



## *Community Development Department*

**DATE:** September 1, 2020

**FROM:** Ben Ehreth, AICP, Community Development Director

**ITEM:** Lot 1, Block 1, Pat's Acres and Auditor's Lots A, B and C of the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 14, T139N-R81W/West Hay Creek Township – Zoning Change

### **REQUEST**

Chase and Toni Dauenhauer are requesting approval of a zoning change from the A – Agricultural and RR – Residential zoning districts to the PUD – Planned Unit Development zoning district on Lot 1, Block 1, Pat's Acres and Auditor's Lots A, B and C of the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec 14, T139N-R80W/Hay Creek Township. This zoning change would allow seasonal commercial recreation and agritourism uses on the property in addition to the existing rural residential and agricultural uses.

The property is located northwest of Bismarck, west of River Road along the south side of Burnt Creek Loop.

Please place this item on the September 8, 2020 and September 22, 2020 City Commission meeting agendas.

### **BACKGROUND INFORMATION**

The Planning and Zoning Commission held a public hearing on this request on August 26, 2020.

No residents spoke at the public hearing and no written comments were received.

At the conclusion of final consideration, and based on the findings contained in the staff report, the Planning & Zoning Commission unanimously recommended approval of the zoning change from the A – Agricultural and RR – Residential zoning districts to the PUD – Planned Unit Development zoning district on Lot 1, Block 1, Pat's Acres and Auditor's Lots A, B and C of the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 14, T139N-R81W/West Hay Creek Township as outlined in the draft PUD ordinance.

## **RECOMMENDED CITY COMMISSION ACTION**

September 8th meeting of the Board of City Commissioners – consider the zoning change as outlined in Ordinance 6436 and call for a public hearing on this item for the September 22nd meeting of the Board of City Commissioners.

September 22nd meeting of the Board of City Commissioners – hold a public hearing on the zoning change as outlined in Ordinance 6436 and take final action on the request.

## **STAFF CONTACT INFORMATION**

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Will Hutchings | Planner, 355-1850 or [whutchings@bismarcknd.gov](mailto:whutchings@bismarcknd.gov)

**ORDINANCE NO. 6436**

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

**AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE 1986 CODE OF ORDINANCES, OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.**

**BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:**

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described properties shall be excluded from the A – Agricultural and RR – Residential districts and included within the PUD – Planned Unit Development District.

Lot 1, Block 1, Pat’s Acres and Auditor’s Lots A, B, and C of the NE ¼ of the NE ¼ of Section 14, T139N-R81W/West Hay Creek Township.

This PUD is subject to the following development standards:

1. *Permitted Uses.* The following uses are permitted within this Planned Unit Development:
  - a. Single-family rural residential uses.
  - b. Farming group
  
2. *Seasonal Permitted Uses.* The following seasonal uses are permitted within this Planned Unit Development:
  - a. Seasonal commercial recreation uses limited to agritourism and commercial recreation activities such as pumpkin patches, corn mazes, horse-drawn rides and other activities that are traditional agritourism activities and involve little food processing (September to October).

- b. Winter agritourism and commercial recreation activities such as sleigh rides, horse-drawn rides, and Christmas tree sales (Thanksgiving to New Year's Day).
  - c. Special events such as reunions, weddings, planting events, horse show and riding events, company picnics, fund raising events and other similar special events and activities outside of the seasonal period listed above. The total number of days for these events shall not exceed 20 per year and shall be limited to no more than 3 consecutive days in length.
  - d. Event-themed activities, attractions, demonstrations, concessions and sales of event-themed merchandise in conjunction with the above uses. Mechanical rides, such as those typically found at a carnival, shall not be allowed.
  - e. An indoor arena up to twenty thousand (20,000) square feet for equine events on a limited basis per the date limitations for events and activities indicated above.
  - f. An indoor event center, to support the permitted uses, up to eight thousand (8,000) square feet on a limited basis per the date limitations for events and activities indicated above.
3. *Special Uses.* The following uses are allowed as special uses within this Planned Unit Development, subject to the provisions of Section 14-03-08 of the City Code of Ordinances:
- a. Seasonal sales of locally grown farm or garden produce.
  - b. Seasonal sales of nursery and bedding stock.
- Other special uses identified in Section 14-03-08 but not included in this list shall be prohibited.
4. *Use Standards.* All uses within this planned unit development shall conform to the following requirements:
- a. There is no unusual fire, explosion or safety hazard.
  - b. If a public address (PA) or similar system is used to amplify sound, speakers must be directed so as to minimize the impact of the amplified sound on adjacent properties. The use of amplified sound on the site shall be limited to the hours of 9:00am to 7:00pm.
  - c. Parking on grass and agricultural areas may be used for commercial recreation and agritourism activities that are

not indoors. Gravel surface parking areas must be provided for the indoor arena and event center buildings in accordance with the parking calculations outlined in Section 14-03-10. Appropriate improvements to ingress and egress locations shall be made and maintained to ensure no tracking of mud and debris onto adjacent roadways. Access to the property shall be limited to permitted access points along Burnt Creek Loop.

- d. If external illumination is used, lighting must be placed and directed so as to minimize light trespass on adjacent properties. The use of external lighting shall not be allowed after 8:00pm.

5. *Dimensional Standards.*

- a. Front Yard Setback. The minimum front yard setback is fifty (50) feet as measured from the front property line for all new buildings.
- b. Side Yard Setback. The minimum side yard setback is fifty (50) feet for all new buildings.
- c. Rear Yard Setback. The minimum rear yard setback is fifty (50) feet for all new buildings.
- g. Height. The maximum building height is thirty-five (35) feet for all new buildings, with a maximum sidewall height of twenty (20) feet.

6. *Development Standards.*

- a. Landscaping and Screening. The existing wooded areas along the southwesterly corner of Auditor's Lot A of the NE ¼ of the NE ¼ of Section 14, T139N-R81W/West Hay Creek Township shall remain in place in order to provide continued screening of the seasonal commercial recreational uses from the adjacent rural residential uses. Additional trees shall be planted along the western edge of Auditor's Lot A of the NE ¼ of the NE ¼ of Section 14, T139N-R81W/West Hay Creek Township if additional structures or site improvements are implemented to support the agritourism and commercial recreational uses. If trees need to be removed for any reason, replacement trees shall be provided at the rate of two replacement trees for each tree removed. No additional landscaping or buffer yards will be required.

- b. Design and Aesthetic. All new buildings and building renovations shall be constructed in a style typical of agricultural buildings. Façade design should be complimentary to existing buildings on the properties and shall be wood, synthetic or metal materials (vinyl products are not allowed). Principal building façade color shall be red and all accents and trim colors either white or black. Where buildings have long, visually uninteresting facades and roof lines, the façade should be broken up with variations such as building bump outs or use of alternating materials, and the roof broken up by the addition of dormers or variations of roof lines. Buildings shall have clearly identifiable entrances.
  - c. Signage. Signs shall be allowed per the standards outlined in Chapter 14-03.1 for the A – Agricultural zoning district.
7. *Changes.* This PUD shall only be amended in accordance with Section 14-04-18(4) of the City Code of Ordinances (Planned Unit Developments). Major changes require a public hearing and approval by the Bismarck Planning & Zoning Commission.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

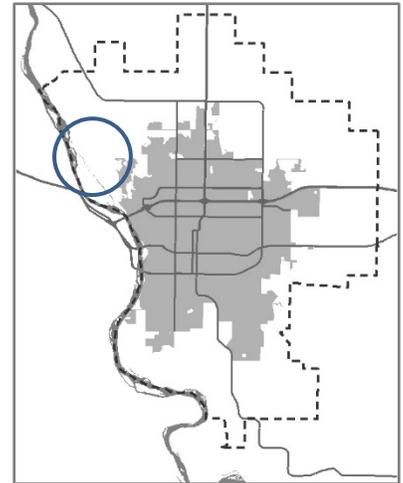
August 26, 2020

## Application for: Zoning Change

TRAKiT Project ID: ZC2020-009

### Project Summary

<b>Title:</b>	Lot 1, Block 1, Pat's Acres and Auditor's Lots A, B and C of the NE <sup>1</sup> / <sub>4</sub> of the NE <sup>1</sup> / <sub>4</sub> of Section 14, T139N-R81W/West Hay Creek Township
<b>Status:</b>	Planning & Zoning Commission – Public Hearing
<b>Owner(s):</b>	Chase and Toni Dauenhauer
<b>Project Contact:</b>	Chase Dauenhauer
<b>Location:</b>	Northwest of Bismarck, west of River Road, along the south side of Burnt Creek Loop
<b>Project Size:</b>	33.25 acres
<b>Request:</b>	Rezone property to allow for seasonal commercial recreation uses in addition to existing rural residential and agricultural uses.



### Site Information

Existing Conditions		Proposed Conditions	
<b>Number of Lots:</b>	4 parcels	<b>Number of Lots:</b>	4 parcels
<b>Land Use:</b>	Rural residential and agricultural	<b>Land Use:</b>	Agricultural and seasonal commercial recreation uses
<b>Designated GMP Future Land Use:</b>	Conventional Rural Residential	<b>Designated GMP Future Land Use:</b>	Conventional Rural Residential
<b>Zoning:</b>	A – Agricultural RR – Residential	<b>Zoning:</b>	PUD – Planned Unit Development
<b>Uses Allowed:</b>	A – Agriculture RR – Large lot single-family residential and limited agriculture	<b>Uses Allowed:</b>	PUD – Uses specified in PUD
<b>Max Density Allowed:</b>	A – 1 unit / 40 acres RR – 1 unit per 65,000 square feet	<b>Max Density Allowed:</b>	PUD – Density specified in PUD

### Property History

<b>Zoned:</b>	Pat's Acres 9/2004	<b>Platted:</b>	Pat's Acres 1/1988	<b>Annexed:</b>	N/A
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## Staff Analysis

Chase and Toni Dauenhauer are requesting approval of a zoning change from the A – Agricultural and RR – Residential zoning districts to a PUD – Planned Unit Development zoning district for Lot 1, Block 1, Pat's Acres and Auditor's Lots A, B and C of the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 14, T139N-R81W/West Hay Creek Township.

The Planning and Zoning Commission considered this request at their meeting of July 22, 2020 and called for a public hearing on the zoning change.

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on August 14<sup>th</sup> and 21<sup>st</sup>, and 13 letters were mailed to the owners of nearby properties on August 14<sup>th</sup>.

Adjacent uses include agricultural uses to the north and east; rural residential, agricultural and seasonal commercial recreation uses to the south; and rural residential uses to the west.

The applicant has historically assisted the south-adjointing property owner with operation of what is known as Papa's Pumpkin Patch. Those events will not occur this year. The applicant desires to provide events in the fall similar to those that occurred at Papa's Pumpkin Patch but in a reduced capacity. In addition, the applicant is interested in future development of their site for other agritourism and commercial recreation uses.



Photo of existing site conditions from Burnt Creek Loop.

Commercial recreational uses are only allowed in the CG – Commercial and MA – Industrial zoning districts. Neither of these zoning districts would be appropriate in this location because of the intensity of the other permitted uses within those districts; therefore, the PUD is being proposed to address seasonal commercial recreational uses.

### *Allowable Uses*

The proposed Planned Unit Development would allow the continued use of the properties for agricultural and rural residential uses and also allow for seasonal agritourism and commercial recreation uses. Examples of these uses may include pumpkin patches, corn mazes, horse-drawn rides, sleigh rides, Christmas tree sales and other activities that are traditional agritourism activities and involve little food processing. These agritourism and commercial recreation uses will allow concessions and sales of event-themed merchandise.

### *Allowable Events and Date Limitation*

Date limitations on these uses are confined to September to October, Thanksgiving Day to New Year's Day and up to 20 additional days per calendar year for one to three day events such as reunions, weddings, planting events, company picnics, fundraising events, church events, equine events, training, demonstrations, horse drawn rides, and riding lessons.

It is anticipated that some of the agritourism and commercial recreation activities may extend onto the south adjacent property consisting of Lots 4, 5 and 6, Block 1, Pearce Estates, which is a separate PUD that allows commercial recreation uses for Papa's Pumpkin Patch. Both properties may allow these uses to cross each of the two PUD zoning districts and property boundaries as long as the spill-over uses are allowed within each respective property's PUD zoning provisions.

### *Use Standards*

Additional standards are outlined in the PUD that are intended to lessen impacts of the proposed agritourism and commercial recreational uses on the adjacent rural residential uses. These standards include measures to

(continued)

prevent sound and light trespass and additional planting requirements in conjunction with future development.

The PUD allows for parking on grass and agricultural land for outdoor seasonal activities. The construction of any new buildings intended for agritourism and commercial recreation uses will require a gravel surface parking area and are subject to the off-street parking calculations outlined in Section 14-03-10 (Off-Street Parking and Loading) of the City Code of Ordinances.

#### *Future Site Development*

The applicant has indicated a desire to construct an indoor event center space for events such as weddings, reunions and company picnics and an indoor arena for equine events within the proposed zoning district to support the seasonal agritourism and commercial recreation uses. The maximum allowable sizes of these buildings would be 8,000 square feet for the indoor event center and 20,000 square feet for the indoor arena for equine events. The maximum allowable sidewall height for these buildings is 20 feet with a maximum allowable height of 35 feet. All new buildings will need to meet applicable building and fire code standards.

Portions of the property are not platted. If future buildings will be constructed to support any of the proposed uses on property in an area that is not currently platted, the remaining property would need to be platted. All access to the property and the proposed uses will be from Burnt Creek Loop. If an additional access points are desired to serve the new proposed uses, the applicant will need to obtain approval of new access from Burleigh County.

#### *Design Standards*

Future development will be subject to design and aesthetic standards that are intended to be harmonious with the existing uses on site and compatible with the adjacent uses.

#### **Required Findings of Fact** (relating to land use)

1. The proposed zoning change does not generally conform to the Future Land Use Plan

in the 2014 Growth Management Plan, as amended; however, because of the seasonal nature of the commercial recreation uses, the proposed zoning change would be consistent with the Future Land Use Plan which identifies the long-term use of the land as rural residential;

2. The proposed zoning change is compatible with adjacent land uses and zoning;
3. The City of Bismarck and/or other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the new zoning classification at the time the property is developed;
4. The Hay Creek Township Board of Supervisors has recommended approval of the proposed zoning change;
5. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
6. The zoning change is in the public interest and is not solely for the benefit of a single property owner;
7. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;
8. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
9. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

#### **Staff Recommendation**

Based on the above findings, staff recommends approval for the zoning change from the A – Agricultural and RR – Residential zoning district to a PUD – Planned Unit Development zoning district for Lot 1, Block 1, Pat's Acres and Auditor's Lots A, B and C of the NE<sup>1</sup>/<sub>4</sub> of the NE<sup>1</sup>/<sub>4</sub> of Section 14, T139N-R81W/West Hay Creek Township as outlined in the attached PUD ordinance.

(continued)

**Attachments**

1. Draft PUD Ordinance
  2. Location Map
  3. Aerial Map
  4. Zoning and Plan Reference Map
  5. Site Exhibit
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*Staff report prepared  
by:*

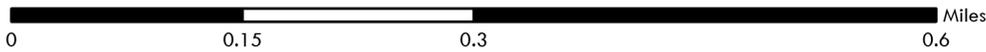
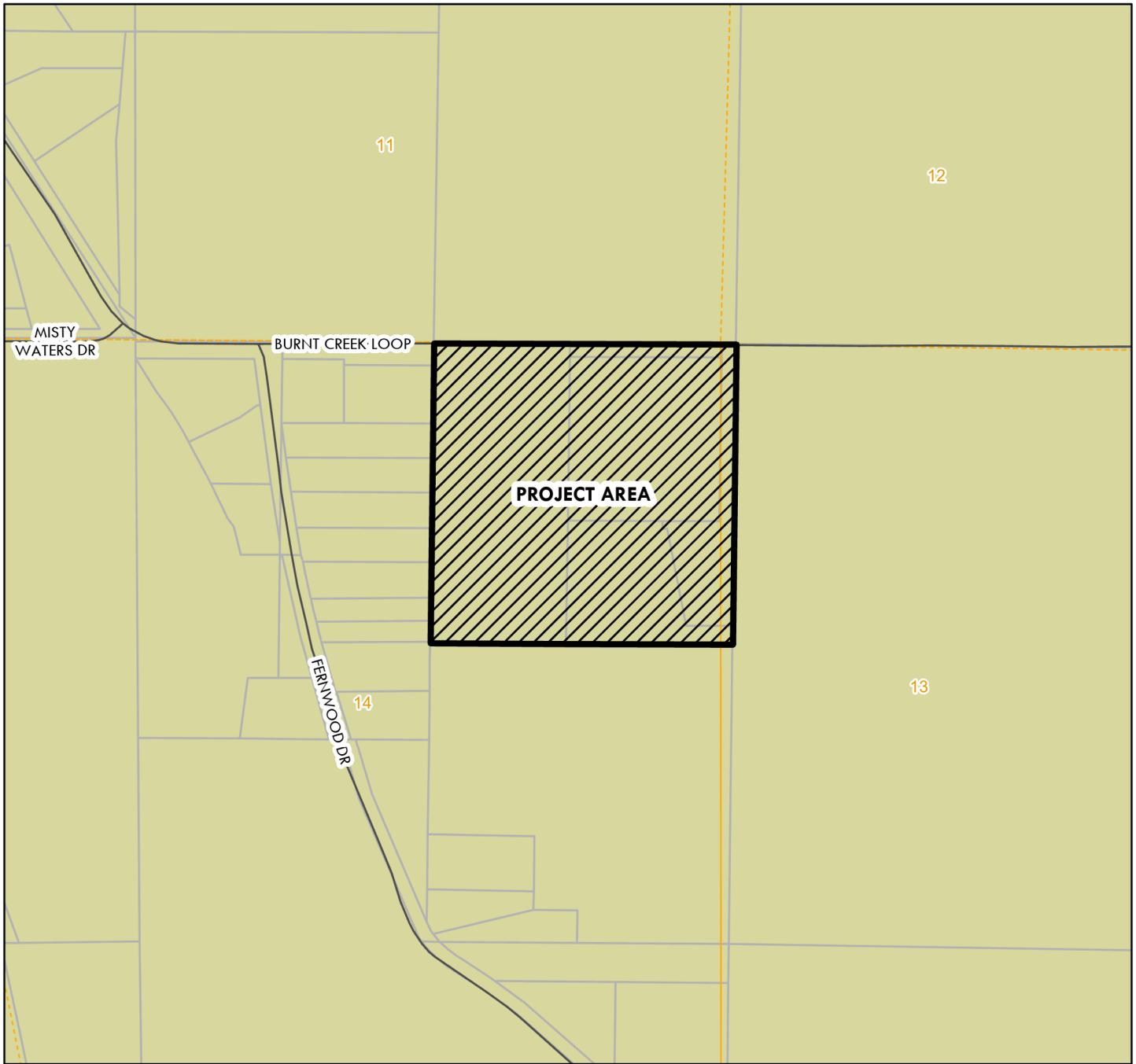
Will Hutchings, Planner  
701-355-1850 | [whutchings@bismarcknd.gov](mailto:whutchings@bismarcknd.gov)



# Location Map

ZC2020-009

PATS ACRES, L1, B1; PT SEC 14 HAY CREEK TWP

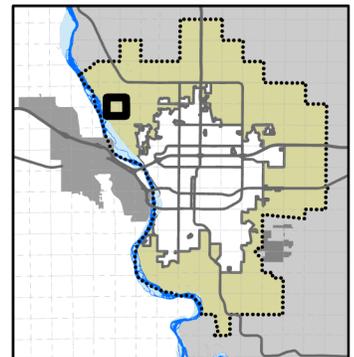


-  Bismarck ETA Jurisdiction
-  County Outside ETA

*Section, township, and range indicated in orange*

City of Bismarck  
 Community Development Department  
 Planning Division  
 August 18, 2020 (HLB)

*This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.*

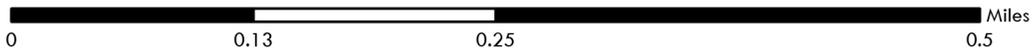




# Aerial Map

ZC2020-009

PATS ACRES, L1, B1; PT SEC 14 W HAY CREEK TWP

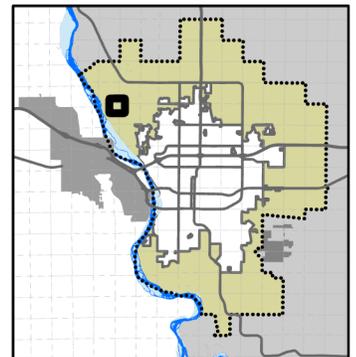


 Bismarck ETA Jurisdiction

Aerial Imagery from 2019

City of Bismarck  
Community Development Department  
Planning Division  
August 31, 2020

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# Zoning and Plan Reference Map

ZC2020-009

PATS ACRES, L1, B1; PT SEC 14 W HAY CREEK TWP

## Zoning Districts

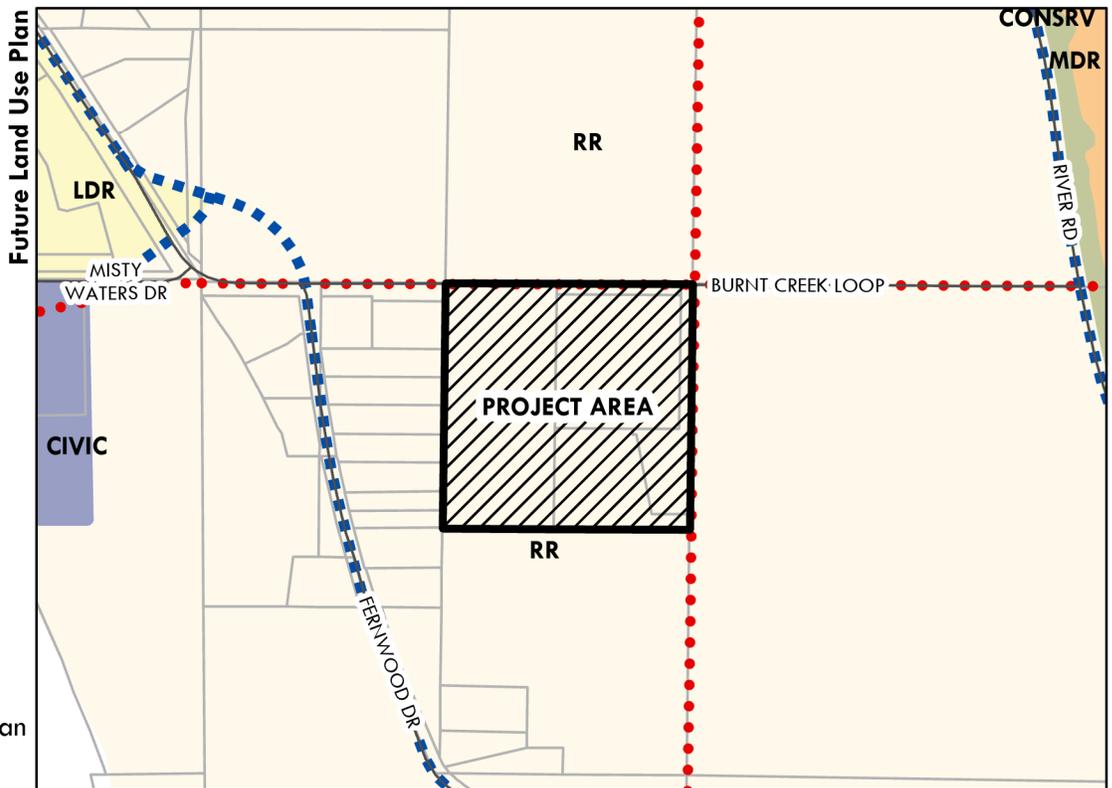
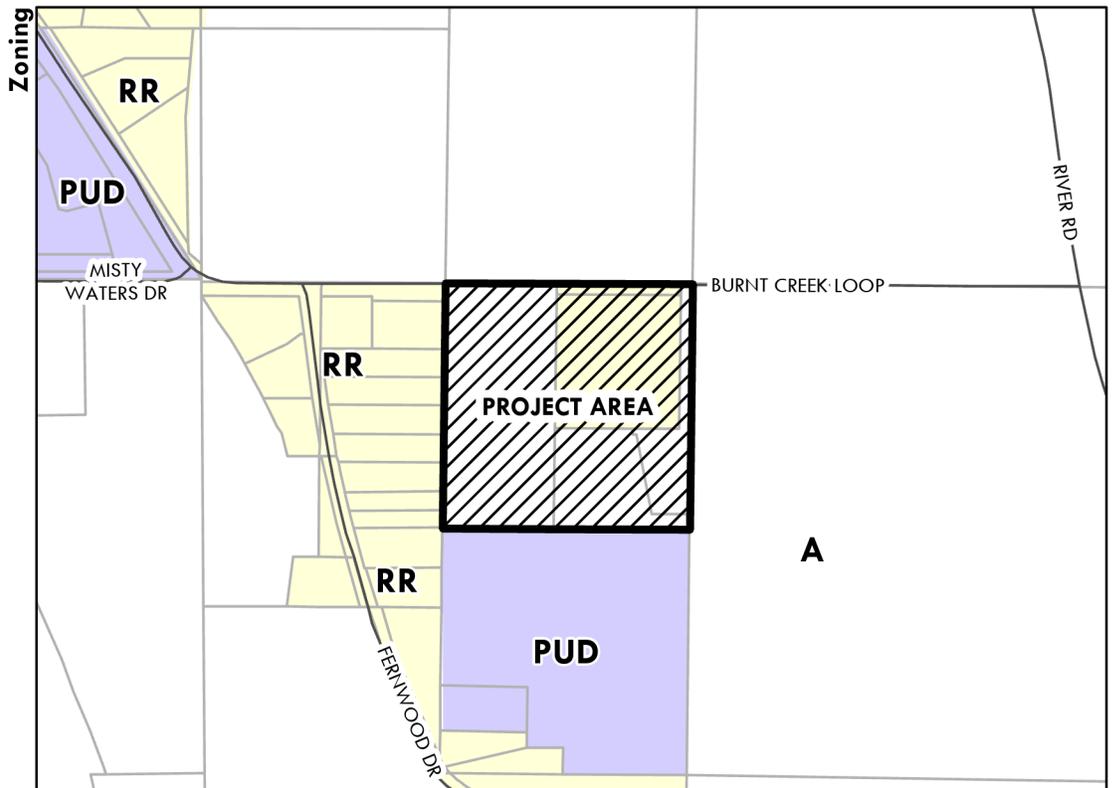
<b>A</b>	Agriculture
<b>RR</b>	Rural Residential
<b>R5</b>	Residential
<b>RMH</b>	Manufactured Home Residential
<b>R10</b>	Residential
<b>RM</b>	Residential Multifamily
<b>RT</b>	Residential (Offices)
<b>HM</b>	Health and Medical
<b>CA</b>	Commercial
<b>CG</b>	Commercial
<b>MA</b>	Industrial
<b>MB</b>	Industrial
<b>PUD</b>	Planned Unit Development
<b>DC</b>	Downtown Core
<b>DF</b>	Downtown Fringe

## Future Land Use Plan

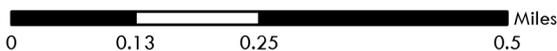
<b>CONSRV</b>	Conservation
<b>BP</b>	Business Park
<b>C</b>	Commercial
<b>C/MU</b>	Commercial/Mixed Use
<b>CIVIC</b>	Civic
<b>HDR</b>	High Density Residential
<b>I</b>	Industrial
<b>LDR</b>	Low Density Residential
<b>MDR</b>	Medium Density Residential
<b>MDR-/MU</b>	Medium Density Residential/Mixed Use
<b>O/MU</b>	Office/Mixed Use
<b>RR-C</b>	Clustered Rural Residential
<b>RR</b>	Standard Rural Residential
<b>UR</b>	Urban Reserve

## Fringe Area Road Master Plan

- ● ● Future Arterial Road
- ■ ■ Future Collector Road

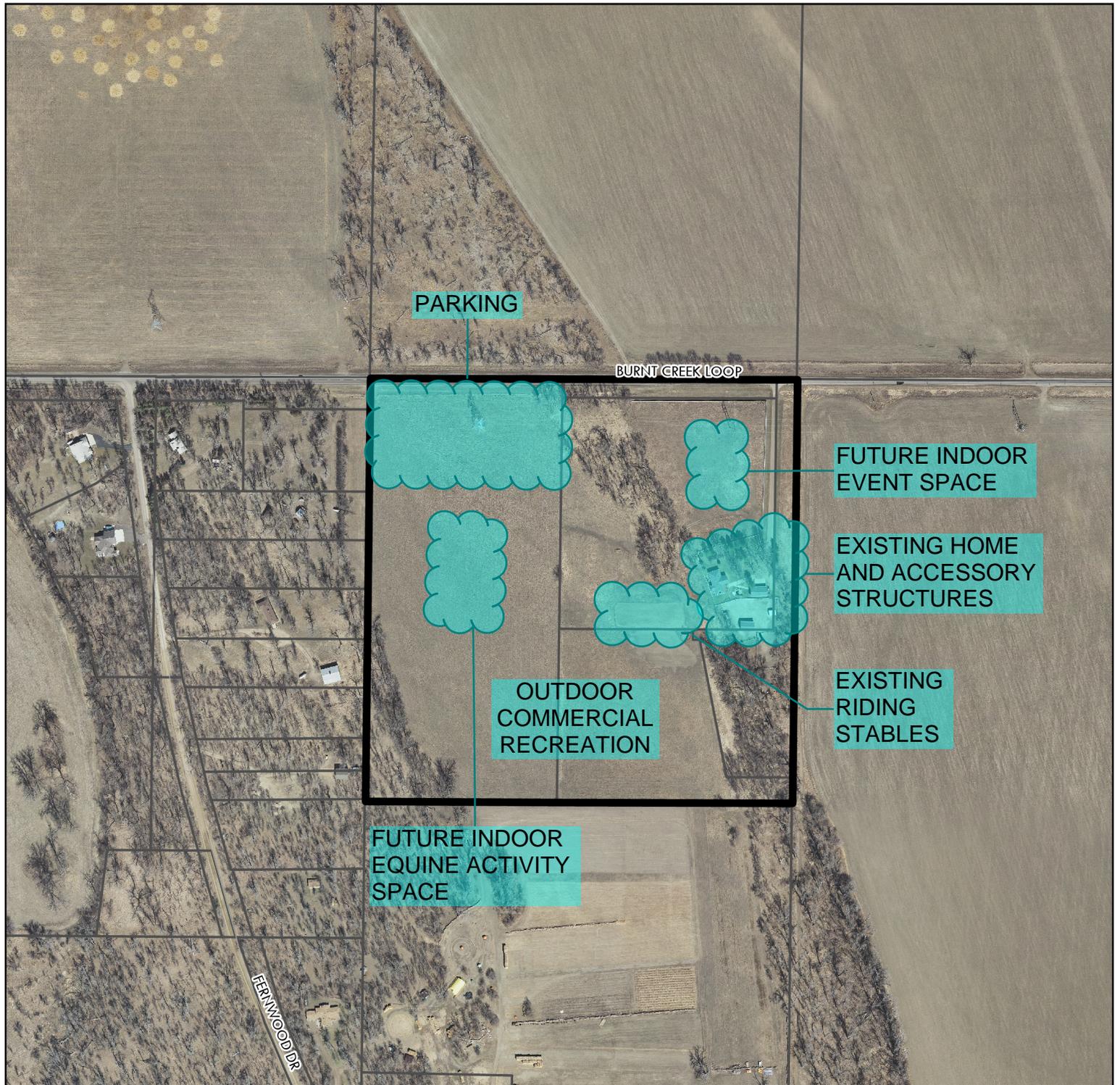


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City of Bismarck  
Community Development Dept.  
Planning Division  
August 31, 2020

# Site Plan Exhibit



This map is for reference purpose only and is not intended as a survey or accurate representation of all map features.

0 8,14516,290 32,580 Feet

