



Valley Advocates for Responsible Development

May 5, 2021

Teton County Planning & Zoning Commission
150 Courthouse Drive
Driggs, ID 83422

Re: Draft Land Use Code

Dear Members of the Commission:

We'd like to offer a hearty thanks for your service. There perhaps is no more thankless - yet important job - in all of the County.

We'd also like to offer our support of the draft Land Use Code (LDC). We appreciate its simplicity and directness, and the fact that it is the primary implementation tool of Teton County's widely-supported and award-winning Comprehensive Plan. It's been nine years since the vision of the Comprehensive Plan has been put into place, and we believe now is the time to move forward with this critical step in protecting Teton Valley's special character.

In addition to our broad support of the LDC, we offer the following specific recommendations for each respective section:

CHAPTER 1: GENERAL PROVISIONS

Section 1-1-6 Enforcement and Penalty. The current code vests enforcement action with the Sheriff: only deputies can collect evidence and issue citations. However, in other Idaho counties, Bonner and Blaine, for example, they authorize the Planning & Zoning Administrator to collect evidence and issue citations for infractions. If the issue isn't resolved, then the Board requests that the County Prosecutor take the violation to district court.

CHAPTER 2: ZONE DISTRICTS

Establishment of Overlays. Teton County has several overlays currently in place, specifically the Floodplain Overlay (FP), Hillside Overlay (HS), Wildlife Habitat Overlay (WH), and Wetlands and Water Overlay (WW). We believe these Overlays should be incorporated into the LDC.

Section 2-1-2(A) [IR, Industrial Research] Description. This section reads *“Most of these areas have low visibility from the highways and tourist centers and are currently undeveloped with some utility services available.”* Does this include the Rocky Road Industrial Park? It is highly visible. If Rocky Road is zoned IR, then perhaps the county should develop landscape screening in the Hwy 33/500 S ROW.

Section 2-1-3(A) [TN, Town Neighborhood] Description. The County should consider TN a placeholder until the cities negotiate for deed-restricted affordable housing in these areas. Underlying zoning in the TN/AOI should be zoned whatever adjacent county lands are zoned, and, upon annexation, development should be required to provide a certain percentage of deed-restricted affordable housing. This is a key strategy in the Teton Valley Housing Strategic Plan.

We also firmly believe in a hard line around the valley’s cities, and that the County should not be in the business of residential zoning greater than a 1 per 5 acre residential density. We also recommend that the County also identify areas with the Cities’ AOI’s that are in the FP, HS, WH, and WW Overlays, and negotiate with the cities to defer to the county’s zoning or to exclude these lands from their respective AOI’s altogether. We believe that the County is in a better position to manage natural resources than the Cities, and that Teton Valley’s natural resources should be regulated by one entity where possible. The Teton Valley ecosystem transcends political boundaries, and protection of the resource should be uniform as possible. Furthermore, the Town of Jackson, Wyoming (TOJ) is creating an Ecosystem Stewardship Department and Commission, which will be supported by public and private funds. The Ecosystem Stewardship Department and Commission will likely expand into a joint department with Teton County, WY. Having one entity in Teton County, ID to work with the TOJ-Teton County Ecosystem Stewardship Department and Commission would ensure efficient, effective, and comprehensive stewardship of our corner of the Greater Yellowstone Ecosystem.

Section 2-1-5(A) [FH-10, Foothills] Description. The Foothills Zone has a prescribed density of 1-unit per 10 acres. The Foothills contain a great deal of natural and scenic resources, most of which are located on steep slopes. The County should consider factoring out non-developable lands (20% slopes in particular) for gross density in the Foothills zone.

CHAPTER 3: USE STANDARDS

Section 3-1-1 Definitions of Uses. This section states *“If a proposed use is not listed in a use category, but is similar to a listed use, it may be considered as a part of that use category.”* The

Planning & Zoning Administrator should be charged with this determination with the caveat that the Commission and/or the Board may find differently.

Section 3-2-2 Use Table. “Garden Center” and “Golf Course” should be a Special Use in each zone save for IR. The size, scale, and intensity of this use can vary greatly and could have deleterious effects for the surrounding neighborhood. As such, these uses should be reviewed as a Special Use.

Because of the intensive, non-ag/non-residential nature of **Hospital, Park-n-Ride Facility, Places of Worship, Garden Center, Car Wash, Heavy Industrial, Light Industrial, Food and Beverage Processing Facility, Mineral Resource Development, Industrial Outdoor Storage, Research and Development, Large Scale Solar Energy System, Vehicle Service and Repair, Warehouse, Storage, and Distribution, Campground, Golf Course, and Shooting Range** uses, the following materials should be required in each use’s respective section:

- A Site Plan prepared by a licensed engineer, surveyor or landscape architect.
- A Grading Plan prepared by a licensed engineer or landscape architect.
- A Utilities Plan prepared by a licensed engineer or surveyor.
- A Stormwater Management Plan prepared by a licensed engineer.
- A landscape plan prepared by a licensed landscape architect.
- Building elevations if buildings are proposed.

Due to the inherent incompatibility with sensitive environmental surroundings, the following uses should not be permitted in the FP, HS, WH, or WW Overlay:

- Hospital
- Park-and-Ride Facility
- School
- Animal Care
- Garden Center
- Aviation Field/Heliport
- Car Wash
- Heavy Industrial
- Light Industrial
- Food and Beverage Processing Facility
- Mineral Resource Development
- Industrial Outdoor Storage
- Research and Development
- Large Scale Solar Energy System
- Vehicle Service and Repair
- Warehouse, Storage, and Distribution
- Waste-Related Service
- Campgrounds

CHAPTER 4: APPLICATION PROCEDURES

Section 4-1-1 Overview of Application Processes. Notice of Proposed Limited Uses should be posted on the county's website and at the site. **Concept Plans** should require review by the Planning & Zoning Commission if they are located within the FP, HS, WH, or WW Overlay. A Natural Resource Analysis pursuant to 9-3-2(C-2-c-WH) of the County's current code should be required with the Concept Plan application if development is in the WH. This will prevent the applicant from expensive changes and delays at the preliminary plat, and ensure a more objective WH analysis. Later in this letter, we also recommend that the county retain a Natural Resources Qualified Professional to review Natural Resource Analyses prepared by the applicant's rep.

Section 4-1-2(C)(1)(b) [Application Submittals and Revisions] Additional Materials. Per our comment on **Section 3-2-2 Use Table**, specific application materials (engineered site plan, landscape plan, building elevations, etc) required for a specific use should be mentioned here.

Section 4-1-2(C)(1)(e) [Application Submittal] Time frame. This section states *"Unless a different time frame is provided for in this chapter, Application materials received less than 15 calendar days prior to a scheduled public meeting or hearing will not be considered. In order for such materials to be considered, the meeting or hearing must be rescheduled."* This likely will create confusion for the staff, reviewing agencies, the applicant, the Commission, the Board, and the public if materials are accepted after the Completeness Determination established in Section 4-1-2(C)(3). This also seems to contradict Review Procedures elsewhere in the Chapter.

Section 4-1-2(C)(3)(c) [Application Submittal] Submission of Supplemental Information. This section allows the Administrator to require additional information after the application has been deemed complete, and that said information can be submitted during the "agency review period." Similar to our comments above, this is a recipe for confusion, and seems to contradict other Sections of Chapter 4. Additional information should be required before the applications are transmitted to Reviewing Agencies, so that all have the same information. Otherwise, staffers will spend undue time managing the application process.

Section 4-1-2(G) [Review Periods and Applications Deemed Approved]. This section allows an application to be deemed approved if no written approval is issued 30 days after the decision - **regardless of the actual decision**. There needs to be an escape hatch here - a county with high staff turnover and unpredictable workloads can't simply let an application reviewed through a public approval process be deemed approved because of a staff oversight.

Review Procedures for all Development Applications (Section 4-1-4 Comprehensive Plan and LDC Amendments, Section 4-1-5 Site-Specific Zoning Map Amendment, Section 4-1-6 Temporary Uses, Section 4-1-7 Limited Uses, Section 4-1-8 Special Uses, Section 4-1-9 Variances, Section 4-1-11 Agricultural Land Divisions, Section 4-1-12 Administrative Land

Divisions, Section 4-1-13 Subdivisions, Section 4-1-14 Modifications to Previous Approvals, Section 4-1-15 Appeals and Reconsideration. Applicants, an informed public, and staff efficiency will all benefit greatly from a uniform review procedure. For the applications listed above, we recommend the following steps in a review procedure.

1. Application submission with verification of submitted materials (items required by the application checklist).
2. Within seven (7) days of application, the Administrator or designee will transmit all Reviewing Agencies. Once the application has been transmitted, **no changes to the application are permitted prior to a final decision, unless the review process begins anew as described in Paragraph 6.**
3. After fourteen (14) days from the date of submission, the Reviewing Agencies, including the Administrator, will determine if the application is Complete or if more information is needed. If the application is deemed incomplete, the Administrator will notify the Reviewing Agencies and direct the applicant to submit the necessary information, and the Review Procedure will begin anew.
4. After thirty (30) days from the date of submission, Reviewing Agency comment is due to the Administrator.
5. After seven (7) days from the Reviewing Agency period, the Administrator will forward all comments, including those of the Administrator, to the applicant.
6. If the applicant wishes to make changes to the application and/or application materials in response to Review Agency comment, the Review Procedure begins anew.

For applications requiring a public hearing before the Commission and/or the Board, the following steps will be taken in the review procedure.

7. If the applicant consents to moving forward in the Review Procedure, the Administrator shall prepare a **Draft Staff Report** to be available to the public no later than the date of published notice.
8. After the deadline for written comment has passed, the Administrator will prepare the **Final Staff Report**.
9. For applications to be reviewed by the Commission, the Commission shall have **65 calendar days** to recommend approval, recommend approval subject to listed modifications, or recommend denial. This time period may be extended if both the Applicant and the Commission agree on an extension.
10. For applications to be approved by the Board, the Board shall have **65 calendar days** to issue a final decision. This time period may be extended if both the Applicant and the Commission agree on an extension.

CHAPTER 5: GENERAL DEVELOPMENT STANDARDS

Section 5-1-6(B)(1) Site Plan Requirements. Add a requirement that site plans shall be of a certain scale as well as drawn to scale.

Section 5-2-1(D) Grading and Erosion Control Permit Application Requirements. Consider a bond rather than a deposit to assure proper grading activity.

Section 5-2-4 (C) [Grading and Drainage] General Development Standards. Don't permit retaining walls over 8'. Require, instead a series of retaining walls with adequate separation. A CUP (along with site plan, grading plan, landscape plan) should be required for a series of retaining walls that exceeds 12 feet. Please note that a Variance is available for unique circumstances with a demonstrated hardship.

Section 5-3-3 (E) [Vegetation Management] General Standards. Include revegetation in bonds posted for Grading and Erosion Control permits.

Section 5-4-1 Wildlife Habitat Protection. In Subsection B Applicability states "*this section applies to all development within Teton County that is within areas identified as a significant wildlife habitat. These areas can be generally referenced per the County's Natural Resource Overlay Map in addition to to updated identification of areas where indicator habitats and/or habitats for indicator species are found as documented by input that is accepted by the County from Idaho Department of Fish and Game or other qualified wildlife professionals.*" Though we appreciate the acknowledgement of new, dynamic data regarding habitat, we fear that inclusion of areas that are not found within the County's Natural Resource Overlay Map or other official County maps could make this section overly vague¹.

Further, we are unclear as to what constitutes "Site Plan review" as stated in Subsection E General Development Standards. Instead, we recommend that the Natural Resource Analysis pursuant to 9-3-2(C-2-c-WH) of the County's existing code be incorporated into this Section. Moreover, we note that Idaho Department of Fish & Game (IDFG) review is not required as it is currently. In the absence of IDFG review, we recommend that the county retain a Qualified Professional (QP) to act as an agency reviewer for development applications. We understand that the county contracts for Nutrient-Pathogen Evaluations, and believe the Natural Resources QP could be contracted similarly.

¹It is advisable that counties and cities map geographically-specific restrictions in order to reduce vagueness and confusion in the administration of an ordinance. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Section 5-4-2 Riparian Buffers. We believe this section should incorporate the Wetlands and Waterways (WW) Overlay from the existing code. This will reduce vagueness and better protect riparian systems. With respect to the required setbacks, we believe that all development should be located outside of WW, and where a parcel is completely located inside the WW, then the setbacks established in this Section should apply. The Comprehensive Plan identifies Waterway Corridors as extremely important, and recommends that these areas should feature “*low to lowest residential density in the County,*” “*conservation and wildlife habitat enhancement,*” and “*overlays and development guidelines to protect natural resources.*” Incorporating the existing WW into Section 5-4-2 Riparian Buffers will accomplish this. Please note that the Variance process is available for unique circumstances demonstrating a hardship.

Division 5-5 Scenic Corridor Protection. As with the county’s Natural Resource Overlays, we believe that the foregrounds and ridgelines referenced in Section 5-5-2 Applicability should be mapped to avoid vagueness and confusion.

Division 5-8 Outdoor Lighting. Current standards in the draft code are adequate, however, it is worth noting that dark skies are a huge priority for Teton Valley residents. We suggest that the County consider outdoor lighting standards that address spotlights with motion sensors, total light output, lighting hours, photometric plan requirements, and amortization of nonconforming fixtures. Grand County, Utah (Moab) is considered to be the gold standard of outdoor lighting regulation; a draft of Grand County ordinance modified for Teton County is attached.

Section 5-9-6 [Sign] Construction. Teton County is known for its rural, rustic character, and is on the doorstep of the world’s most famous national park. Lexan and other plastics are not becoming of Teton Valley character.

Section 5-9-14(A) Sign Area. We recommend a limit of square feet for frontages longer than 125’. Unlimited sign area is not appropriate.

Section 5-9-15 Sign Dimensions. We recommend that monument signs be limited to 10’ in height.

Thank you for your consideration,



Shawn W. Hill
Executive Director