planned unit development denying the request for the construction of an outdoor commercial entertainment facility as a part of the planned unit development but approving limited live entertainment events as a part of the Planned Unit development all with the following conditions of approval:

#### **CONDITIONS ON DEVELOPMENT TO BE PLACED WITHIN THE DEVELOPMENT AGREEMENT:**

##### ARTICLE IV CONDITIONS ON DEVELOPMENT

- 4.1 The Owner acknowledges that there is insufficient municipal water capacity for any building permits to be issued and that it is unknown as to when sufficient capacity will be available.
- 4.2 The maximum gross density for the Property shall be 3.9 dwelling units per (One existing home, 84 multifamily units and 3 short-term rental or vacation rentals equating to 88 dwelling units on 22.83 acres). In accordance with Donnelly City Code, the units within the Recreational Cabin Park shall not be considered dwelling units for density calculations.

To reduce the density to 88 dwelling units, the two multifamily buildings within the center area where the clubhouse and open space are located shall be removed. That area shall be designed with common-area amenities to be reviewed and approved with the design review application for the site.

- 4.3 This Development Agreement shall vest the right of Owner to develop the Property subject to the conditions and limitations set forth in this Development Agreement. This Development Agreement shall not preclude the application of any law that is specifically mandated and required by changes in state or

federal laws or regulations. In the event such law prevents or precludes compliance with one or more provisions of this Development Agreement, Owner and Donnelly shall meet and confer to determine how provisions of this Development Agreement would need to be modified or suspended in order to comply with the law while still allowing the project to proceed substantially in accordance with this Agreement. Owner shall prepare and process the necessary amendment or amendments to this Development Agreement reasonably required in order to complete the development of the Property in accordance with this Agreement.

- 4.4 The Owner shall submit such ancillary applications, as may be required in order to complete development of the Project which may include floodplain development permit review, design review, and/or any conditional use permits and any other applicable applications as may be required by Donnelly City Code.
- 4.5 The Concept Plan dated December 26, 2025 (**Exhibit D**) represents Owner's concept for completion of the project. As the Concept Plan evolves, the city understands and agrees that certain changes in that concept may occur. If the Unified Development Code Administrator determines that any such change(s) requires additional public comment through a public hearing process, due to potential impacts on surrounding property or the community, a public hearing shall be held on any proposed change(s) in the Concept Plan, with notice provided as may be required by the City.
- 4.6 To mitigate noise between floors and units, for residential buildings comprising more than one dwelling unit, first floors shall be insulated from second floors, second floors shall be insulated from third floors, and so forth, and common walls between units shall be insulated. The insulation method shall be reviewed and approved by the Donnelly Unified Development Code Administrator prior to issuance of building permits.
- 4.7 Along with the submittal for the design review application for the apartments, the Owner shall submit a "Public Safety and Security Plan" to be reviewed and approved by the City. At a minimum, the plan shall include the following requirements:
  - a. A location for a 24-hour on-site manager with contact information.
  - b. Street addresses shall be clearly visible from the street or internal drive aisle (at least 3 inches high and reflective at night).
  - c. Buildings shall be designed, and landscaping maintained, so that apartment exterior doors, or apartment entry areas, are visible from the street or internal drive aisles.
  - d. Outdoor lighting control mechanisms shall be activated by a photocell or seasonally adjusted timer, required to uniformly illuminate parking areas and pedestrian walkways, and those areas shall be kept unobscured, and all inoperable fixtures shall be repaired within 48 hours.
  - e. The clubhouse and any pools, playgrounds, picnic areas, and similar public amenity areas, shall be visible from streets or internal drive isles.
  - f. Electronic surveillance shall be required in common areas such as, but not limited to, hallways, stairways, trash enclosures, amenity areas and parking areas.
  - g. A business license shall be required for the management of the apartments. The business license shall be renewed yearly, and yearly renewal fee paid as determined by the city.
- 4.8 Prior to the submittal of a design review application for the first phase of development, the Owner shall conduct a traffic impact assessment (TIA) by a professional engineer that identifies the traffic impacts for the intersection of Eld Lane and Highway 55 and recommend mitigation measures. The TIA shall identify any safety issues regarding the intersection.

Mitigation measures for Highway 55 at Eld Lane shall include, at a minimum, the construction of a southbound right turn lane and the potential extension of the northbound center turn, subject to ITD approval. Additionally, the north bound sight visibility may need to be mitigated dependent upon the review and requirements of ITD and the city.

Mitigation measures for Eld Lane at Highway 55 shall include, at a minimum, regrading and reconstruction of the gravel road a minimum of 100-feet west of the west edge of Highway 55 to provide a 24-foot wide minimum gravel road approaching the intersection with no more than a 2 percent slope.

Mitigation measures shall also include pedestrian improvements (to be reviewed as part of the design review), at the intersection which shall at a minimum include pedestrian activated rectangular rapid flashing beacons, crosswalks and pathway connections, subject to ITD approval.

The City and the Idaho Transportation Department (ITD) will both conduct a review and approval of the TIA. The Owner shall be required to construct any other required Highway 55/Eld Lane improvements prior to the issuance of the first certificate of occupancy for phase one.

- 4.9 The traffic impact assessment (TIA) shall also identify the traffic impacts to the intersection of W. Roseberry Road with State Highway 55. The Owner shall be required to either construct improvements for the intersection or contribute to the City, or ITD, a proportional share of the cost of any roadway or intersection improvements, including the installation of a traffic signal to be identified in the TIA. The estimated daily, pm peak and am peak trips to be generated by the development shall be determined by recommendation of the traffic engineer to be approved by the Donnelly Unified Development Code Administrator and ITD.
- 4.10 Prior to submitting the first design review application, the Owner shall submit public roadway and utility construction plans for review by the city engineer.
- 4.11 Prior to the submittal of the first design review application, the Owner shall provide a public pathway easement, with construction details, to be approved by the City Council, south of Boulder Creek extending the full length of the property from east to west. The pathway shall be constructed and approved by the City prior to the issuance of the first occupancy permit for the development.
- 4.12 A temporary connection of the planned Residential Cabin Park, consisting of 14 cabins, to the existing onsite well, until the Owner can connect to the municipal water system, is approved subject to Idaho Department of Water Resources (IDWR), Central District Health Department (CDHD), and Donnelly Rural Fire Protection District (DRFPD) approvals. The Owner acknowledges that there is insufficient capacity for any other building permits to be issued and may obtain additional building permits when the city engineer has determined that the water capacity is sufficient for additional building permits to be issued.

Upon central water, with sufficient capacity as determined by the city engineer, becoming available to the Property, the Owner shall connect to the City of Donnelly's municipal water system, at the Owner's sole expense, prior to issuance of any building permits for the apartments or short term rental units, and the well shall be abandoned or, if approved by IDWR, may be utilized for landscaping purposes.

- 4.13 The planned Recreational Cabin Park, consisting of 14 cabins, may be constructed prior to the abutting improvements of Eld Lane, however, the required Highway 55/Eld Lane intersection improvements shall be constructed prior to the issuance of the first certificate of occupancy for the Recreational Cabin Park if it is developed as the first phase. No other occupancy permits shall be issued until the entire Eld Lane frontage is constructed with curb, gutter and pavement measuring a minimum of forty-four feet (44') from the back of curb to back of curb, with a minimum six foot (6') wide planter strip and five foot (5') wide sidewalk abutting the Property. Since development is only occurring on one side of Eld Lane the pavement section shall be a minimum of twenty-eight feet (28') wide and shall be crowned at the ultimate centerline with no curb or gutter required on the non-developing side.
- 4.14 Eld Lane is a collector street with sixty-eight feet (68') of right-of-way required (Thirty-four feet from centerline). Prior to submittal of the first design review application, the Owner shall dedicate, to the city, property south and east of the centerline to provide for thirty-four feet (34') of right-of-way.
- 4.15 Prior to submitting the first design review application, the Owner shall submit a wetland study of the property for review and approval by the City.
- 4.16 A revised concept plan, based upon the conditions herein related to site layout, shall be provided to the City for review and approval by the Administrator, prior to the first design review application being submitted.
- 4.17 The Owner acknowledges the requirements within City of Donnelly Ordinance 174 "Water Supply" and will comply with these requirements.

- 4.18 No lot split or lot line adjustment shall be recorded until the public roadway and utility construction plans have been reviewed and approved by the City and the lot split is determined by the Unified Development Code Administrator to be in compliance with the conditions herein.
- 4.19 Development of the Property, as conditioned by this Development Agreement, shall be completed by December 31, 2032. For any portion of the Property not completed, as conditioned by this Development Agreement, the City shall stop issuing building permits for new construction unless an amendment to this Development Agreement is approved by the City through the public hearing process specified within Donnelly City Code.
- 4.20 A 30-foot wide ingress/egress easement shall be required for the roadway into Area 4 from Eld Lane and the roadway to the short term rental/vacation rental units.
- 4.21 A 24 foot wide emergency access shall be provided between the apartment site, Area 3, connecting to the hammer head at the short term rental/vacation units in Area 2.
- 4.22 Parking shall be prohibited on Eld Lane, except that, if in the future the City Council determines that parking should be allowed on Eld Lane, the council may pass a resolution allowing parking as they deem appropriate and an amendment to this condition of this development agreement shall not be required.
- 4.23 Prior to any occupancy permits being issued for the multi-family units Eld Lane, from the east edge of the subject property to Highway 55 shall be reconstructed to a minimum width of 24-feet (Two travel lanes), with a compacted base including road mix gravel and a minimum five foot wide compacted crushed cinder or gravel pedestrian pathway within the right-of-way. Reconstruction plans and specific pathway location shall be reviewed by the UDC administrator and city engineer.

**CONDITIONS OF APPROVAL FOR THE CONDITIONAL USE PERMIT:**

1. Comply with the conditions of the Development Agreement.
2. Comply with the City of Donnelly Unified Development Code.
3. Remove the pathway on the east side of the short-term rentals and either remove the pathway south of 163 Eld Lane or relocate it closer to Boulder Creek, subject to city approval.
4. Live entertainment events shall comply with the following:
  - a. Shall comply with Donnelly City Code. The code currently defines "Live Entertainment Events" as, *"Temporary concerts and other cultural events lasting less than 14 days or ongoing occasional events such as barn dances, square dances, weddings and receptions; temporary events such as corn mazes, hayrides, retail pumpkin patches and petting zoos lasting less than 60 days per calendar year."*
  - b. A design review application shall be provided for Area 4 as shown on the concept plan, which is a part of the development agreement.
  - c. Shall be limited to the area east of Boulder Creek, except that a temporary event area may be permitted on the west side of Boulder Creek until such time as the area on the east side is developed.
  - d. Events are restricted to Thursday through Sunday and Holidays, unless a waiver is granted by the city council.
  - e. Events are restricted to between the hours of 10:00 AM to 10:00 PM, unless a waiver is granted by the city council.
  - f. Amplified sound shall be prohibited between the hours of 10 PM and 10 AM unless a waiver is granted by the city council.
  - g. Illumination for events must be terminated within one hour after the event's conclusion.
  - h. As a part of the design review application the Owner shall submit a detailed traffic control schedule and designated parking plan to prevent overflow traffic and parking into residential streets, subject to review and approval by the City Council.

- i. As a part of the design review application the owner shall submit a detailed plan specifying sanitation (portable restrooms), fire watch personnel, trash/recycling and emergency access.
  - j. A parking area with thirty spaces shall be provided to be reviewed and approved with the design review application. The parking area will not be required to be paved but shall be constructed with a compacted base with gravel, or other material providing for a hard surface.
  - k. Parking shall only be permitted within the parking lot and shall be prohibited anywhere else on the live entertainment event property except for non-patron or staff vehicles such as delivery vehicles, and event set up vehicles.
  - l. If food trucks are planned, they shall only be permitted to be parked in an area to be shown as a part of the design review application contingent upon design review application approval.
  - m. A "Public Safety and Security Plan" shall be provided to the city for review and approval of the Unified Development Code Administrator.
5. The road shall be maintained for dust abatement during the construction.
  6. The development shall comply with construction hours.

**NOTE: In the event a Standard Condition of Approval conflicts with a Site Specific Condition of Approval contained herein the Site Specific Condition of Approval shall control.**

**STANDARD CONDITIONS OF APPROVAL:**

1. The Owner shall comply with all provision of the city of Donnelly Unified Development Code.
2. The Owner shall comply with all requirements of the Idaho Transportation Department including, but not limited to, approval of the drainage system, curbs, gutters, streets, and sidewalks.
3. No ditch, pipe, canal, drain, or other structure for irrigation water or irrigation wastewater owned by an organized irrigation district, canal company, ditch association, drainage district, drainage entity, or other irrigation entity, shall be obstructed, routed, covered or changed in any way unless such obstruction, rerouting, covering or changing has first been approved in writing by the entity. A Registered Engineer shall certify that any ditch rerouting, piping, covering or otherwise changing of the existing irrigation or waste ditch (1) has been made in such a manner that the flow of water will not be impeded or increased beyond carrying capacity of the downstream ditch; (2) will not otherwise injure any person or persons using or interested in such ditch or their property; and (3) has satisfied the Idaho Standards for Public Works Construction. A copy of such written approval and certification shall be filed with the construction drawing and submitted to the City Engineer.
4. Encroachments including, but not limited to, landscaping, fencing, lighting, and/or pathways shall not be located within any easement or right-of-way for any ditch, pipe, canal, drain, or other structure used for irrigation water or irrigation wastewater without the express written approval of the organized irrigation district, canal company, ditch association, drainage district, drainage entity or other irrigation entity associated with such ditch, pipe, drainage, canal or other structure. The Owner shall submit a copy of the written approval from the irrigation entity, drainage district, or drainage entity.
5. An approval letter from the Donnelly Rural Fire Protection District shall be submitted to the City.
6. Conservation and recreation easements (if applicable) shall be approved by the staff and the City Engineer prior to issuance of a building permit or Certificate of Occupancy (whichever occurs first).
7. The Owner shall obtain approval of the development relative to its effects on wetlands or other natural waterways (if applicable) from the Corps of Engineers, Idaho Department of Water Resources and any other agency with jurisdiction.
8. The Americans with Disabilities Act, Uniform Building Code, Donnelly City Code, Donnelly Comprehensive Plan, and all applicable County, State and Federal Codes and Regulations, shall be complied with. All design and construction shall be in accordance with all applicable City of Donnelly

Codes unless specifically approved by the City Council.

9. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of said application prior to commencing any change. Any change by the Owner to the planned use of the property, which is the subject of said application shall require the Owner to comply with all rules, regulations, ordinances, plans, and any other regulatory and legal restrictions in force at the time the Owner (or its successors in interest) submits the application to the City of Donnelly for a change to the planned use of the subject property.
10. The City's actions on the application do not grant the Owner any appropriation of water or interference with existing water rights. The Owner indemnifies and holds the City harmless for any and all water rights claims in any way associated with this application.
11. The Owner shall take care to locate, and protect from damage, existing utilities, pipelines and similar structures. Documentation indicating that "Digline" has performed an inspection of the site shall be submitted prior to the issuance of any building permits for the site.
12. The Owner shall provide a construction site dust control mitigation plan to be reviewed and approved by staff prior to the issuance of a "Notice to Proceed with Construction" letter.
13. If applicable, verification and assurance of compliance with any Federal Aviation Administration requirements shall be provided to the City.

#### CONCLUSIONS OF LAW:

The City Council reviewed the particular facts and circumstances of this proposed annexation, rezone with a development agreement, and conditional use permit for a planned unit development in regard to the applicable City of Donnelly Comprehensive Plan and established goals, objectives and policies and Donnelly City Code (DCC), and based upon the information provided concludes that the proposed annexation, rezone with a development agreement, and conditional use permit for a planned unit development as conditioned herein are in accordance with the said City of Donnelly Comprehensive Plan and Donnelly City Code (DCC) because:

A. PER DONNELLY UNIFIED DEVELOPMENT CODE SECTION 18.55.010.F, FOR APPROVAL OF ZONING DISTRICTS, THE CITY COUNCIL FINDS THAT:

1. The proposed zoning districts are in compliance with the comprehensive plan:

*The southern parcel is contiguous with City of Donnelly's municipal city limits and therefore can be annexed.*

*The rezone areas are based on the areas associated with the proposed parcel split and parcel line adjustments, Record of Survey for Freedom Management, LLC & Reuben Ortega, which is a part of the record and was attached to the staff report showing a minor variation in Comprehensive Plan Future Land Use Map land use designation areas of approximately 0.6 acres. Including the abutting right-of-way, the land as shown as Parcels 1, 2 and 3 are approved for R-8-DA and the land as shown as Parcel 4 is approved for RR-DA. The Development Agreement legal descriptions for the two zones are also part of the public record.*

*The proposed zoning designation of R-8-DA (Residential with a development agreement) for the northern parcel is consistent with the comprehensive plan provisions referenced herein and the land use designation of Compact Residential encompassing the majority of the property.*

*The southern parcel is contiguous with City of Donnelly's municipal city limits and therefore can be annexed.*

*The proposed zoning designation of RR-DA (Rural Residential with a development agreement) for the southern is consistent with the comprehensive plan provisions referenced herein and*

*future land use map designation of Public Use, Parks, and Open Space encompassing the majority of the property because, although RR is not shown on the Zoning Compatibility Matrix, the proposed use will be restricted with a development agreement to provide for pathways, public uses, and preservation of the Special Flood Hazard Area and wetland areas, in alignment with the comprehensive plan and Donnelly City Code.*

*The City Council has determined that the layout, with about 79 percent of open space, where city code requires 15 percent and with NO residential dwelling development within the special flood hazard area, even though Donnelly city code allows development within the flood fringe with the special flood hazard area, clearly avoids undue concentration of population and overcrowding of land.*

2. Adequate public facilities exist, or are expected to be provided, to serve any and all uses allowed on this property under the proposed zoning districts:

*The Owner acknowledged, by entering into a Hold Harmless Agreement with the City, that there is insufficient municipal water capacity for any building permits to be issued and that it is unknown as to when sufficient capacity will be available, but that the City has entered into a public private partnership with another developer to have a 600,000 gallon water tank constructed.*

*The Owner is extending all central services to the site as regulated by the conditions of approval. Development of sewer, water, drainage, streets and other services will be provided at the developer's expense. The Owner has been working with the Donnelly Rural Fire Protection District regarding the district's requirements for access and fire flows and will be required to make substantial improvements to Eld Lane and its intersection with Highway 55 as the City Council conditioned the applications herein.*

3. The proposed zoning districts are compatible with the existing or planned uses in the surrounding area:

*The site is designed to be harmonious and appropriate in appearance with the existing and intended character of the area as regulated by the conditions of approval. A majority of the site is bordered by vacant parcels. The existing residential homes located north of the proposed development are located within an area which is shown as Commercial on the Donnelly Comprehensive Plan Future Land Use Map and have an R-8 zoning district, the same as being requested by the Owner in this location, except with no development agreement limiting uses and layout.*

*The City Council has determined that the layout, with about 79 percent of open space, where city code requires 15 percent and with NO development within the special flood hazard area, even though Donnelly city code allows development within the flood fringe with the special flood hazard area, clearly avoids undue concentration of population and overcrowding of land.*

4. No nonconforming uses will be created with the zoning districts proposed:

*No nonconforming use will be created with the zoning districts proposed.*

**B. PER DONNELLY UNIFIED DEVELOPMENT CODE SECTION 18.40.010.C: OBJECTIVE. TO GUIDE LAND DEVELOPMENT AND CONSTRUCTION TO ACHIEVE THE FOLLOWING, THE CITY COUNCIL FINDS THAT:**

1. A maximum choice of living environments by allowing a variety of housing and building types, lot dimensions, yards, building setbacks and area requirements:

*The proposed development will provide multifamily dwellings, cabins/casitas, vacation housing and a single family home to provide a variety of housing, including workforce housing, as identified within the Donnelly Comprehensive Plan as regulated by the conditions of approval. The site is designed in conformance with the density, dimensional standards and setbacks required as regulated by the conditions of approval.*

*The City Council acknowledged that, at the hearing on January 26, 2026, one of the project representatives stated that the casitas will be used for work force housing until the apartments are built, and the Council concludes that said use is consistent with obtaining a variety of housing and consistent with Donnelly's Unified Development Code definition of Recreational Cabin Park because the workforce housing use will be temporary until the apartments are built.*

2. A more useful pattern of open space and recreation areas and, if permitted as part of the project, more convenience in the location of accessory commercial uses, office uses and services;

*The site will contain substantial open space located within and adjacent to the Special Flood Hazard Area. The site is proposed with pathways and an area for live entertainment events to provide a place where residents and tourists may recreate or enjoy music within the natural environment as regulated by the conditions of approval.*

*The City Council has determined that the layout, with about 79 percent of open space, where city code requires 15 percent and with NO residential dwelling development within the special flood hazard area, even though Donnelly city code allows development within the flood fringe with the special flood hazard area, clearly avoids undue concentration of population and overcrowding of land.*

3. A development pattern which preserves and utilizes natural topography and geologic features, scenic vistas, trees and other vegetation, and prevents the disruption of natural drainage patterns;

*The site is designed to preserve natural topography and natural drainage areas as regulated by the conditions of approval. Approximately 18.14-acres (79%) inclusive of a mix of natural vegetation and landscaped areas are proposed for the site which far exceeds the 15 percent minimum required per code. The Owner is also aware they will be required to mitigate for any proposed changes to the natural environment.*

4. A more efficient use of land than is generally achieved through conventional development resulting in substantial savings through shorter utilities and streets; and

*The site is designed to take advantage of the areas which are conducive to the construction of dwellings and cabins. The natural areas will be designed to accommodate limited live entertainment events while preserving the Special Flood Hazard Area and the wetlands as regulated by the conditions of approval.*

*The City Council has determined that the layout, with about 79 percent of open space, where city code requires 15 percent and with NO residential dwelling development within the special flood hazard area, even though Donnelly city code allows development within the flood fringe with the special flood hazard area, clearly avoids undue concentration of population and overcrowding of land.*

5. A development pattern in harmony with the objective for land use density, transportation and community facilities as presented in the comprehensive plan.

*The development has been designed to be in conformance with the Donnelly Comprehensive Plan, with Eld Lane being designed as a collector road abutting the site, as conditioned by the*

*City Council, in regard to density, transportation and the extension of community infrastructure as strictly regulated by the conditions of approval.*

6. A development pattern that provides for the integrated and harmonious design of buildings, and for adequate and properly arranged facilities for internal traffic circulation, landscaping and such other features and facilities as may be necessary to make the project attractive and efficient from the standpoint of the adjoining and surrounding noncommercial areas.

*The site is designed to allow for internal traffic circulation and parking as strictly regulated by the conditions of approval required herein by the City Council. The building design, orientation of buildings, and landscaping will be subject to design review approval.*

C. PER DONNELLY UNIFIED DEVELOPMENT CODE SECTION 18.40.030: STANDARDS FOR CONDITIONAL USES, THE CITY COUNCIL FINDS THAT:

- A. Will, in fact, constitute a conditional use as established within Donnelly City Code for the zoning district involved:

*A planned unit development, multifamily dwelling, and recreational cabin park requires approval of a conditional use permit within the R-8 (Residential) zoning district. Live entertainment events require approval of a conditional use permit within the RR (Rural Residential) district.*

- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or Donnelly City Code:

*The site is designed to be in conformance with the goals and policies of the comprehensive plan relative to the density, providing a variety of housing options, located adjacent to a future collector (Eld Lane), protection of floodplain areas, and natural resources (wetlands), as regulated by the conditions of approval.*

*The site is designed in conformance with Donnelly City Code relative to density, setbacks, and conditional permitted uses as regulated by the conditions of approval.*

*The City Council has determined that the layout, with about 79 percent of open space, where city code requires 15 percent and with NO residential dwelling development within the special flood hazard area, even though Donnelly city code allows development within the flood fringe within the special flood hazard area, clearly avoids undue concentration of population and overcrowding of land.*

- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area:

*The site is designed to be harmonious and appropriate in appearance with the existing and intended character of the area as regulated by the conditions of approval. A majority of the site is bordered by vacant parcels. The existing residential homes located north of the proposed development are located within an area which is shown as Commercial on the Donnelly Comprehensive Plan Future Land Use Map and have an R-8 zoning district, the same as being requested by the Owner in this location, except with no development agreement limiting uses and layout. The home to the east of the subject property is zoned R-4 (residential) and has a Comprehensive Plan Future land Use Plan destination commercial, with that land use designation extending to Highway 55.*

- D. Will not be hazardous or disturbing to existing or planned future neighborhood uses:

*The area where the multifamily dwellings are proposed is bordered to the north by Eld Lane and residential uses with a commercial comprehensive plan land use designation and an R-8 zone and*

*industrial uses to the west. The area where the live entrainment events are planned is bordered by the proposed development, vacant parcels, and one (1) parcel with a residential dwelling. Also, the areas bordering the area where the live entertainment events are planned are shown to be, Public Lands and Open Space (northeast), Mixed Use (east), Neighborhood Residential (south) and Industrial (west) on the Donnelly Comprehensive Plan Future Land Use Map.*

- E. Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services:

*The Owner acknowledged, by entering into a Hold Harmless Agreement with the City, that there is insufficient municipal water capacity for any building permits to be issued and that it is unknown as to when sufficient capacity will be available, but that the City has entered into a public private partnership with another developer to have a 600,000 gallon water tank constructed.*

*The Owner is extending all central services to the site as regulated by the conditions of approval. Development of sewer, water, drainage, streets and other services will be provided at the developer's expense. The Owner has been working with the Donnelly Rural Fire Protection District regarding the district's requirements for access and fire flows and will be required to make substantial improvements to Eld Lane and its intersection with Highway 55 as the City Council conditioned the applications herein.*

- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community:

*The costs of the extension of all public facilities and services will be borne by the developer and must be approved at the time of installation and before acceptance by the City of Donnelly and the Donnelly Rural Fire Protection District as regulated by the conditions of approval, and the tax base will increase with the development proposed.*

- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors:

*It is not anticipated that these uses or activities will be detrimental to the surrounding properties upon completion of the site work as regulated by the conditions of approval. The development will be served by internal drives connected to Eld Lane at four (4) separate points of ingress/egress. Eld Lane extends to State Highway 55. The Owner understands that there are conditions of approval to address any noise and traffic associated with the live entertainment event area.*

- H. Will have vehicular approaches to the property which are designed as not to create an interference with traffic on surrounding public thoroughfares:

*Access to the development will be from Eld Lane (future collector) which has access to State Highway 55. The Owner understands they will be required to widen and improve Eld Lane abutting the property to address the additional traffic associated with the proposed uses and to reconstruct Eld Lane at Highway 55 for safety as conditioned by the development agreement. The design and construction of the roadways and entrances will be as regulated by the conditions of approval.*

- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance:

*The Owner is working with an environmental engineer and hydraulic engineers to address the Special Flood Hazard Area and the wetland areas located within the site. The Owner will be*

*required to conform with Donnelly City Code associated with any development within the Special Flood Hazard Area. The Owner will also be required to obtain any permits associated with any proposed changes to the wetland areas.*

DATED this ~~16<sup>th</sup> day of March~~ 4th day of May 2026.

CITY COUNCIL  
OF THE CITY OF DONNELLY  
Valley County, Idaho

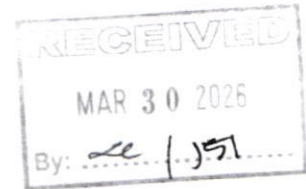
---

Wendy Davenport, Council President

ATTEST:

---

Lori Clements, Donnelly City Clerk



Julia Thrower  
614 Thompson Avenue, McCall, ID 83638  
jthrower@mtntoplw.com · (208) 271-6503

March 30, 2026

Lori Clemens  
Donnelly City Clerk  
169 Halferty Street  
Donnelly, ID 83615  
lclemens@cityofdonnelly.org

Re: Motion for Reconsideration (Boulder Creek, 2026-AN-1, 2026-RZ-1, 2026-CUP-1)  
Submission under Protest

To the City Clerk:

Please find the enclosed Motion for Reconsideration regarding the City Council's recent decision on the Boulder Creek development project, 2026-AN-1, 2026-RZ-1, 2026-CUP-1.

Included with this filing is the required **\$500.00** administrative fee as established in the City of Donnelly's adopted Fee Schedule. I am also enclosing the "Agreement to Pay" for estimated pass-through costs of **\$3,773.00**. Please be advised that I am signing this agreement and submitting these materials **strictly under protest**. I believe the imposition of these pass-through legal costs as a condition of filing a Motion for Reconsideration is legally improper for the following reasons:

**Statutory Barrier to Due Process:** Under Idaho Code § 67-6535(2)(b), a Motion for Reconsideration is a mandatory procedural step required before an affected person can seek judicial review. Imposing significant, variable financial barriers to this mandatory step infringes upon my clients' right to due process and fundamental fairness as emphasized in I.C. § 67-6535(3).

**Violation of the "American Rule":** Idaho law generally requires each party to bear its own attorney fees. Idaho Code § 12-117 provides the specific mechanism for awarding fees in land-use disputes, which is reserved for the courts—not as a "pre-pay" requirement imposed by a city clerk.

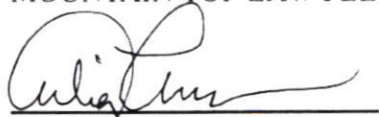
**Illegal Tax vs. Fee:** Under Idaho Code § 63-1311, municipal fees must be "reasonably related" to the actual cost of the service. Charging an applicant for the City's legal defense of its own decision is not a "service" to the applicant, but a general cost of governance that should be funded by the city's operating budget.

By signing the attached agreement and paying the initial fee, I do **not** waive my right to challenge the legality of these pass-through costs in a court of law or to seek a refund of any amounts paid toward these unauthorized "estimated costs."

I request that this letter be made a permanent part of the official record for this land-use action.

Sincerely,

MOUNTAIN TOP LAW PLLC



---

Julia Thrower



## City of Donnelly Planning & Zoning Fee Agreement

The City of Donnelly is a small municipality that does not have the resources to maintain its own development services staff. Therefore, pursuant to Donnelly Ordinance #230, adopted on February 26, 2016, and subsequent amendments and adopted fee schedules, the Applicant is required to cover all costs related to their application(s).

Land use applications are subject to professional review for the purpose of addressing compliance, conformance, situational, and public health, safety, and general welfare issues. Professional review may include, but is not limited to, review by engineering, legal, planning, and other qualified professionals. The City of Donnelly reserves the right to contract these services to private firms. The costs of these reviews are passed on to the applicant. These professional fees are separate, and in addition to the City's application and permit fees.

I Julia Thrower (Applicant) for request for reconsideration for city council decision on **CASE NUMBERS 2026-AN-1, 2026-RZ-1 & 2026-CUP-1 (Boulder Creek)** understand and consent to paying for the use of the contracted professional and administrative services by the City as stated herein and I acknowledge that I acquire no greater rights, duties or privileges from said professionals or staff as they are working on behalf of the City.

### INITIAL ESTIMATE OF SERVICES:

Unified Development Code Administrator	\$1,680
City Engineering Firm	\$N/A
Water Engineer	\$N/A
City Attorney	\$1,750
<b>SUB TOTAL</b>	<b>\$3,430</b>
City Administrative Services (10 percent of sub total)	\$343
<b>TOTAL ESTIMATE</b>	<b>\$3,773</b>

### DEPOSIT BY APPLICANT:

Applicant agrees to pay a deposit for pass-through services in the amount of \$3,773 at the time of application (request for reconsideration). Applicant will be notified in advance if additional services are required due to specific factors related to application requiring further review. In the event the City staff allows the application to proceed without the immediate payment of additional costs, the Applicant agrees to repay the City for the additional costs.

DATED this 30 day of MARCH, 2026.

APPLICANT'S SIGNATURE

ATTEST



**CITY OF DONNELLY FEE SCHEDULE**  
 169 Halferty Street / PO BOX 725  
 Donnelly, Idaho 83615  
 Tel: 208.325.8859

<b>ADMINISTRATIVE</b>		
<b>Administrative Processing</b>		<b>10%</b>
Copies/Faxes	Per Page	25
<b>Dishonored Checks</b>		<b>35.00</b>
Notary		5.00
<b>LICENSES/PERMITS</b>		
Alcohol License	Maximum Allowed by State	
<b>Business License</b>	<b>New</b>	<b>75.00</b>
Business License	Renewal	25.00
<b>Dog License</b>	<b>Neutered/Spayed</b>	<b>5.00</b>
Dog License	Not Neutered/Spayed	15.00
<b>Fireworks Stand</b>		<b>11.00</b>
Peddler Permit		16.50
<b>Vendor Permit</b>	<b>Daily</b>	<b>25.00</b>
Vendor Permit	Six (6) Month	300.00
<b>FACILITIES/RESERVATIONS</b>		
Boat Dock Pass	Annual	25.00
<b>Boat Dock Pass</b>	<b>Day Use</b>	<b>5.00</b>
Campground	Overnight	15.00
<b>City Park/Boat Dock Pavilion</b>		<b>50.00</b>
City Park/Boat Dock Pavilion	Refundable Deposit	100.00
<b>Community Center</b>	<b>4 Hours or Less / More than 4 Hours</b>	<b>25.00 / 50.00</b>
Racquet Courts	Two (2) Hours	10.00
<b>Racquet Courts</b>	<b>Six (6) Hours</b>	<b>25.00</b>
<b>UTILITIES</b>		
<b>Water Base Rate</b>	<b>Per EDU</b>	<b>35.28</b>
Water Improvement Fund	Per EDU	5.00
<b>Water Usage</b>	<b>Gallon</b>	<b>2.50 per 1,000 gal</b>
Water Load Fee	Gallon	10.00 per 1,000 gal
<b>Sewer Base Rate</b>	<b>Per EDU</b>	<b>44.00</b>
<b>Sewer Improvement Fund</b>	<b>Per EDU</b>	<b>5.00</b>
<b>DEVELOPMENT</b>		
The cost of any review by City hired consultants, including but not limited to, Attorneys, Engineers, Land Use Planners, Architects and other professionals, shall be reimbursed to the City. Fees listed below shall be in addition to any consultant review reimbursement costs.		Cost + 10%
Legal Publication		Cost + 10%
<b>Public Mailing</b>	<b>Per Mailing</b>	<b>2.00</b>
Design Review (DR)		330.00 + 11.00/lot or unit
<b>Development Agreement (DA)</b>		<b>500.00</b>
Conditional Use Permit (CUP)		330.00 + 11.00/lot or unit
<b>Planned Unit Development (PUD)</b>		<b>770.00 + 22.00/lot or unit</b>
Annexation		1,100.00
<b>Demolition Permit</b>	<b>Structure</b>	<b>25.00</b>
Lot or parcel adjustment, combination or split		200.00
<b>Preliminary Plat or Final Plat</b>		<b>770.00 + 22.00/lot</b>
Occupancy Permit	Valley County Fee + 11.00	Valley County + 11.00
<b>Rezone</b>	<b>Per zone requested</b>	<b>440.00</b>
Variance		1,100.00
<b>Master Sign Plan</b>		<b>200.00</b>
Sign Permit		55.00
<b>Change of Use Permit</b>		<b>200.00</b>
Appeal to City Council		200.00
<b>LLUPA Request for Reconsideration</b>		<b>500.00</b>
Flood Plain Development Permit		500.00
<b>Engineering Plan Review for Building Permit</b>		<b>500.00</b>
Extension of Time		200.00
<b>Other Applications Not Listed</b>		<b>200.00</b>

MOUNTAIN TOP LAW PLLC  
614 Thompson Ave  
McCall, ID 83638

DATE MARCH 30, 2026

1111

PAY TO THE ORDER OF City of Donnelly \$ 500.00  
Five hundred and 100/100 DOLLARS



IDAHO FIRST BANK

Boulder Creek Reconsideration fee

[Signature]

⑆⑆24⑆03838⑆ 2000043518⑆ ⑆⑆⑆⑆

MOUNTAIN TOP LAW PLLC  
614 Thompson Ave  
McCall, ID 83638

\* UNDER PROTEST \*

DATE MARCH 30, 2026

1112

PAY TO THE ORDER OF City of Donnelly \$ 3773.00  
Three thousand seven hundred seventy three and 00/100 DOLLARS



IDAHO FIRST BANK

Boulder Creek Reconsideration  
passthrough costs

[Signature]

⑆⑆24⑆03838⑆ 2000043518⑆ ⑆⑆⑆⑆

Regarding the "Protest of Fees". The fees charged are in accordance with the Donnelly Unified Development Code adopted by the Donnelly City Council on September 15, 2025, as Ordinance number 269 and Resolution #2025-005 adopted by the Donnelly City Council on August 18, 2025.

Current Status:

Application fee paid - \$500

Pass through consultant fees were estimated at \$3,430 with 10 percent city administrative fee of \$343 with total paid for pass through fees being \$3,773.

Pass through consultant fees to date are \$3,250, and adding the 10 percent city administrative fees at \$325 brings the actual total to \$3,575, resulting in a refund of \$198 due to the applicant.