

Julie Robinson
3187 S. 2000 E
Driggs, Idaho 83422
zzjulie@icloud.com

Teton County Planning and Zoning Board
Teton County, Idaho

To the planning board,

Thank you for all the time and thought you've devoted to creating the Land Development Code. It is a testament to your dedication to protecting Teton County.

My comment relates specifically to fencing, addressed in Chapter 13, page 26. The statements in section B are quite vague. I'd like to see the Code be more specific in it's demands on new fencing. First, it should be specified that the changes in requirements would only relate to new fencing. Old fencing need not be replaced. Secondly, it should specify exactly what Wildlife Friendly fencing is, what it accomplishes, and what it looks like.

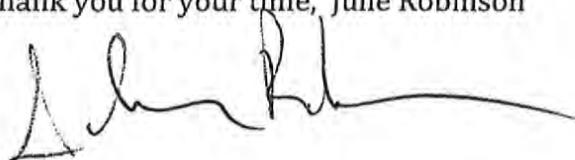
Wildlife is an asset to the County in many ways. It is a part of the area's heritage and history. It is also an economic asset. A healthier wildlife community relates to our tourist industry in hunting as well as recreation. (People love to see a Moose when they float the river). It enhances the attraction of Teton County to tourists, as well as new and old residents. Our obligation is to protect it in every feasible way.

Wildlife friendly fencing is very feasible in that it's not more expensive, only more thoughtful. By that I mean more full of thought. And, still provides for stock containment, or property delineation, as it was intended. Wildlife friendly fencing respects how animals need to move around, making it easier and less stressful which in turn makes for a healthier wildlife community.

I've included a Wildlife Friendly Fencing brochure for each of you, which I compiled from the information found in the regulations for Teton County Wyoming. Since wildlife knows no political boundaries, it seemed appropriate to be consistent with regional regulations.

Let me know if you'd like more copies of this brochure.

Thank you for your time, Julie Robinson



Guidelines for Wildlife Friendly Fencing

If a barbed-wire fence is needed to contain cattle, it can be made wildlife-friendly by adding a top rail and keeping the wire strands taut (therefore it is less likely to entangle either stock or wildlife). If the wire fence is not needed year-round, it can be designed to lay on the ground during the winter. Wire fences that cross creeks can be made more visible with the addition of a plastic-pipe sleeve or simple flagging. This can help prevent low-flying birds from running into them.

Buck and Rail fences, originally designed for areas too rocky to dig fence posts, have become popular for property boundary fences. These are not easy for wildlife to get over or through. However, rails can be laid down or a gap in the fence can be provided (look for a place where animals are likely to cross - a swale or creek, away from buildings and access roads).



The Ideal Wildlife Friendly Fence

From a wild animal's standpoint, the ideal fence is one that can be seen (and therefore not run into. Especially in the case of Swans and Owls), and one that can either be easily leapt over or scurried under without injury. **A fence with posts and a wooden top rail works best.** Rails or smooth wire strands can be used below the top rail to effectively contain stock and allow wildlife movement. **A maximum height of 38 to 40 inches, with the bottom strand of wire 16 inches from the ground, is considered optimum.**

Actions for Wildlife:

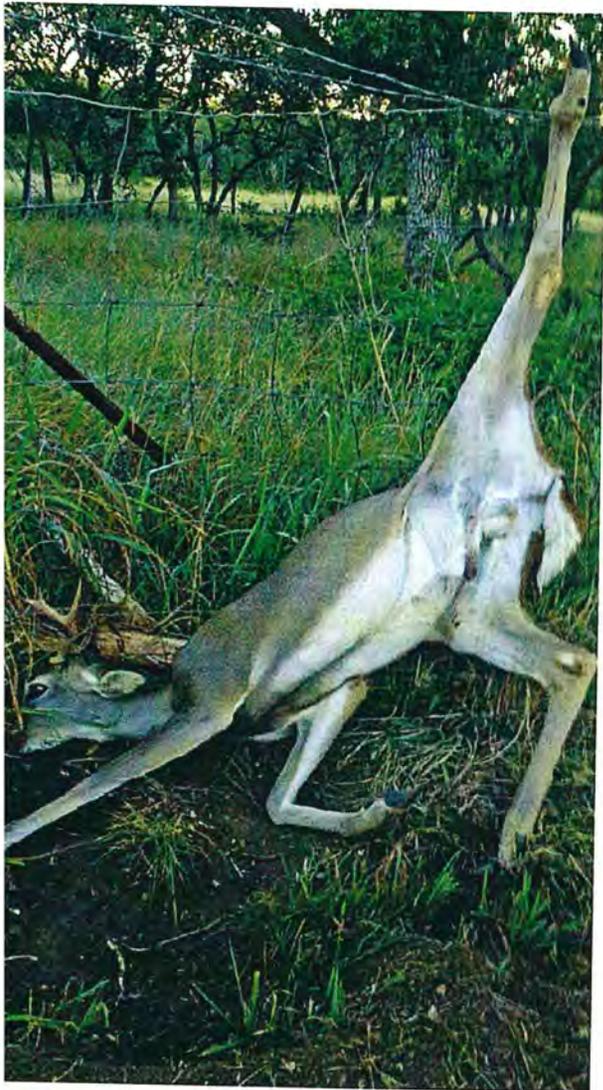
1. Send an email to: pz@co.teton.id.us Tell the Planning and Zoning Commission to include Wildlife Friendly Fencing in the Teton Valley Development Code.
2. Watch for and attend the Public Hearings for the Teton Valley Development Code expected to be in September 2016. **Speak up for Wildlife.**
3. Redesign your own fencing to accommodate wildlife movement.



Wildlife Friendly Fencing



Wildlife Friendly Fencing maintains habitat connectivity for wildlife, thus preserving this integral part of our western heritage.



Wildlife Friendly Fencing:

- Allows for barrier-free wildlife movement and migration, while still containing domestic livestock.
- Reduces damage to the fence thus reducing the need for maintenance or repair of the fence.
- Is designed to eliminate or substantially reduce the number of injuries and deaths to wildlife.
- Can reduce the number of animal/vehicle collisions by reducing the time the animal spends in the Right of Way.
- Preserves the wild animals for future generations.

Wildlife friendly fencing can be accomplished while still serving the purpose of containing stock. There is no reason not to incorporate Wildlife Friendly Fencing for new and repaired fences into Teton Valley's Development Code.

Helpful information can be found online at www.wildlifefriendlyfencing.com.

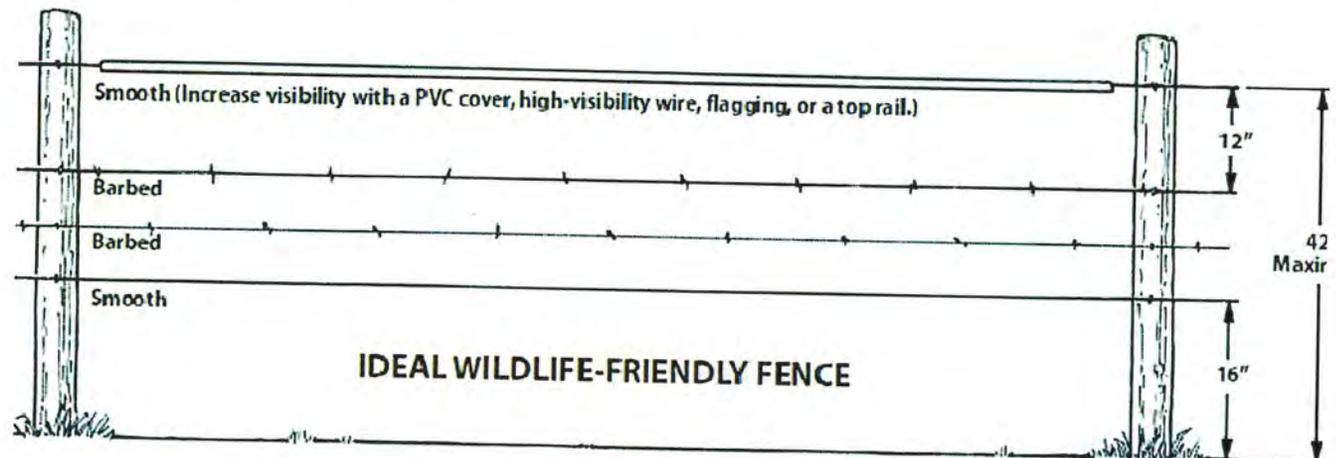
Why Wildlife Friendly Fencing?

Here in Teton Valley Idaho we share the land with the wildlife who have called this area home for thousands of years. They deserve our respect and admiration. Future generations of people deserve to have these wild animals share their habitat.

Some animals, such as Elk, Moose, and Deer, migrate between the mountains in the summer and the valley floor in the winter. Others live as year-round residents on ranch lands or in river or stream corridors.

Fencing can create an impediment for wildlife movement and migration resulting in injuries, or death, to the animals, and damage to the fencing as well.

It is in the best interest of hunters, ranchers, and wildlife-lovers to preserve this heritage and build responsible fences to allow these animals to migrate and move about more safely.



October 3, 2016

Teton County Planning and Zoning Commission Teton
County Courthouse
150 Courthouse Drive - Room 107
Driggs, ID 83422



To Whom It May Concern:

As a non-profit serving Teton County, Teton Regional Land Trust continues to find ways to fulfill our mission of conserving working farms and ranches, fish and wildlife habitat, and scenic landscapes in Eastern Idaho for this and future generations.

The Draft Code uses preservation as a zoning tool for mitigating development within subdivisions. Although we are supportive of any measure of preserving the important resources described within this letter, we feel it is necessary to explain the difference between rezoning an area as Preservation (PRS) and conservation easements. Because PRS is a county designation subject to the zoning ordinance, which can change over time, it is unclear how such a designation will achieve the requirement for permanent land protection in the Draft Code. It seems possible that lands dedicated as PRS could be converted to development in the future if the Code is later changed to remove PRS.

Alternatively, conservation easements offer a way to permanently protect property, because they are legal instruments that encumber a property in perpetuity. A conservation easement is a voluntary, legal agreement between a landowner and the easement holder that limits certain uses of the land – like large scale subdivision – in order to conserve the natural and agricultural values of the land.

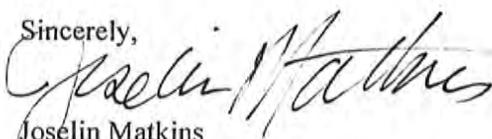
When considering whether to hold a conservation easement, TRLT evaluates each property for its conservation values to ensure it meets the IRS standards aimed at assuring that conservation easements serve the public good. Using conservation easements as an incentive for allowing development is problematic, and TRLT does not advocate for the requirement that landowners enter into conservation easements in exchange for meeting development requirements. Not all open spaces within any particular subdivision will meet the requirements for a conservation easement, or conserve important agricultural lands and wildlife habitat.

Most importantly with density changes as presented in the Draft Code, there is potential that less land will be suitable for agricultural production or intact enough for our area's wildlife, to qualify as land eligible for a conservation easement held by TRLT. This could limit the conservation options for future landowners. Additionally, if Teton County determines that conservation easements are the appropriate tool, they may want to consider how and if the County would hold, monitor, and enforce the open space placed in a conservation easement.

While we understand growth is inevitable and important to sustain our County's economic growth, we work to protect our rural character and wildlife resources to support the high quality of life and a sustainable economy for future generations.

As this Draft Code may directly impact the future success of our mission, we wanted to communicate these concerns.

Sincerely,



Joselin Matkins
Executive Director

Kristin Rader

From: Teton Valley Code <info@tetonvalleycode.org>
Sent: Wednesday, October 05, 2016 3:52 PM
To: Kristin Owen
Subject: Teton Valley Code Comment Form Submission

Message from Teton Valley Code Comment Form

Name: Barbara and David Agnew

Email:

Phone:

Which Jurisdiction?: kowen@co.teton.id.us

Type of Comment?: Code

Chapter: None

Comments:

Subject: Draft Land Use Code

Oct. 5, 2016

Dear Planning and Zoning Commissioners,

We are not in favor of any changes to the current A-20 zoning. The proposed changes would at least double the density of the now available A-20 lots. The proposed changes would not protect the property values or views that so many people have bought land and built homes upon, which they did based upon current A-20 zoning. For example, if an A-20 lot in front of a person's home was split into two lots, a new home could be built directly in front of their home, blocking their view and destroying the scenic value they have invested in. As we see it, this proposal is a "giveaway" to large landowners and developers.

We do not understand how Planning and Zoning could take three years to develop this proposal, and then expect to read and analyze all public comments and input fairly in a few weeks. We think your results will be shortsighted and will not reflect public concerns such as ours.

Thank you. Barbara and David Agnew

Tetonia, ID 83452

Kristin Rader

From: Jason Boal <jasonb@victorcityidaho.com>
Sent: Wednesday, October 05, 2016 11:01 AM
To: Kristin Owen
Subject: FW: Teton Valley Code Comment Form Submission

I think this was supposed to be directed to the county.....

Jason Boal- AICP, CFM

Planning and Zoning Administrator
City of Victor
P.O. Box 122-32 Elm Street-Victor, ID 83455
Phone: (208) 787-2940 – Fax: (208) 787-2357 – Cell: (208) 313-9493
<http://www.victorcityidaho.com>

Like the City of Victor on Facebook: www.facebook.com/CityofVictor

From: Teton Valley Code [mailto:info@tetonvalleycode.org]
Sent: Wednesday, October 05, 2016 10:47 AM
To: jasonb@victorcityidaho.com
Subject: Teton Valley Code Comment Form Submission

Message from Teton Valley Code Comment Form

Name: Emily Selleck

Email: [REDACTED]

Phone: [REDACTED]

Which Jurisdiction?: jasonb@victorcityidaho.com

Type of Comment?: Code

Chapter: Chapter 3

Comments:

My comments are for the entire code, but specifically on #s 3 & 13:

It's not perfect; but it's a place to start. We need to plan for the long-term lives of the people, the wildlife, and the overall quality of life in the Valley. Both ag and wildlife contribute to the economic viability of TV; and as such, should be thoughtfully considered. The proposed plan allows for planned population growth of people & wildlife. We need both to flourish in our Valley.

Kristin Rader

From: Teton Valley Code <info@tetonvalleycode.org>
Sent: Wednesday, October 05, 2016 3:20 PM
To: Kristin Owen
Subject: Teton Valley Code Comment Form Submission

Message from Teton Valley Code Comment Form

Name: Gini Van Siclén

Email: [REDACTED]

Phone: [REDACTED]

Which Jurisdiction?: kowen@co.teton.id.us

Type of Comment?: Code

Chapter: None

Comments:

My understanding is that the Code is derived from the Comprehensive Plan, i.e., the Comprehensive Plan established the requirements for the Code. Exceptions to the code can be made for public safety, health, and welfare as stated in Code Article 11.3.4

When I look at the Code, I do not see any citations to the associated Comprehensive Plan requirement(s)/guidance. In engineering and project work, it is standard practice to map the requirements to the detailed design and implementation. I expected to see such a mapping from the Comprehensive Plan to the Code. Is there a document showing this mapping? I don't see how anyone, professional, county commissioner, or citizen like me, can review the Code without such a mapping. Certainly I don't see how the Commissioners can approve it!

I appreciate the work of the P&Z and all those who participated in the Comprehensive Plan creation. I also appreciate our Commissioners. I know folks have put a ton of work in!

At the same time, the work is not complete without documented verification that it implements the Comprehensive Plan, and so I believe the Code cannot and should not be approved at this stage.

Gini Van Siclén

Kristin Rader

From: Teton Valley Code <info@tetonvalleycode.org>
Sent: Wednesday, October 05, 2016 11:15 AM
To: Kristin Owen
Subject: Teton Valley Code Comment Form Submission

Message from Teton Valley Code Comment Form

Name: Ron Prevost

Email: [REDACTED]

Phone: [REDACTED]

Which Jurisdiction?: kowen@co.teton.id.us

Type of Comment?: Code

Chapter: Chapter 13

Comments:

Thanks to all for the efforts to put these Codes together, I know it is a difficult task.

My comments are as follows:

- 1) Slow the process down as all public comments suggest.
- 2) The NP study requirement, to protect groundwater, is a step in the right direction but overlooks the reality that existing platted lots may exceed the capacity to assimilate waste. As an Environmental Engineer working in the Valley on NP studies it has recently become apparent to me that if all currently platted lots are developed with traditional septic systems, the Nitrate MCLs in Valley groundwater will most likely be exceeded. There is already evidence that this is happening. In the Teton view corridor north of Driggs, where many of the platted lots have been developed, voluntary nitrate tests show a disturbing trend. Many of these tests show elevated N levels. At a minimum, the NP Analysis requirement should be mandatory for any proposed subdivision. Ideally, if potential Nitrate overloading can be scientifically corroborated, a provision could be included that all future development using septic systems be required to have advanced Nitrate reduction processes included. This is not a terribly expensive addition to a traditional system. This should be considered an existential threat to the Teton Valley community as a whole because if we pollute our primary water resource, we can not easily get it back.

Kristin Rader

From: T Sperber <tbsperb@yahoo.com>
Sent: Wednesday, October 05, 2016 1:50 AM
To: Kristin Owen; PZ
Subject: Draft code comments

Dear Teton County Planning and Zoning Commission,

As a fourth generation southeast Idahoan and a citizen of Teton County for the last 10 years, I greatly appreciate efforts to promote a healthy economy while protecting the cultural heritage and natural resources in our amazing landscape. I also appreciate the opportunity to comment on the 2016 Teton County draft code. However, I am concerned about the short amount of time County citizens have to review, assimilate, and develop meaningful comments on the over 400 page document. In addition, I am concerned about potential impacts to wildlife .

One of the greatest resources Teton County has is its wildlife. The replacement of the Natural Resource Overlay with the "Wildlife Habitat Protection Map" (13.3.8) does not provide adequate protection to natural resources or wildlife habitat in Teton County. The Wildlife Habitat Protection Map was not developed for the purpose of making land use decisions. The map does not include the entire county, both the northern and southern portions of the County are missing. How will the County address lands in these omitted areas? The use of this map also ignores the importance of rural agricultural lands to wildlife. Several of the Indicator Species listed in the code rely on open space and agricultural lands in Teton County during some part of the year. Elk use these open areas to transition between summer and winter habitats. Trumpeter swans wintering in Teton County forage and rest in farm fields and pastures. Sandhill cranes depend on grain fields and pasture land to build up their reserves for their long migration south and once again when they return in the spring. Using the Wildlife Habitat Protection Map significantly decreases the protection of natural resources and wildlife habitat in Teton County. I strongly encourage the use of an updated Natural Resource Overlay map while recognizing that although this map was based on empirical data and input from knowledgeable biologists in the region, the boundaries of the mapped areas are not hard and fast. The County should retain the authority to require wildlife habitat assessments outside of areas mapped as wildlife habitat.

I am also concerned about the density threshold for requiring a wildlife habitat assessment in areas mapped as rural residential/agriculture. The acreage threshold should be much higher (the density threshold should be lower) in order for the County to fulfill its intent is to maintain the long term viability of habitat (13.3.8.D). The density of a development is often secondary to the configuration of the development in terms of impacts to wildlife and sensitive areas. Requiring a wildlife habitat assessment at a lower density threshold would enable the County to make more informed decisions regarding the impacts of the development on wildlife resources and help minimize the 'death by a thousand cuts' wildlife are subject to as our region continues to grow.

Riparian corridors support a highly diverse suite of wildlife species, protect water quality, attenuate flood waters, and stabilize streambanks. I applaud the increases in setbacks from rivers and streams in the draft code (Riparian Buffers 13.3.1). However, the riparian corridor associated with natural water bodies can differ greatly, including the width of the corridor. To protect and maintain riparian buffers in the County, please consider requiring the greater of either the setbacks listed under 13.3.1.F or the edge of the riparian corridor for rivers and streams.

Thank you the amount of time and effort you have put into developing the draft code. Given the enormity and complexity of the document, I urge you to consider giving the public more time to review and comment. In the words of John Wooden, "if you don't have time to do it right, when will you have time to do it over?"

Respectfully,

Tamara Sperber
Victor, ID



IDAHO DEPARTMENT OF FISH AND GAME

UPPER SNAKE REGION

4279 Commerce Circle
Idaho Falls, Idaho 83401

C.L. "Butch" Otter / Governor
Virgil Moore / Director

October 5, 2016

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

Re: Teton County's Draft Land Use Development Code

Dear Planning & Zoning Commissioners:

Idaho Department of Fish and Game (Department) appreciates the opportunity to provide comments on the draft Teton County Land Use Development Code (Land Use Code). While we acknowledge Teton County's efforts to solicit public comment, we were unable to thoroughly review and understand the implications of the Land Use Code. The Department needs to fully understand and further discuss County expectations of our role in reviewing proposed development projects. Once the initial round of public comments are complete, the Department recommends the County to work with us to understand our concerns and develop revised draft language to ensure adequate protections for wildlife and fisheries resources are in the new Land Use Code.

The Department recommends that "IDFG's Major Plant Communities Map" should not be used in place of a bona fide Wildlife Habitat Overlay. Section 13.3.8 (A) Wildlife Habitat Protection Map, is proposed to be used to determine protected Indicator Species habitat location, and lands contained therein will be subject to a Wildlife Habitat Assessment (when they are not exempted by Section 13.3.8 (C)). It appears that the Major Plant Communities Map from IDFG's 2012 *Summary of Key Fish and Wildlife Habitats of Low Elevation Lands in Teton County, Idaho* (IDFG 2012) is proposed to replace the county's existing Wildlife Habitat Overlay Map. Please note that this is not the map's intended purpose. Originally, the Department included this map in our report to the County as a general reference only. Priority wildlife habitat is comprised of many characteristics, not just vegetative cover. Teton County's existing Wildlife Habitat Overlay (Overlay) was produced in consultation with the Department and other partners. In our view, it is the best tool for protecting wildlife habitat in the course of land development. Priority habitats and the rationale for their designation are explained thoroughly in IDFG (2012), which is included as an appendix in the Teton County Comprehensive Plan.

The Department is concerned that the proposed density exemptions in Section 13.3.8 (C) were developed without any scientific basis. It appears this section exempts development of a certain density from the Wildlife Habitat Assessment requirement. The purpose of this exemption is unclear. However, we assume that the Planning & Zoning Commission found that development of less than one unit per 25 acres has no impact to Indicator Species, or that the Commission does not seek to protect habitat in exchange for lower density proposals. In the case of the latter, we find this to be a local policy decision independent of scientific analysis. However, if Teton County's intent is to protect key habitat, we stress the location of development - not the density of development - is a more scientifically sound approach to wildlife habitat protection.

Keeping Idaho's Wildlife Heritage

The Department is very concerned about our role in the proposed Land Use Code. We believe that the review of Wildlife Habitat Assessments should not fall solely to the Department. Section 13.3.8 (G) establishes the Department as the sole technical reviewer for:

- 1) The optional preliminary review of plant communities in Section 13.3.8 (G)(1), and
- 2) The required review for Wildlife Habitat Assessments outlined in Section 13.3.8 (G)(2).

The Department welcomes the opportunity to provide technical assistance to Teton County in managing the state's wildlife resources, and we will make every effort to accommodate reasonable requests. However, effective and sufficient wildlife protections may be compromised with Teton County mandating the Department's review for county development applications. The Department will not have the resources to conduct a thorough review for every application within the 45-day timeframe established in Section 13.3.8 (G)(2). Moreover, we have concerns with the language in Section 13.3.8 (G)(2)(b), that states "if no comments are received [from IDFG] within 45 days, it will be judged that there are no IDFG comments on this application." The Department recommends providing language that states "if IDFG is properly notified and if no comments are received [from IDFG] within 45 days, it will be judged that there are no IDFG comments on this application." Additionally, we recommend adding language that would offer the Department an opportunity to extend our comment period due to significant wildlife or fishery resource concerns. This would also be helpful in the event that the Department is requested to review several applications at one time.

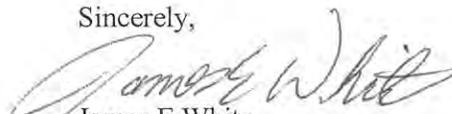
To alleviate Department concerns about being the sole technical reviewer for Wildlife Habitat Assessments, we suggest Teton County require some preliminary natural resources technical document for development applications. These should be prepared by qualified wildlife professionals familiar with the Teton County wildlife and ecology to provide the required review of the Wildlife Habitat Assessments proposed in Section 13.3.8 (G). The Department further recommends the County identify qualified wildlife consultants who are variably contracted directly by the County (*not the development applicant*). A process like this would benefit important wildlife habitat and:

- 1) Create a fair, level playing field for all applicants,
- 2) Increase objectivity of analyses,
- 3) Streamline technical review by the Department, and
- 4) Create a positive process that enhances the Department's relationship with Teton County planners.

In closing, the Department recommends the County to develop a wildlife review team that is tasked to engage with the Department. The intent of the wildlife review team would be for the County to understand our concerns and the Department has the opportunity to further discuss County expectations of our role in reviewing proposed development projects. This would be helpful to ensure adequate protections for wildlife are in the new Land Use Code.

Thank you for the opportunity to comment. If you have questions or require additional information, please contact Robert Cavallaro, Regional Wildlife Habitat Manager, or, Tom Bassista, Environmental Staff Biologist, at 208-525-7290.

Sincerely,



James E White
Regional Supervisor

JEW:RAC:TPB:jms

October 3, 2016

Teton County Planning and Zoning Commission
Teton County Courthouse
150 Courthouse Drive - Room 107
Driggs, ID 83422



To Whom It May Concern:

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When considering whether to hold a conservation easement, TRLT evaluates each property for its conservation values to ensure it meets the IRS standards aimed at assuring that conservation easements serve the public good. Using conservation easements as an incentive for allowing development is problematic, and TRLT does not advocate for the requirement that landowners enter into conservation easements in exchange for meeting development requirements. Not all open spaces within any particular subdivision will meet the requirements for a conservation easement, or conserve important agricultural lands and wildlife habitat.

Most importantly with density changes as presented in the Draft Code, there is potential that less land will be suitable for agricultural production or intact enough for our area's wildlife, to qualify as land eligible for a conservation easement held by TRLT. This could limit the conservation options for future landowners. Additionally, if Teton County determines that conservation easements are the appropriate tool, they may want to consider how and if the County would hold, monitor, and enforce the open space placed in a conservation easement.

While we understand growth is inevitable and important to sustain our County's economic growth, we work to protect our rural character and wildlife resources to support the high quality of life and a sustainable economy for future generations.

As this Draft Code may directly impact the future success of our mission, we wanted to communicate these concerns.

Sincerely,

A handwritten signature in black ink that reads "Joselin Matkins".

Joselin Matkins
Executive Director

October 5, 2016
Teton County Planning and Zoning Commission
Driggs, Idaho

Dear Commissioners,

Firstly thank you all for your hard work on crafting the proposed new code for the County. After being on your side of the table I know first hand what a difficult job you had. As with all planning ideas there are always multiple view points which make the outcome even more complicated. I have some thoughts on the draft code and will try to keep them as brief as possible.

- Some general comments: The code is a complicated document and would be better if it was simplified. For example reduce the number of land division possibilities.
- Density: Giving bonus density for “doing the right thing” is a left over idea from the PUD days and is a bad idea. If the community wants to keep the rural parts of the county rural then zone it accordingly. For example make the base acreage 40 acres. If the development was clustered then allow 2 building sites. That would keep the underlying density at 20acres and if the clustered sites were 3 acres each 34 acres of open space would be created or 85%.
- Allow an administrative land division of 100 acres or more. This is an arbitrary number but the concept is valid. The proposed parcel would need to have a minimum of 300 feet of road frontage on an approved county road. This would be a very easy process with no P&Z review, public meeting/hearing etc. Also this new parcel would not be eligible for any further divisions. Certainly this would maintain the rural feel and allow large landowners an easy method of land division.
- Eliminate one time lot splits. This has been an abused method of land divisions for a long time.
- There should not be 10 acre density allowed no matter what mitigation measures are required. That is not rural in feel. Remember that a while back a proposal for a subdivision was suggested in the north west part of the valley. Because of the size of the development acreage (over 6,000 acres) a development the size of Driggs would have been created. No matter how much open space would have been created that part of the county certainly would not have maintained it rural feeling.
- Who comprises the DRC? How many members? Why are minutes not required?

- Wildlife13.3.8 There needs to be more than the use of the vegetation layer to protect the county's wildlife. It seems prudent to ask IF&G to help craft a comprehensive wildlife management plan. Also does IDF&G have the capacity to review the subdivisions as described in the code? The county should create a list of environmental consultants that are trusted to produce unbiased reports. An applicant should pick from the list and pay for the studies that need to be done.
- Article 10: agricultural uses: eliminate commercial feed lots. Why would Teton County want the possibility of a feed lot coming into the valley with all the problems that it would create?

In closing my main points are keep the rural parts of the county rural. An underlying density of 10 acres will not do that. Make a stronger wildlife protection section with specifics from IF&G. Allow a by right land division process if the created parcel is large enough to maintain a rural feel. Eliminate one time only lot splits. Thank you again for your hard work and effort in rewriting the code.

Sincerely,

Sandy Mason
Tetonia, ID

Kristin Rader

From: Teton Valley Code [REDACTED]
Sent: Wednesday, October 05, 2016 3:52 PM
To: Kristin Owen
Subject: Teton Valley Code Comment Form Submission

Message from Teton Valley Code Comment Form

Name: Barbara and David Agnew

Email: [REDACTED]

Phone: [REDACTED]

Which Jurisdiction?: kowen@co.teton.id.us

Type of Comment?: Code

Chapter: None

Comments:

Subject: Draft Land Use Code
Oct. 5, 2016

Dear Planning and Zoning Commissioners,

We are not in favor of any changes to the current A-20 zoning. The proposed changes would at least double the density of the now available A-20 lots. The proposed changes would not protect the property values or views that so many people have bought land and built homes upon, which they did based upon current A-20 zoning. For example, if an A-20 lot in front of a person's home was split into two lots, a new home could be built directly in front of their home, blocking their view and destroying the scenic value they have invested in. As we see it, this proposal is a "giveaway" to large landowners and developers.

We do not understand how Planning and Zoning could take three years to develop this proposal, and then expect to read and analyze all public comments and input fairly in a few weeks. We think your results will be shortsighted and will not reflect public concerns such as ours.

Thank you. Barbara and David Agnew
2861 West 4000 North
Tetonia, ID 83452

Kristin Rader

From: Richard Berg [REDACTED]
Sent: Thursday, October 06, 2016 1:01 PM
To: Kristin Owen
Subject: Re: Teton Valley Code Comment Form Submission

Kristin, I found the comment I wrote (it was the very first comment that I posted) which did not show up ... please read as the draft code violates Idaho state law ...

The definitions and limitations set forth in 10.6.12.B regarding Amateur Radio Facilities violates Idaho state law. See the Emergency Communication Preservation Act at 55-2901 through 55-2904 which states "Any rule or ordinance of a local unit of government involving the placement, screening or height of antennas and towers based on health, safety or aesthetic considerations must be crafted to represent the minimum practical regulation to accomplish a legitimate purpose of the local unit of government."

The code with its definitions goes way overboard with its restrictions. Suggested changes: (i) bring the codes definitions into alignment with the definitions in the state statute, (ii) the code does not express what the purpose is of the stated restrictions nor does it represent "the minimum practical regulation" to whatever that pursue might be, so state the purpose is (is it aesthetics or something else like safety?).

Having a larger lot or having a lot with many trees would address an aesthetics issue. The current rules, which apply regardless of lot size, location and configuration, and regardless of the size or how well built the Amateur radio facility is (if the issue is safety), does not represent "the minimum practical regulation" as required by state law and does not "reasonably accommodate amateur radio communications" as required by state law.

Maybe you should talk about this stuff with someone who has a better understanding of the issues and the technologies involved here? I have the highest class of amateur radio license, a degree in electrical engineering and a law degree and moreover I would be happy to help.

Thanks, but I posted THREE comments ...

If you only got TWO comments, then this system is broken.

Richard Berg

On Oct 5, 2016, at 9:46 AM, Kristin Owen <kowen@co.teton.id.us> wrote:

Thanks, Richard. I will pass both of your comments on to the Planning Commission.

Kristin Rader

From: Felix E Zajac <[REDACTED]>
Sent: Wednesday, October 05, 2016 4:34 PM
To: PZ
Cc: Kristin Owen
Subject: Comments on Teton County Draft Code

October 5, 22016

Dear Planning and Zoning Commission:

I wish to thank you for the enormous time and effort to produce this draft code. I am sure reaching a consensus with a committee of nine, representing many County constituents of conflicting opinions/interests, must have been challenging, to say the least.

This morning I read all the comments previously submitted. My additional comments are:

1. Short Plat and Full Plat Density and Open Space:

I like the draft.

2. Land Division:

In general, I would prefer making it less advantageous for landowners to use this option.

a) RA, LA, and FH districts: As proposed, a landowner with ≤ 160 ac parcel will find that the Land Division process will provide him/her with more available lots than the Plat process. **I suggest that the density be no more than 1 lot per 40 ac**, which would be consistent with the Short and Full Plat densities with any of the two open space options, and would be consistent with the purpose of the Land Division (i.e.,for a division of **large**, rural, unplatted land in the County into four (4) or fewer lots through a simplified process, meeting specific criteria, in exchange for **decreased density** and minimized impacts to the County.”

b) ARN district: **Do not allow Land Division because large parcels are non-existent**. Or at least make the density consistent with the Short and Full Plat densities (i.e., 6.67ac per lot); otherwise a landowner with ≤ 26.68 ac parcel will find it more advantageous to use the Land Division option.

3. One-Time Land Split:

Perhaps this option, coupled with my suggestions for Land Division, will still give flexibility many landowners desire.

Again, thank you.

Sincerely,

Felix Zajac



Victor, ID 83455

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October 5, 2016

Teton County Planning and Zoning
Commission
150 Courthouse Drive, Room 107
Driggs, ID 83422

Re: Comments on Teton County Proposed Land Development Code

Dear Planning and Zoning Commission:

I am writing on behalf of Brigham Young University – Idaho (“BYU-Idaho”) to provide its comments regarding the draft Land Development Code currently being considered by the Teton County Planning and Zoning Commission.

Teton County has completed its Comprehensive Plan, as required by Idaho Code § 67-6509 and § 67-6510. Now, Teton County is in the process of adopting a new development code which should “be in accordance with the policies set forth in the adopted comprehensive plan.” Idaho Code § 67-6511(1). This letter is provided to give comment on the proposed Land Development Code for Teton County, Idaho (PZC Public Review Draft – August 2016) (“Development Code”).

Beginning in 1979, BYU-Idaho has conducted outdoor learning experiences on property it owns that is located on Badger Creek in Teton County, Idaho. This facility is known as the BYU-Idaho Outdoor Learning Center. The Outdoor Learning Center has provided many students and others the ability to learn in a natural outdoor environment, and to obtain access to public lands located in Teton County and surrounding areas. BYU-Idaho has invested significant resources in the Outdoor Learning Center in order to achieve its educational objectives.

BYU-Idaho now asks that the Planning Commission include provisions in the Development Code to ensure that this important facility and others like it can provide outdoor, experience-based education to students and others, as contemplated by the Teton County Comprehensive Plan.

The Objectives of the BYU-Idaho Outdoor Learning Center

BYU-Idaho seeks to use the unique location of the Outdoor Learning Center near federal and state public recreation areas to introduce students and others to the learning opportunities available outdoors. BYU-Idaho tries to utilize the outdoor resources for its teaching mission in a variety of ways, including through the Outdoor Learning Center, its Recreation Management degree, its Outdoor Resource Center, and through other programs.

The Outdoor Learning Center is an outdoor, hands-on learning center designed to create deeply significant leadership, learning and recreational experiences for many young people and others, including those students whose area of focus is recreation management and therapy. The Outdoor Learning Center partners with campus organizations and academic departments to provide these experiences.

One significant part of the Outdoor Learning Center is its partnership with the Recreation Management academic area within the BYU-Idaho Department of Health, Recreation and Human Performance. That academic area awards Bachelor of Science degrees and minor degrees in Recreation Management and Therapeutic Recreation. The Outdoor Learning Center helps this academic area provide opportunities for leadership training through adventure education. This academic area combines the unique natural resources of our region with the experiential teaching philosophy of BYU-Idaho in order to prepare students for future careers and experience in outdoor recreation. This provides students with opportunities for personal growth, and develops strong resource protection and service ethics. Students in these programs go on to become leaders in their careers, which frequently involve making the outdoors accessible to youth and adults.

The Outdoor Learning Center includes a dedicated ranch, ropes courses, principle-based learning activities, and cabins to create learning experiences. The Outdoor Learning Center partners with academic departments and other campus organizations in their educational goals. That means that the staff and student leaders at the Outdoor Learning Center coordinate learning experiences focused on the principles chosen by the group utilizing the Outdoor Learning Center facilities.

The Outdoor Learning Center also hosts summer experiences for high school age students from across the country. This program, which is currently called "Adventures for Youth" or AFY, provides these students a week-long experience in the outdoors, combined with adventures on public lands.

Another way that BYU-Idaho encourages outdoor education and access to the public lands is through the Outdoor Resource Center located on the BYU-Idaho campus in Rexburg. The Outdoor Resource Center in Rexburg provides all of the types of equipment needed for people to get outdoors and enjoy the area's natural resources, in exchange for low rental price. This

includes rafts, tents, kayaks, skis, boats, snowshoes, canoes, climbing gear, hiking gear, clothing, boots, cooking gear, safety equipment, and nearly any other piece of equipment needed to access the outdoors. This Outdoor Resource Center is available to the public, as well as to BYU-Idaho students and faculty. The Outdoor Learning Center often utilizes the equipment at the Outdoor Resource Center for its programs.

BYU-Idaho also allows public groups, including Teton School District 401, to utilize the Outdoor Learning Center for their educational and non-profit purposes.

The Pressing Need for Educational Experiences in the Outdoor World

While the Outdoor Learning Center has been introducing youth to the outdoors since 1979, there has recently been national attention on the need for nature experiences of this type. In 2005, Richard Louv published his book “Last Child in the Woods: Saving Our Children from Nature-Deficit Disorder,” which explored the question of how lives could be improved if our days and nights were as immersed in nature as they are in technology. Louv, Richard, *Last Child in the Woods: Saving Our Children from Nature-Deficit Disorder* (2005). Richard Louv was awarded the prestigious Audubon Medal for raising this issue of the costs of children’s isolation from the natural world, and for leading a movement to remedy the problem. Louv wrote:

Every child needs nature. Not just the ones with parents who appreciate nature. Not only those of a certain economic class or culture or set of abilities. *Every child.*

<http://richardlouv.com/blog/> (February 28, 2012).

The October 2016 issue of *National Geographic* also raised this same issue, in the article “Can the Selfie Generation Unplug and Get Into Parks,” by New York Times writer Timothy Egan. *National Geographic*, October 2016. In that article, Egan explains that younger generations are not visiting national parks in the same proportion as prior generations. Many national conservation leaders are concerned that the next generation may not have the same level of commitment to stewardship and preservation of natural places that prior generations have had. In the article, the Director of the National Park Service states that “[y]oung people are more separated from the natural world than perhaps any generation before them” and “[t]he national parks risk obsolescence in the eyes of an increasingly diverse and distracted demographic.”

The same concerns have also been expressed and addressed in our local area. Recently, a meeting on how to address “nature deficit disorder” in eastern Idaho was held jointly with the State of Idaho Department of Fish and Game, the U.S. Forest Service, Idaho Falls Department of Parks and Recreation, the Theodore Roosevelt Conservation Partnership, and Tight Line Media. See Trevellyan, K., “Unstructured Play,” *Post Register* at A1 (September 28, 2016) (“Local officials are concerned children aren’t spending time outdoors”). That article stated

that at this meeting, “Many were concerned that if children don’t engage in outdoor activities – hiking, camping, angling – it will create a lapse in interest for future generations, and an indifference toward nature at large.”

One of the criticisms posited by this movement is that local land use planning has not adequately incorporated locations for youth and the public to enjoy natural spaces. Teton County should reflect this important need in its land use planning, and in its new development code. The Outdoor Learning Center operated by BYU-Idaho meets this important need to bring youth into the outdoors, and similar uses should be encouraged in Teton County.

The Comprehensive Plan Encourages Preservation of Natural Resources for All Users

The Vision stated in the Comprehensive Plan provides that Teton County will strive to “[p]reserve natural resources and a healthy environment, which are essential for creating viable economic and recreational opportunities for all users.” Comprehensive Plan – A Vision and Framework 2012-2030 (“Comp. Plan”) 1-8. The Vision is also that Teton County will “[c]ontribute to our strong sense of community by providing quality facilities, services, and activities to benefit the community.” Comp. Plan 1-8. The Outdoor Learning Center promotes the accomplishment of these purposes.

The Teton County Comprehensive Plan focuses on education and recreational opportunities, utilizing and promoting Teton County’s unique access to public lands.

Our future vision is for a Valley with a vibrant economy and high quality of life. This requires **educational opportunities**, **recreational opportunities**, cultural amenities, **public land access**, and **protection of natural resources** and scenic vistas. Therefore, the Framework Map also depicts a recreational trail and pathway system that rivals the best in the nation, scenic vista protection along the primary transportation routes, a valley-wide recreation program and centers and support for multimodal transit. Providing a variety of **high quality educational opportunities**, diverse cultural amenities, well maintained transportation routes and **public access to the surrounding forests** and the Teton River are key aspects of the Framework’s goals and policies.

Comp. Plan 1-9 (emphasis added).

The principles contained within the “Natural Resources and Recreation” portion of Teton County’s Vision statement are consistent with the purposes of the BYU-Idaho Outdoor Learning Center. These include:

- Enhance and preserve our access to public lands and recognize the need to accommodate different user groups in a way that minimizes user conflict and area damage.
- Recognize that tourism is a fundamental component of our economy and is dependent on healthy natural resources.
- Preserve and improve recreational opportunities as well as natural resources
- Create and sustain economic development through promotion of recreational opportunities and natural resources

Comp. Plan 4-9. The Comprehensive Plan also lists other guiding principles relevant to the Outdoor Learning Center:

- Encourage diverse and affordable activities for all ages
- Encourage the development of quality education facilities - primary, secondary and post-secondary
- Explore new funding options (e.g. Recreation District, grants, private donations) to develop and support affordable activities for all ages (e.g. Recreation Center, 4-H, etc.)

Comp. Plan 4-11. The Comprehensive Plan also encourages Teton County to work with non-profit groups, such as BYU-Idaho, "to expand services and facilities."

- Encourage partnerships and working relationships with non-profit groups in order to expand services and facilities

As part of the Comprehensive Plan process, Teton County also solicited the opinions of youth in the area. The principles provided by the youth group as part of the Comprehensive Plan are particularly relevant to the Outdoor Learning Center. These principles incorporated by the youth group include:

- Encourage the development of art, culture, and recreational facilities
- Encourage challenging, relevant, hands-on, diverse classes and experience
- Facilitate a more vibrant economy and encourage local business
- Encourage the preservation of, and access to, natural resources
- Provide more educational resources

- Provide productive, engaging, affordable, and positive entertainment
- Provide opportunities for youth involvement and leadership in the community

Comp. Plan 4-15. These principles are the same as the values and direction of the Outdoor Learning Center. The Outdoor Learning Center provides an experience-based education, access to natural resources, productive and affordable entertainment, and opportunities for youth involvement and leadership.

The Comprehensive Plan states that it is important to accommodate different user groups, while enhancing access to public lands. Goal 2 of the Natural Resources and Outdoor Recreation group was to “Enhance and preserve our access to public lands and recognize the need to accommodate different user groups in a way that minimizes user conflict and damage to natural resources.” Comp. Plan 5-20. The Outdoor Learning Center seeks to do this by providing a staging facility for youth to take important excursions into public lands.

The Comprehensive Plan also states that it is important that the interests of all user groups is also emphasized. Goal 3 of the Natural Resources and Outdoor Recreation group was to “Provide and promote exceptional recreational opportunities for all types of users (including but not limited to biking, skiing, fishing, off-highway vehicle use, target practice, hunting, trail users, equestrians, boating and non-motorized flight) as a means for economic development and enhanced quality of life.” Comp. Plan 5-21.

A key part of the Comprehensive Plan is that Teton County should promote and market uses that “package” the natural environment for outsiders and tourists:

Recreational tourism is a niche segment of the outdoor recreation product that Teton County is offering tourists. It is essentially comprised of **packaging special itineraries, activities and experiences that focus on the natural environment of the region.** The region is very well suited to pursue this segment, as the destination features outdoor recreation, world class scenery and high quality experiences in nature. Therefore, **these types of recreational tourism experiences should be promoted and marketed.**

Comp. Plan, 6-5 (emphasis added). To be consistent with the Comprehensive Plan, the proposed Development Code needs to include provisions that would encourage land uses that feature “outdoor recreation” and “high quality experiences in nature” such as that offered by the Outdoor Learning Center.

The Need for Protection for Outdoor Camps and Educational Facilities

The idea that Teton County should promote uses that encourage the enjoyment of the area’s outdoors and public lands by youth and students is not a new idea. Rather, Teton County and

its surrounding valley has long been a center for outdoor learning and outdoor recreational experiences for youth.

For example, the National Outdoor Leadership School (NOLS) has chosen a location near Driggs for one of its outdoor leadership training locations. NOLS is a leader in wilderness education and teaches students of all ages outdoor skills, leadership, and environmental ethics through wilderness expeditions. NOLS has also used the Outdoor Learning Center facilities for some of its activities.

Another example is the Treasure Mountain Camp operated by the Grand Teton Council of the Boy Scouts of America has been providing education and access to outdoor experiences to thousands of young men since 1936. Treasure Mountain is used by the Boy Scouts of America as one of its premier locations for the BSA National Youth Leadership Training (NYLT) program.

The Darby Girls Camp located in Darby Creek Canyon has been in operation since at least 1951 providing outdoor experiences for thousands of youth. West Piney Lodge in the Pine Creek Canyon has also been providing educational outdoor experiences for thousands of youth since 1953.

These uses bring large numbers of people to Teton County each year. However, all of these uses are located just outside of Teton County. Treasure Mountain and Darby are located on national forest land within Teton County, Wyoming. West Piney Lodge is located on national forest land in Bonneville County, Idaho.

The draft Development Code is not consistent with the Comprehensive Plan, which provides that these types of outdoor recreational experiences should be “promoted and marketed.” The draft Development Code also does not seem consistent with Teton County’s rich history of hosting this type of outdoor recreational experience in the past.

While the proposed Land Use Development is an impressive body of work, it is difficult to understand how the Land Development Code applies to these important uses. The draft Land Development Code would conflict with the Comprehensive Plan if it fails to promote land uses that focus on outdoor recreational experiences and education for youth and the public. The current process presents an opportunity to amend the draft Development Code to better promote these outdoor values.

The Draft Land Use Development Code Should Be Clarified to Protect Outdoor Camps and Educational Facilities

The proposed Development Code does not include provisions that are tailored to this important purpose of getting youth into the outdoors for education in the natural environment. Instead, this type of use is covered only as part of other uses.

It appears that outdoor camps and recreational facilities for education and training of youth would fit into three potential uses listed in the draft Land Development Code.

First, this type of camp may be considered a “Guest / Dude Ranch” use which is a use that is allowed in the Foothills zoning district, subject to the limits of 10.7.2, which are:

A ranch that provides multi-night accommodations for guests, provides a recreational/agricultural activity or immediate access to recreational/agricultural activities, has dining facilities on-site, barns, associated buildings, corrals, pastures, and livestock related to a working ranch, working farm and/or the recreational activity available to guests. The guest/dude ranch does not include a commercial restaurant, café, or bar that caters to the general public, nor does it actively solicit nightly accommodations. A guest/dude ranch may have limited availability for special activities such as a wedding or social gathering.

Development Code § 10.7.2. While this definition of a “Guest / Dude Ranch” use would allow the Outdoor Learning Center, it should be expanded to clarify that a “Guest / Dude Ranch” may also provide outdoor educational experiences, as well as recreational activities. The proposed Land Development Code should be revised to the following:

A ranch that provides multi-night accommodations for guests, provides a recreational/agricultural/educational activity or immediate access to recreational/agricultural/educational activities, has dining facilities on-site, barns, associated buildings, corrals, pastures, and livestock related to a working ranch, working farm and/or the recreational or educational activity available to guests. The guest/dude ranch does not include a commercial restaurant, café, or bar that caters to the general public, nor does it actively solicit nightly accommodations. A guest/dude ranch may have limited availability for special activities such as a wedding or social gathering.

This change is consistent with the Comprehensive Plan, by including outdoor education experiences, as well as outdoor recreational and outdoor agricultural experiences in the “Guest/Dude Ranch” category.

Second, this type of camp may be considered an “Outdoor Recreation” use, which is

A commercial facility, varying in size, providing daily or regularly scheduled recreation-oriented activities. Activities take place predominately outdoors or within outdoor structures. Outdoor recreation includes the following.

1. Drive-in theater.
2. Campground, travel trailer park, RV park.
3. Extreme sports facility such as BMX, skateboarding, or roller blading.
4. Horse stable, riding academy, equestrian center.
5. Outdoor amusements such as batting cage, golf driving range, amusement park, miniature golf facility, or water park.
6. Outdoor theater.
7. Shooting range.
8. Racetrack.

Development Code § 10.7.3. These enumerated items are only examples of “Outdoor Recreation” uses, and the draft Code does not limit “Outdoor Recreation” to these enumerated uses. However, the Use Table provided in Section 10 of the draft Code does not make it clear whether non-enumerated uses would be allowed as conditional uses, limited uses, or allowed uses. That should be clarified in the draft Code, so that an outdoor camp for recreation experiences for youth, utilizing the natural resources of the area, could be classified as an allowed use under the draft Code.

Third, this type of camp may be considered a “Retreat Center” use, which is a use that is allowed in the Foothills zoning district, subject to the limits of section 10.7.4, which are:

A facility used by small groups of people to congregate temporarily for such purposes as education, meditation, spiritual renewal, meetings, conferences, social gatherings, seminars, or weddings and which may provide meals, services, and recreation for participants during the period of the retreat or program only. Such centers may not be utilized by the general public for meal or overnight accommodations

Draft Code § 10.7.4. This definition of “Retreat Center” in the proposed Development Code was revised from the definition of “Retreat Center” found in the current Zoning Regulations. The current version of this definition in the proposed Development Code has the following additions and deletions:

A facility used by small groups of people to congregate temporarily for such purposes as education, meditation, spiritual renewal, meetings, conferences, ~~or social gatherings, seminars, or~~

~~weddings and which may provide meals, housingservices, and recreation for participants during the period of the retreat or program only. Such centers may not be utilized by the general public for meal or overnight accommodations. Housing for particiapants may be in lodges, dormitories, sleeping cabins (with or without baths), or in such other temporary quarters as may be approved, but kitchen and dining facilities shall be located in a single centrally located building or buildings.~~

The definition of "Retreat Center" in the draft Code eliminated the last sentence, which makes it clear that housing in sleeping cabins is allowed, with dining facilities at a centrally located building. The definition should not be changed from the current Zoning Regulations in this way. Instead, the definition of "Retreat Center" in the proposed Development Code should be revised to the following:

A facility used by small groups of people to congregate temporarily for such purposes as education, meditation, spiritual renewal, meetings, conferences, social gatherings, seminars, or weddings and which may provide meals, services, and recreation for participants during the period of the retreat or program only. Such centers may not be utilized by the general public for meal or overnight accommodations. Housing for participants may be in lodges, dormitories, sleeping cabins (with or without baths), or in such other temporary quarters as may be approved, but kitchen and dining facilities shall be located in a single centrally located building or buildings.

With this change, the "Retreat Center" use could be used by the Outdoor Learning Center to encourage its valuable educational purposes.

To be most consistent with the Comprehensive Plan, the proposed Development Code should include a specific provision allowing uses that encourage educational experiences for youth in the outdoor environment conducted by non-profit organizations. For that reason, the Development Code should include a category of "Outdoor Education Center" as an allowed Recreational Use in the Land Use Table found in Section 10.2. This use should be defined in Section 10.7 as follows:

Outdoor Education Center.

A facility used by a non-profit association or education enterprise to provide educational or recreational opportunities in a natural outdoor environment. Housing for participants may be in lodges, dormitories, sleeping cabins (with or without baths), or in such other temporary quarters. The Outdoor Education Center does

not include a commercial restaurant, café, or bar that caters to the general public. An Outdoor Education Center may have limited availability for special activities such as a wedding or family or social gathering.

There may be other ways that the proposed Development Code could be improved to encourage and promote the types of outdoor recreational uses that the Comprehensive Plan seeks to encourage. BYU-Idaho encourages Teton County to consider further changes to the Development Code that would encourage the types of uses covered in the Comprehensive Plan.

Attempts by BYU-Idaho to Resolve Impacts Expressed by Neighbors

Of course, the significant need for outdoor public locations for education does not mean that neighboring residential uses should be adversely impacted. Some of the neighbors of the Outdoor Learning Center have expressed their concerns that the exuberance of those using the Outdoor Learning Center can be distracting. While BYU-Idaho tries to introduce students and others to the beauty and learning available in the natural world, it does not want to cause any harm to other neighboring landowners.

In the past, BYU-Idaho has tried to be responsive to those concerns, and has taken a number of operational steps to mitigate any impacts of its property use on neighbors. BYU-Idaho is also currently taking additional steps to address these concerns, and will continue to address these issues if they arise in the future. These steps are explained further in a letter of today's date submitted to the Teton County Planning Administrator in response to her letter dated September 7. BYU-Idaho refers to that letter for details regarding its responses to the neighbors' concerns.

Conclusion

It is important that uses like the Outdoor Learning Center be permitted within Teton County. The Outdoor Learning Center introduces youth to the outdoors, and provides them experiences that are not available in a classroom setting. The Teton County Comprehensive Plan seeks to promote and market this type of facility that offers these types of experiences. The draft Land Development Code should be consistent with the Comprehensive Plan, by making it more clear that this type of outdoor facility and use should be both allowed and promoted.

Sincerely,



Lee Radford

KLR/car

P&Z Land-Use Code Draft: Carl Jordan comments, 10-05-2016

I. General. Code Studios departed from conventional code composition in ways that I find unfamiliar, confusing, awkward, annoying, and unwarranted—as if they were being paid simply to be different beyond the production of form-based content. My discussion of five such departures follows.

1. **Shall and may.** Legal construction should be consistent and unambiguous. Conventional drafting verbs are: *shall* for mandatory, prescriptive and absolute; and *may* for permissive, discretionary. That keeps it simple, simple **may** also include bear-traps.

The verb *may* is commonly understood in context. But *shall* is one of our most-litigated words in the legal lexicon and has therefore been all but purged from Federal rules—although it remains ubiquitous in contracts, statutes, ordinances, rules and regulations, and even the U.S. Constitution. That is because *shall* can be ambiguous, does not always mean *must*, and therefore has often been replaced by *must*, *will*, *is*, *may*, or the phrase *is entitled to*.

(The Fifth Amendment is such an example: *No person shall be ... deprived of life, liberty, or property, without due process of law.* See http://www.abajournal.com/magazine/article/shall_we_abandon_shall/)

So, Code Studios got that part right, and their draft of the Lighting Ordinance substituted *must* for *shall*—but not consistently. Besides retaining *shall* serendipitously, their draft used *cannot*, *do not*, *may not*, or *will not* for *shall not*; and used *may* arbitrarily where discretion was both intended and not intended. Code Studios' intent was undoubtedly a recognition of the legal ambiguity of *shall*—but out of litigation avoidance, not user friendliness as suggested by staff. But their execution was slipshod.

Code writers in other jurisdictions also get it, so are sure to **include definitions of *shall* and *may***. For example, the Athens, Georgia Code Part III Code of Ordinances does it twice. §1-1-2 General provisions, Rules of Construction states: *The word "shall" is mandatory; the word "may" is permissive.* And more expansive is the §7-4-3 sign definition: *The word "shall" is mandatory, not discretionary. The word "may" is permissive.*

Retention of the operative verbs *shall* and *may* **remains my preference**. But I have no objection to the replacement of *shall* with *must*; but your code has also used *is*, *will*, and *may* as replacements, and it is probably too late to turn back. But that also opens the door to sloppy drafting, as noted in VARD's letter of February 24, 2016, *Comments on the "2-5-16" draft of the Best Practices Manual*, as follows:

Tighter language. Overall, the proposed policy language is very loosely written. For example, the draft often uses "should" "perhaps," and "may" when the proper and less ambiguous term is "shall".
Statutory language and the Attorney General handbooks provide good examples of succinct writing.

Thus, if Teton County is hell-bent to purge the ambiguous *shall*, **please do it very carefully**; be sure that *may* is also used unambiguously and only where intended; and that *will* refers only to the future, not to an obligatory present.

2. **Code "divisions."** Code Studios splits code titles (?) into articles (not chapters) and divisions (not sections)—another departure from conventional composition

Article is ordinarily reserved as the primary heading for foundational documents such as the U.S. or Idaho Constitution, or a Municipal/Corporation Charter.

Division is ordinarily an act or process (verb) of creating a primary entity (noun), an **uncommon use** that is rarely capitalized except in the military and sports. See <<http://www.memidex.com/division>>

Title is typically a first-level heading, followed by *chapter* and *section*; but federal code skips the *chapters*. *Article* is often omitted altogether, as in the Codes of Idaho, Teton County (ID), Tetonia, old Victor, and Jackson (and most other political *subdivisions*). Legal publisher **Municode** does not appear to have a uniform placement for *article*, placing it either before or after chapter. (Athens, GA code places *articles* sometimes before, but usually within *chapters*, apparently as needed.) *Division* is occasionally embedded when needed in lengthy, complex codes. (The Atlanta sequence is *title, chapter, article, division, and section*.)

Victor's older Code sequence is *title, chapter, and section*, whereas its newer Zoning Title has adopted the Code Studios format of *article and division*. The current Driggs Code is divided by *title, chapter, article, and section*.

Unless an objective is simply to introduce the unfamiliar, to be different, I know of no constructive advantage for Driggs to depart from the current, familiar, conventional headings. And common, oral references to sub-chapters and sub-sections (not *subdivisions*) may continue without ambiguity or confusion.

3. **Title-style capitalization.**

Title capitalization is typically referenced by case style, as follows.

- a. **Title Case:** capitalize the first letter of **each major word**, but not words such as *but, for, or, to, as, a*, etc.
- b. **Sentence Case:** just like the capitalization in a sentence—only the **first word** of the title or heading is capitalized, plus any names and proper nouns

Apparently there is no settled convention for news headlines. Title Case is used by the NY Times, Wall St Journal, Time, ABC News, NPR, Forbes, Huffington Post, Planet JH. Whereas Sentence Case is used by the Washington Post, Chicago Tribune, LA Times, USA Today, The Telegraph, Financial Times, AP, UPI, Reuters, BBC, CNN, CBS, Fox, ESPN, Microsoft, JH News & Guide/Daily, Teton Valley News.

Still different is the use of **all-capital** letters for headings/titles, as for current Driggs and Idaho Code. The **Municode** style is similar to Driggs' (all capitals for title, article, and chapter headings), but uses sentence style for section headings.

A safe selection would be the *Municode* style. But I prefer (as in the Driggs Lighting Ordinance) the following: Title Case for the title and first-level headings (*title* and *chapter*), and Sentence Case thereafter; and avoid all-capital letters. That is also preferred by the excellent style guide that I usually rely on:

<http://www.eia.gov/about/eiawritingstyleguide.pdf> (must be pasted into browser)

4. **Format.** I find the “portrait” 2-column format to be cumbersome when working on a “landscape” computer monitor—my eye and mind want to go only in **one direction**, not up and down, back and forth. In most instances it is also wasteful of space. I suggest that you return to a single column that conforms to the **Municode** standard that you should be embracing, and eventually subscribe to.

5. **Definitions.** Definitions unique to a single section should be imbedded in that section. That clearly applies to the lighting definitions. Also the seminal definition applicable to riparian buffers, *Ordinary High-Water Mark*, surely belongs in Article 13; also definitions relating to flood control.

II. **Outdoor Lighting Standards.**

I very much appreciate your partial retention of the current Driggs ordinance (adopted September 2012). It has worked well, without controversy, and with recognition that wider compliance and enforcement should evolve. I regret, however, that the foundationally important statement of purpose was deleted—should be included, as should the numerous definitions which are specialized and only relevant to lighting. Also, several seemingly small changes have rendered large portions of the County draft irrelevant or incoherent, and the remainder unlikely to have much impact in the near future.

Time and space do not allow for a more detailed discussion here. But as I continue to work with Driggs to assimilate its lighting ordinance into its new code, I ask that you consider coordinated discussions to achieve a common, effective text. Lighting issues relating to public safety, resource protection, dark-sky enhancement, and property trespass are critical components of the Land-use objectives, so require appropriate care.

III. **Signs.**

Certain signs are allowed a public R/W encroachment up to 2 feet of a curb or street, but without any public-benefit offset. R/W is valuable public property, the public should get something in return, and private use should not impose undue risks (public liability) upon pedestrians due to obstacles or falling elements (winter ice). At least the encroachment should be with respect to the **distance of encroachment** (as incorporated in the Driggs code), NOT as the residual distance to the curb. Alternatively the public interest may be served if sign size were an inverse function of projection distance. For example, sign size could be reduced by 15% for each foot of R/W encroachment.

IV. Protection of environmentally sensitive areas, Article 13.

This section has some good components, particularly stressing buffer quality, but it needs more work. For example, the role of buffers as critical wildlife habit is not referenced, delineation is loose, distinctions between riparian areas and wetlands are confused, and enforcement unimaginable.

CRITICAL DEFINITIONS: The definition of riparian is schizophrenic, needing both focus and correction, and buffer reference to “*Ordinary High-Water Mark*” needs far more than a definition located elsewhere. All should be imbedded in context, in Article 13.

“ORDINARY HIGH WATER MARK. The line on the shore established by the fluctuations of water indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.”

Indeed, all of those criteria are relevant and may apply, but HOW? Subjectivity is inevitable. But what are those “other appropriate means?” How may this correspond to FEMA maps of 2, 5, 10 etc.-year occurrence events? Evaluation is complex depending if streams are ephemeral, intermittent, or perennial, needing objective measures. Accordingly, an objective protocol should be considered, as used by many other jurisdictions.

Alternatively, a mapped buffer would be even better, and not require specialized regulatory training. That and other ideas are appended below.

WETLANDS are a different ecology, so require a separate section. **Riparian areas** are associated with rivers, streams, and bodies of water that **may** involve related wetlands. Whereas wetlands are defined to include marsh, swamp, bog and fen (bogs and fens being types of mires), regardless of stream context, although needing buffers similar to streams.

Wetland identification is technical, and NOT identical to stream-channel identification. Wetlands are listed in USFWS National Wetlands Inventory, but are not definitive. Criteria are far more demanding for Jurisdictional Wetlands delineated by USACE pursuant to CWA §404, and therefore suggest imposing a buffer wider than for NWI entities, not a smaller one.

Section 13.3.1.c.5 *Waterbodies that appear on maps are not subject to these buffer requirements when an on-site determination reveals the absence on the ground of a corresponding waterbody.*

This provision defeats the entire protective purpose, denies the character of wetlands and ephemeral streams, and deregulates numerous vernal locations. Indeed, NWI mapping is always an approximation, needing specific confirmation or delineation. But the **immediate presence or absence of water or a waterbody is NEVER necessary or sufficient for wetland determination**. And that also applies to **stream determination** for buffer applications. Furthermore, such determination requires geomorphic or hydrology skills ordinarily not “on staff.”

V. Alternative code concepts or text relating to water protection.

1. Buffer intrusion allowed.

Construction of one single-family dwelling on an existing lot of record may violate a protected buffer provided the intrusion meets the following criteria:

- a. the dwelling is located within a buildable area;
- b. the total area of development disturbance does not exceed 3,000 SF;
- c. the maximum extent of the buffer intrusion does not exceed 20% of the buffer width, and
- d. the area of buffer intrusion is to the minimum-practical extent.

2. Minimum buildable area required.

All lots modified by lot line adjustments or new lots created from existing lots which contain floodplains, wetlands, or riparian buffer areas must contain a buildable area of a sufficient size to accommodate the uses permitted in the underlying zone, unless the action is for open space or conservation purposes. This requirement shall apply even if the effect is to prohibit further division of lots that are larger than the minimum size permitted in the zoning ordinance.

3. Protection of environmentally sensitive areas.

All waters shall be protected by buffers whose distances are measured along slope, consistent with Idaho protocol.

Riparian buffers defined.

1. Streams included on current Flood Insurance Rate Maps (FIRM) published by the Federal Emergency Management Agency (FEMA): the buffers of such streams shall be undisturbed and coincide with the furthest extent of the 100-year flood event whose boundary is indicated on said maps, including areas designated as Special Flood Hazard Areas (SFHA), but that buffer distance shall extend no less than 100 feet from the floodplain's bank-full origin.
2. Streams not included on current FIRM/FEMA maps shall be protected by a 100-foot undisturbed buffer measured from the stream's Ordinary High Water Mark (OHWM) as delineated according to criteria established by the U.S. Army Corps of Engineers (USACE) for perennial streams (Relatively Permanent Waters (RPWs)) and intermittent streams (Non-Relatively Permanent Waters (non-RPWs)).

Other waters shall be protected by a native-vegetated buffer measured from the Ordinary High Water Mark (OHWM) in accordance with USACE criteria as follows.

Ephemeral streams and irrigation canals: 30 feet.

Irrigation and drainage ditches: 10 feet.

Lakes and ponds: 75 feet.

Wetland buffers defined. Wetlands shall be protected by a 75-foot undisturbed buffer. Their delineation shall be determined by the presence of at least two of the three indicators of jurisdictional wetlands established by the USACE—namely hydric soils, determinant hydrophytic vegetation, and supportive wetland hydrology.

REFERENCES.

OHWN assessment for intermittent streams:

http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg_supp/west_mt_finalsupp_aug2014.pdf

OHWM regulatory guidance:

<http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-05.pdf>

OHWM and Bank-full field identification:

<http://www.swg.usace.army.mil/Portals/26/docs/regulatory/Streams/BFvOHWM.pdf>

CWA field guide for JD identification and determination:

http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/ewa_guide/jd_guidebook_051207final.pdf

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