

TETON COUNTY
PLANNING & ZONING
SEP 22 2011
RECEIVED



CONDITIONAL USE PERMIT APPLICATION

Teton County, Idaho

The planning staff is available to discuss this application and answer questions. Once a complete application is received, it will be reviewed by the planning administrator or his designee and then scheduled for a public hearing with the Planning and Zoning Commission, who will make a recommendation to the Board of County Commissioners. A second public hearing will be scheduled with the Board of County Commissioners who will make the final decision. It is recommended that the applicant review Title 8 of the Teton County Code and 67-6512 of the Idaho Code. Application materials may be viewed on the Teton County Idaho website at www.tetoncountyidaho.gov.

To expedite the review of your application, please be sure to address each of the following items.

SECTION I: PERSONAL AND PROPERTY RELATED DATA

Owner: Blackfoot Farms LLC

Applicant: same E-mail: tom_muir@huntsman.com

Phone: (801) 584-5700 Mailing Address: 500 Huntsman Way

City: Salt Lake City State: UT Zip Code: 84108

Engineering Firm: A-W Engineering Contact Person: Sharon W Phone: (208) 781-2952

Address: 255 South Main St. E-mail: aweng@ida.net
Victor, ID 83455

Location and Zoning District:

Address: Hwy # 31 and 7000 South Parcel Number: RPO4N45E354801

Section: 35 Township: 4N Range: 45E Total Acreage: 5.51

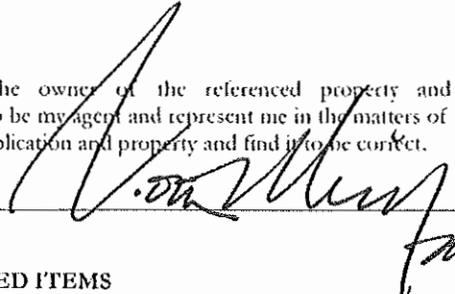
Zoning District: ARR-2.5 Requested Land Use: church building

I, the undersigned, have reviewed the attached information and found it to be correct. I also understand that the items listed below are required for my application to be considered complete and for it to be scheduled on the agenda for the Board of County Commissioners public hearing.

• Applicant Signature: [Signature] Date: 09/15/11

Fees are non-refundable.

I, the undersigned, am the owner of the referenced property and do hereby give my permission to A-W Engineering to be my agent and represent me in the matters of this application. I have read the attached information regarding the application and property and find it to be correct.

• Owner Signature:  Date: 09/15/11

SECTION I: REQUIRED ITEMS

1. Latest Recorded Deed to the Property
2. Affidavit of Legal Interest
3. Application fee paid in full in accordance with current fee schedule
4. Twelve (12) copies of information and data (pictures, diagrams, etc.) necessary to assure the fullest presentation of the facts for evaluation of the request.
5. Twelve (12) copies of a site plan drawn to scale.
6. Narrative explaining the following:
 - Location is compatible to other uses in the general neighborhood.
 - Use will not place undue burden on existing public services and facilities in the vicinity.
 - Site is large enough to accommodate that proposed use and other features of this ordinance.
 - Proposed use is in compliance with and supports the goals, policies, and objectives of the Comprehensive Plan

SECTION III: CRITERIA FOR RECOMMENDATIONS AND DECISIONS

1. Upon the granting of a conditional use permit, conditions may be attached to a conditional use permit including, but not limited to, those:
 - Minimizing adverse impact on other development;
 - Controlling the sequence and timing of development;
 - Controlling the duration of development;
 - Assuring that development is maintained properly;
 - Designating the exact location and nature of development;
 - Requiring the provision for on-site or off-site public facilities or services;
 - Requiring more restrictive standards than those generally required in this Title;
 - Designating the number of non-family employees in the home occupation and home business based on the type of business and the location;
 - Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.
2. Prior to granting a conditional use permit, studies may be required of the social, economic, fiscal, and environmental effects of the proposed conditional use. A conditional use permit shall not be considered as establishing a binding precedent to grant other conditional use permits. A conditional use permit is not transferable from one (1) parcel of land to another.
3. Commercial Development Agreement for all land uses in the C-1, C-2, C-3, and M zoning designations are required to include the following, as applicable:
 - A site plan and/or survey prepared by a professional surveyor to include current and proposed plan;
 - A professionally prepared landscaping plan;
 - Financial guarantee for public improvements which may include but not be limited to: roads, phone, electric, water, sewer, fire protection, and lighting;
 - Professionally prepared final construction drawings.



ONE TIME ONLY LAND SPLIT APPLICATION

The planning staff is available to discuss this application and answer questions. The Planning Administrator shall review the completed application and may approve or disapprove it.

To expedite the review of your application, please be sure to address each of the following items.

SECTION I: PERSONAL AND PROPERTY RELATED DATA

Owner: Blackfoot Farms LLC
Applicant: same E-mail: tom_muir@huntzman.com
Phone: (801) 584-5700 Mailing Address: 500 Huntsman Way
City: Salt Lake City State: UT Zip Code: 84108

Location and Zoning District:
Address: Hwy # 31 and 7000 South Parcel Number: RPOA-N45E35480
Section: 35 Township: A-N Range: 45E Total Acreage: 80.92
Zoning District: ARR-2.5 Proposed Lot Sizes: Parcel one 75.41 Parcel two 5.51

I, the undersigned, understand that the items listed below are required for my application to be considered complete.

• Applicant Signature: [Signature] Date: 02/15/11

I, the undersigned, am the owner of the referenced property and do hereby give my permission to A-W Engineering to be my agent and represent me in the matters of this application. I have read the attached information regarding the application and property and find it to be correct.

• Owner Signature: [Signature] Date: 02/15/11

Fees are non-refundable.

SECTION II: ITEMS REQUIRED

Affidavit of Legal Interest

State of Idaho)
)
County of _____)

I, Tom Muir, Blackfoot Farms L.C., a Utah Limited Liability Company whose address is 500 Huntsman Way, Salt Lake City Utah 84108

Being first duly sworn upon oath, depose and say:

That I am the record owner of the property described on the attached, and I grant my permission to:

Todd Woolstenhulme as Owner's Representative whose address is 501 Huntsman Springs Drive, Driggs Idaho 83422

AW Engineering whose address is Box 139, Victor Idaho and

NBW Architects whose address is 990 John Adams Parkway, Idaho Falls Idaho 83403

to submit the accompanying applications for a lot split and subsequent conditional use permit and/or other entitlements necessary to partition approximately 5.51 acres for the use as an LDS Church meetinghouse site.

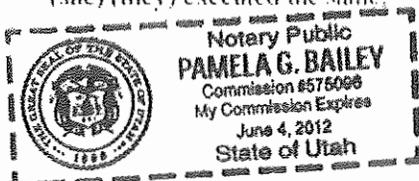
I agree to indemnify and hold the County harmless from any claim or liability resulting from any dispute as to the statements contained herein or as to the ownership of the property which is the subject of the application.

Dated this 16 day of September, 2011

Tom Muir / Mgr.
Signature

Utah
STATE OF ~~IDAHO~~
COUNTY OF *Salt Lake*

On this 16th day of September, 2011, personally appeared before me Tom Muir, known to me to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she) (they) executed the same.



Pamela G. Bailey
Notary Public for ~~Idaho~~ *Utah*
My commission expires on June 4, 2012

Section 1 Item 6 Narrative
September 22, 2011

1. Compatibility with other uses: Currently the only use for land surrounding the proposed church property is agricultural. The site is a distance from the City of Victor and there are no established residences or commercial properties in the immediate area. It is anticipated that as this area develops that the commercial growth will happen along the state highway and that residential uses will fill in the area immediately around the church. There are no apparent conflicts of use that would preclude the church from functioning for its intended purpose at this location, nor does it appear to become a detrimental factor in considering current or proposed surrounding land uses.
2. The church has obtained a Memorandum of Understanding or "Will Serve" letter from the City of Victor stating that their services will be made available to this site and will be adequate based on projected demands that have been provided to the city by the church. In turn the church will assume financial responsibility for extending these services to the site in cooperation with the City of Victor.
3. The site is large enough to accommodate the proposed building, parking facilities, ample landscape, storm water retention and ingress/egress facilities. This site size is typical for these functions based on previous planning and construction of other similar facilities by the church.
4. We believe that the proposed use is in compliance with and supports the goals, policies and objectives of the Comprehensive Plan. We anticipate that county staff will provide input regarding any items of interest in relation to compliance with these aforementioned requirements and the church will be prepared to address and resolve any concerns that arise. The LDS church is commonly known throughout the country and even the world for providing attractive, quality, well thought out facilities and grounds, for being a conscientious neighbor and for enhancing the areas in which their buildings reside. We will stand ready to work with the county to meet requirements as needed.



Teton County Engineer

October 17, 2011

Tom Muir
Blackfoot Farms, LLC
500 Huntsman Way
Salt Lake City, UT 84108

RE: for Blackfoot Farms (Driggs Stake)-Conditional Use Permit/Work within County Right of Way Permit

Dear Mr. Muir,

The following comments pertain to the permits submitted for the project referenced above. I have combined my preliminary review comments for both permits in this letter in an effort to streamline the review process. Additionally, I have sent copies of this letter to the Teton County Planning Department, City of Victor, your engineer (AW Engineering) and your architect (NBW Architects). These comments should be automatically carried over for the final review.

Permit to Work within the County Right of Way:

Please address the following comments:

1. The approach type is marked incorrectly as Agriculture.
2. A culvert will be required for the access; it is the applicant's responsibility to size the culvert.
3. Is a mailbox going to be installed as part of this permit? Please mark the appropriate box on the permit.
4. Approaches should be spaced at a minimum of 330 feet from center to center of approach. Currently the approaches are spaced at 250 feet.
5. The project appears to generate over 100 vehicle trips per hour during the peak hour, therefore a traffic study is required for this project. The traffic study should address at a minimum the items outlined in Section III-E of the *LTHAC Manual for Use of Public Right of Way Standard Approach Policy*. Additionally, this study should include input from the Idaho Department of Transportation regarding the effect of the project upon State Highway 33.

Conditional Use Permit:

Please address the following comments:

General

1. A full set of stamped construction plans, including site, layout, grading, and utility plans must be included with the building permit submission for review.
2. Please provide a schematic layout of the proposed water and sewer mains servicing the site. A permit to work within the county right of way will be required prior to construction of these mains within the right of way.
3. Please provide the parking space calculations for the building, including the future addition.



Teton County Engineer

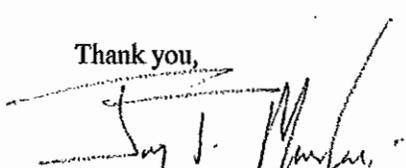
4. Please investigate the construction of a pathway connecting the project to the Rails to Trails bike path adjacent to State Highway 33.
5. Please provide a preliminary storm water management plan and report. The report should include at a minimum;
 - a) Written narrative discussing the existing and proposed site, runoff calculation methodologies used, stormwater quality measures proposed, summary, and a post construction operation and maintenance plan.
 - b) Existing and proposed drainage plans for the proposed site drawn to a scale not less than 1"=100' showing water flow directions and 1' contour intervals;
 - c) Existing and proposed stormwater runoff calculations for the 2-year and 100-yr 24hr design storm. Post development rates of runoff may not exceed pre-development rates of runoff.
 - d) Proposed stormwater quality measures.
 - e) Soil tests verifying percolation rates (if used).

Site Plan

1. Please provide a legend.
2. Please identify snow storage locations.
3. Please identify curb locations and types.
4. Please identify the surface types (concrete, asphalt, etc)
5. Please show proposed utilities, including connections to the City of Victor systems.
6. Is any signage proposed; if so please show on the site plan and landscaping plan.

If you have any questions or comments, please call.

Thank you,


Jay T. Mazalewski, PE
Teton County Engineer

Cc:
Teton County Planning Department
City of Victor
NBW Architects
AW Engineering



WK: 208-354-0245

**Teton County Engineer
MEMO**

150 Courthouse Drive
Driggs, ID 83422

October 18, 2011

TO: Teton County Planning Department
FROM: Teton County Engineer - Jay T. Mazalewski, PE
SUBJECT: Blackfoot Farms Lot Split

I have reviewed the Blackfoot Farms One Time Only Lots Split with regards to legal access to each parcel. Each parcel can have a legal access to from a County Road.

Parcel 2 has adequate frontage and intersection spacing along County Road W7000S for an access.

Parcel 1 has adequate frontage and intersection spacing along County S500W for an access.

Parcel 1 may have adequate frontage and intersection spacing along County Road W7000S for an access, depending on the location of the Parcel 2 access. Please note that 330 feet spacing between accesses is required.

The applicant submitted a Permit to Work within the County Right-of-Way (access permit) for Parcel 2. I have requested additional information from the applicant before I will approve the permit. The lack of an approved permit should not prevent the approval of the lot split, as I believe each parcel has a legal access option to a county road.

If you have any questions, please call.

Thank You,

A handwritten signature in black ink, appearing to read "Jay T. Mazalewski".

Jay T. Mazalewski, PE

Wendy Danielson

From: Jay Mazalewski
Sent: Tuesday, October 18, 2011 9:19 AM
To: Wendy Danielson; Curt Moore
Subject: FW: [LIKELY_SPAM]Re: Blackfoot Farms CUP/Access Permit-Engineer Comments

Jay T. Mazalewski, PE
County Engineer/Public Works Director
150 Courthouse Way
Driggs, ID 83422
208-354-0245

-----Original Message-----

From: AW Engineering [<mailto:aweng@ida.net>]
Sent: Monday, October 17, 2011 7:33 PM
To: Jay Mazalewski
Subject: [LIKELY_SPAM]Re: Blackfoot Farms CUP/Access Permit-Engineer Comments

Thankyou, Jay for your comments. Please note that the county land split application requires an access permit application. This was not done for the conditional use permit at this point in time, but for the land split.

The items you're requiring will be furnished as part of the conditional use permit. None of that is part of the land split application, which is the reason for the access permit application.

I have felt that is part of the challenge of requiring it for a land split; often (although not in this particular case) a land split application is applied for with no intention of any type of development in the foreseeable future. Access to each newly created parcel in the land split application has always been a requirement without the access permit application.

If the application was marked Agriculture, that was not the intent. I thought it had been marked for a church, which I think falls in the commercial category for an access permit. I'll check in the morning.

Best,

Sharon W
A-W Engineering
> Tom,
>
> Please find the attached .pdf with my comments regarding the
> Conditional Use Permit and the Work within the County Right of Way
> Permit. If you have any questions or comments, please call.
>
> Thank you,
> Jay
>
> Jay T. Mazalewski, PE
> County Engineer/Public Works Director
> 150 Courthouse Way
> Driggs, ID 83422

> 208-354-0245

>

>

AW Engineering

aweng@ida.net

PO Box 139

255 South Main Street

Victor, ID 83455

(208) 787-2952: phone

(208) 787-2957: fax

Curt Moore

From: Cory Roberts [cjr@nbwarchitects.com]
Sent: Wednesday, January 25, 2012 10:15 AM
To: Curt Moore
Cc: Scott Nielson
Subject: Driggs Idaho Stake Heritage - LDS Church
Attachments: Teton Cty ID steeple variance RLUIPA.pdf

Curt,

Attached is a copy of a supplement letter from the Church of Jesus Christ of Latter-Day Saints concerning the steeple variance that we will be applying for this week. Scott mentioned you wanted to have time to review it prior to our turning the application.

Cory Roberts
NBW Architects

**CORPORATION OF THE PRESIDING BISHOP OF
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS**

Supplement to Land Use Application

January 25, 2012

These explanatory materials supplement the Applicant's other submissions and aim to (1) outline the religious significance of the steeple's design, and (2) summarize the substantial religious burden a denial of the application would impose on members of The Church of Jesus Christ of Latter-day Saints (herein, the "Church" or the "LDS Church").

Introduction

As detailed below and in the other submissions, the proposed steeple has no other functional purpose but to convey a religious message. It expresses symbolically core doctrinal teachings of the LDS Church and identifies the building as a house of worship. Like the church itself, the steeple is understated in design and in keeping with the beauty of the surrounding area. It is the smallest possible design that will accommodate worship needs. There are no lights or bells in the steeple. The church is located outside the nearby Scenic Corridor and the steeple's impact on the area is minimal. Nonetheless, some opposition to the steeple appears to have surfaced. However, we respectfully submit that a denial would violate the state and federally protected right of churches to construct houses of worship consistent with their religious needs. The Idaho Free Exercise of Religion Protected Act ("FERPA"), the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), and other statutory and constitutional provisions preclude any denial — even a denial resulting from a neutral or generally applicable regulation — if the impact of the denial constitutes a "substantial burden" on religious exercise. Here, a denial would significantly impair the ability of the LDS Church and its members to worship according to their faith, constituting a substantial burden and an "undue hardship" under section 8-8-1 of the Teton County Zoning Ordinance. Accordingly, for these reasons, as well as for the reasons stated in the accompanying submissions, we urge the approval of the LDS Church's application.

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History of Application

The LDS Church critically needs the proposed building for two local congregations whose members reside in the vicinity of the site. Those congregations currently travel to other churches that are overcrowded with congregations of their own and can no longer accommodate the visiting congregations. The LDS Church identified this site for the proposed church after an extended search, considering many other locations. The LDS Church was sensitive of potential environmental concerns and only considered sites outside of the nearby Scenic Corridor. Local Church leaders authorities sought, and then received, divine confirmation that the chosen site fulfilled the LDS Church's temporal and spiritual criteria, or, in other words, that the site was acceptable to God.

Accordingly, the LDS Church entered into a contract to purchase the site, contingent on receiving the necessary permits. Initial discussions with planning staff were positive. The Church complied with staff requests and all requirements of the Teton County Zoning Ordinance and received approval for single-lot plat adjustment for the 5.5 acre parcel. Subsequently, concern was raised over the proposed roof ridgeline of the building, which exceeded the Zoning Ordinance height limitation by nine inches. Accordingly, the LDS Church has agreed to reconfigure building plans and lower the vaulted roofline to bring it into compliance with the County's Zoning Ordinance.

Staff also notified the LDS Church that the proposed steeple exceeded the County's height limitation. Unlike many jurisdictions, and despite the rigorous protections afforded by Idaho's religious freedom statute, Teton County's Zoning Ordinance affords no exception to the height limitation to accommodate religious use from steeples or cupolas. As the LDS Church has demonstrated, it has been and remains willing to compromise by altering building plans to reflect changes that do not substantially burden religious exercise. However, as explained below, any alteration to the proposed steeple would severely hamper the Church's and its members' ability to worship according to the dictates of the LDS faith. The LDS Church therefore requests a variance to allow it to construct a steeple that adequately reflects its religious beliefs.

Critical Religious Need for the Proposed Steeple

The proposed steeple is imbued with religious meaning. It is the building's most distinctive architectural feature, an age-old symbol of Christianity that readily identifies to all that the church is a place of worship. The steeple also expresses symbolically core doctrinal teachings of the LDS Church, including faith and devotion to God. By literally lifting the adherent's eye heavenward, it conveys the belief in ascension to God. It has no other function but to convey these religious messages. Indeed, courts have recognized the importance of steeples in LDS Church beliefs. *See Martin v. Corp. of Presiding Bishop of The Church of Jesus Christ of Latter-day Saints*, 747 N.E.2d 131, 137 (Mass. 2001) ("It is clearly part of Mormon theology to reflect, in their buildings, the belief of an ascension towards heaven" and "that steeples, by pointing towards heaven, serve the purpose of lifting Mormons' eyes and thoughts towards heaven" (internal quotations omitted)).

As one LDS Church president taught:

Latter-day Saint chapels are more than just houses of worship. The stakes and districts of Zion are symbolic of the holy places spoken of by the Lord where His Saints are to gather in the last days as a refuge from the storm. You and your children will gather here to worship; to do sacred ordinances, to socialize, to learn, to perform in music, dance, drama, athletics, and to generally improve yourselves and one another. It is often thought significant that our chapels have on them a steeple, with spires toward the heavens symbolic of how our lives ought to be ever moving upward toward God.

Ezra Taft Benson, *Teachings of Ezra Taft Benson*, p. 151-52. Or as stated long ago by one of the LDS Church's founding leaders: "[An] elevated steeple point[s] to heaven, as much as to say, 'I stand here in honor of that God who created the heavens and the earth, and who framed the materials of which I am composed.'" (Oliver Cowdery, *Messenger and Advocate* (Feb. 1835), p.75)

Notably, the LDS Church experimented with other types of steeples. However, those steeples did not effectively identify the church as a place of worship or express the LDS Church's intended message of devotion to God. Thus, per ecclesiastical policy, all new churches are constructed with traditional, roof-mounted steeples. In 1997, the LDS Church adopted a program to retrofit older churches and install roof-mounted steeples to better convey the intended message. A traditional steeple that is proportional to the church in height, width and design is an expression of LDS Church beliefs.

Construction of the Steeple is Protected by State and Federal Religious Freedom Statutes.

In addition to any other statutory or constitutional claims the LDS Church may assert, and given the substantial religious burdens a denial of the proposed steeple would have on the Church and its members, any denial of the Church's effort to build the proposed steeple would violate the federal Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") and the Idaho Free Exercise of Religion Protected Act ("FERPA").

RLUIPA and FERPA protect churches from unduly burdensome land use regulations.

Passed unanimously by both Houses of Congress and signed by President Clinton in 2000, RLUIPA erects rigorous protections against land use regulations that burden the free exercise of religion, subjecting them to the most exacting judicial scrutiny. In other words, RLUIPA prohibits any land use regulation that substantially burdens the exercise of religion, except in extraordinary circumstances where the government can demonstrate that the regulation

is “the least restrictive means” of furthering a “compelling” government interest. 42 U.S.C. § 2000cc(a)(1)(B).¹

Idaho’s FERPA was enacted the year after RLUIPA and, as discussed below, is closely patterned after the federal act, *see* Idaho Code § 73-402, although its protections are even broader than RLUIPA’s. *See State v. White*, 2011 WL 6183613, fn. 2 (Id. Ct. App. Dec. 14, 2011). Both statutes create a private right of action for aggrieved churches to challenge ordinances that burden religion in the civil courts. 42 U.S.C. § 2000cc-2(a); Idaho Code § 73-402(4). Moreover, the statutes compel the government to pay the attorneys’ fees of churches that successfully assert religious exercise claims. 42 U.S.C. § 1988(b); Idaho Code § 73-402(4).

Faced with a denial of the proposed steeple, the Church easily could state a prima facie case under RLUIPA and FERPA.

To establish a prima facie case under RLUIPA and FERPA, and thereby invoke the compelling interest test, a religious claimant² must show that their religious exercise has been substantially burdened.³ 42 U.S.C. § 2000cc(a)(1); Idaho Code § 73-402(2). Once a claimant makes a prima facie case under RLUIPA and FERPA, the burden shifts to the government to prove that the challenged regulation is the least restrictive means of furthering a compelling government interest. 42 U.S.C. § 2000cc-2(b); Idaho Code § 73-402(3). (Alternatively, the

¹ RLUIPA also contains an anti-discrimination provision, prohibiting governments from (1) treating religious assemblies on less than “equal terms” with nonreligious assemblies, (2) discriminating on the basis of religion, and (3) imposing land use regulations that exclude or unreasonably limit religious assemblies from a jurisdiction. 42 U.S.C. § 2000cc(b).

² The LDS Church is a “religious claimant” under RLUIPA because it has a property interest in the regulated land in the form of a purchase contract. 42 U.S.C. § 2000cc-5(5).

³ RLUIPA applies to “land use regulation(s)”, 42 U.S.C. § 2000cc(a), while FERPA casts a much wider net: it applies to “all state laws and local ordinances.” Idaho Code § 73-403(1) (emphasis added). For a court to exercise jurisdiction over a RLUIPA claim, the plaintiff must show either: (1) that the challenged decision involves an “individualized assessment[] of the proposed uses for the property involved,” or (2) that the challenged regulation(s) affect interstate or foreign commerce. 42 U.S.C. § 2000cc(a)(2)(A)-(C). In this case, both tests are met. First, the County’s decision to grant or deny the LDS Church’s application clearly involves an individualized assessment. Federal courts have held that “zoning ordinances . . . by their nature impose individual assessment regimes.” *Freedom Bapt. Church of Del. v. Tp. of Middleton*, 204 F. Supp. 2d 857, 868 (E.D. Pa. 2002); *accord, e.g., Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 326 F. Supp. 2d 1140, 1160 n. 10 (E.D. Ca. 2003), *aff’d*, 456 F.3d 978 (9th Cir. 2006). Moreover, the land use regulation(s) at issue impact interstate commerce because construction of the proposed church would employ labor and materials that originate out of state or are transported via interstate carriers, and construction would be financed through tithe moneys donated by Church members from across the United States. *See Cottonwood Christian Center v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203,1221 (C.D. Cal. 2002) (stating that churches “are ‘major participants in interstate markets’” and “construction of [churches] affect commerce”) (citation omitted); *accord, e.g., Rocky Mountain Christian Church v. Board of County Com’rs of Boulder County*, 612 F.Supp.2d 1163, 1173 (D. Colo. March 30, 2009), *aff’d* 613 F.3d 1229 (10th Cir. 2010), *cert. denied*, 131 S. Ct. 978 (2011). Again, FERPA contains no such jurisdictional requirements—it applies to “all state laws and local ordinances and the implementation of those laws and ordinances, whether statutory or otherwise[.]” Idaho Code § 73-403(1).

government may avoid violations of these acts by exempting the religious exercise from the challenged regulation, such as through a variance. *See* 42 U.S.C. § 2000cc-3(e)).

Both RLUIPA and its state counterpart protect a broad range of religious activity. *See* 42 U.S.C. § 2000cc-3(g) (RLUIPA “shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the] Act and the Constitution”). Religious exercise is expansively defined in both statutes. *See* 42 U.S.C. § 2000cc-5(7)(A)-(B) (“religious exercise” “includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief,” including “[t]he use, building, or conversion of real property for the purpose of religious exercise”); Idaho Code § 73-401(2) (“‘Exercise of religion’ means the ability to act or refusal to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.”).

RLUIPA does not define “substantial burden” in the statute itself, but the Ninth Circuit has stated that “[a] substantial burden exists where the governmental authority puts ‘substantial pressure on an adherent to modify his behavior and to violate his beliefs.’” *Int’l Church of the Foursquare Gospel v. City of San Leandro*, 2011 WL 1518980, *7 (9th Cir. April 22, 2011) (citing *Guru Nanak Sikh Soc. v. County of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006) (other citation omitted); *see also Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 899-901 (7th Cir. 2005) (“That the burden would not be insuperable would not make it insubstantial.”). Thus, preventing or making it unreasonably difficult to build a worship site, restricting the size of a congregation, or otherwise limiting religious observance have all been held to be “substantial burdens” under RLUIPA.⁴

FERPA defines “substantial burden” more expansively than courts have interpreted its federal counterpart. A “substantial burden” under FERPA is anything that “inhibit[s] or curtail[s] religiously motivated practices.” Idaho Code § 73-401(5). Importantly, even neutral and generally applicable zoning ordinances can constitute a substantial burden under RLUIPA and FERPA. *See* Idaho Code § 73-402(1)-(2) (“Free exercise of religion is a fundamental right that applies in this state, *even if laws, rules or other government actions are facially neutral*”; [absent a compelling governmental interest] government shall not substantially burden a person’s exercise of religion *even if the burden results from a rule of general applicability*”) (emphasis added); *Church of the Foursquare Gospel*, 2011 WL 1518980 at **6-7 (“We have never held that a zoning regulation cannot impose a substantial burden under RLUIPA simply by the fact that it is a zoning regulation. . . . This conclusion misinterprets our precedent and effectively writes RLUIPA’s substantial burden provision out of RLUIPA.”).

⁴ *See id.*; *see also Fortress Bible Church v. Feiner*, 734 F.Supp.2d 409, 503-04 (S.D.N.Y. 2010); *Westchester Day Sch. v. Mamaroneck*, 504 F.3d 338, 350-53 (2d Cir. 2007); *Rocky Mountain Christian Church v. Board of County Com’rs of Boulder County*, 612 F.Supp.2d 1163, 1172 (D. Colo. March 30, 2009), *aff’d*, 613 F.3d 1229 (10th Cir. 2010), *cert. denied*, 131 S. Ct. 978 (2011); *Grace Church v. City of San Diego*, 555 F.Supp.2d 1126, 1136-37 (S.D. Cal. 2008); *Reaching Hearts Int’l, Inc. v. Prince George’s County*, 584 F. Supp. 2d 766, 784 (D. Md. 2008), *aff’d*, 368 Fed. Appx. 370 (4th Cir. 2010); *Lighthouse Comty. Church of God v. City of Southfield*, 2007 U.S. Dist. LEXIS 28, *24 (E.D. Mich. Jan. 3, 2007); *Mintz v. Roman Catholic Bishop*, 424 F. Supp. 2d 309, 320-21 (D. Mass. 2006); *Cottonwood Christian Center v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1226-27 (C.D. Cal. 2002); *Barr v. City of Sinton*, 295 S.W.3d 287, 302-03 (Tex. 2009).

Therefore, even if Teton County’s height restriction is a neutral and generally applicable zoning ordinance, denial of the requested variance would constitute a substantial burden under both RLUIPA and FERPA because, as detailed above, there is critical religious need for the proposed new steeple. Constructing a steeple that adequately expresses its religious tenets is an integral part of and central to the religious exercise of the LDS Church and its members. It is true that the proposed steeple will not impact the functionality of the existing church as a gathering place for members. However, a separate, equally important purpose of a house of worship is to express, symbolically, the LDS Church’s faith to members and others. “[C]hurches have long built steeples to ‘express elevation toward the infinite, [their] spires soaring into the heavens,’ J. Sallis, *Stone* 63 (Ind. Univ. Press 1994), and a steeple is the precise architectural feature that most often makes the public identify the building as a religious structure.” *Martin*, 747 N.E.2d at 140 (overturning denial of height variance to build steeple on existing CPB temple). To members of The Church of Jesus Christ of Latter-day Saints, an appropriate steeple affirms faith. To those not of the Church, the steeple proclaims faith. It bespeaks a universally recognized message of reverence and ascension to God.

Moreover, it is part of worship for LDS Church members to speak with a united voice to proclaim a religious vision. The LDS Church takes literally the biblical edict to “preach the gospel to every creature,” Mark 16:15, including to “proclaim [the gospel] upon the housetops.” Luke 12:3. Though it speaks symbolically — and through an understated design — the proposed steeple intends to partly fulfill this command on behalf of the congregations who meet in the church. Absent the steeple, the building would not communicate the inspirational message the LDS Church intends to convey or adequately distinguish the church as a place of worship. Detractors may not agree with or understand the LDS Church’s need for a steeple that adequately reflects its religious beliefs, but both RLUIPA and FERPA prohibit any inquiry “into the truth or falsity of stated religious beliefs.” *Church of the Foursquare Gospel*, 2011 WL 1518980 at *9 (citing *United States v. Ballard*, 322 U.S. 78, 86–87 (1944)); *see also* Idaho Code § 73-401(2) (religious exercise protected “whether or not the exercise is compulsory or central to a larger system of religious belief”).

Houses of worship are central to religious exercise because “religious activity derives meaning in large measure from participation in a larger religious community.” *Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring); *see also Church of the Foursquare Gospel*, 2011 WL 1518980 at *10 (“a place of worship ... is at the very core of the free exercise of religion”). And not just any house of worship will do:

Churches and synagogues cannot function without a physical space adequate to their needs and *consistent with their theological requirements*. The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes.

Id. (quoting 146 Cong. Rec. S7774–01, Exhibit 1 (daily ed. July 27, 2000) (joint statement of Senator Hatch and Senator Kennedy on RLUIPA of 2000) (emphasis added)).

For these reasons, a denial of the requested variance would “pressure” the LDS Church and its members “to modify [their] behavior and to violate [their] beliefs”; it would “inhibit or curtail [the LDS Church’s] religious motivated practices” described above. *Church of the Foursquare Gospel*, 2011 WL 1518980 at *7; Idaho Code § 73-401(5). In short, preventing construction of the proposed steeple would substantially burden the Church’s and its members’ religious exercise in violation of RLUIPA and FERPA, which necessarily constitutes an undue hardship under section 8-8-1 of the Teton County Zoning Ordinance.

Denying the proposed steeple would not further a compelling governmental interest through the least restrictive means.

Once a religious claimant shows that a land use decision substantially burdens religion, the burden shifts to the government to prove that the challenged regulation is the least restrictive means of furthering a compelling government interest. 42 U.S.C. § 2000cc-2(b); Idaho Code § 73-402(3). Federal interpretations of the compelling interest test apply with equal force to the compelling interest test of FERPA. *See Hyde v. Fisher*, 203 P.3d 712, 732 (Id. Ct. App. 2009) (compelling interest test of FERPA and RLUIPA “uses identical language” and “there is no indication that the two statutes should be applied differently”).

The compelling interest standard poses a formidable obstacle: “a law restrictive of religious practice must advance interests of the highest order” because “only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.” *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546 (1993); *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972); *accord Sherbert v. Verner*, 374 U.S. 398, 406 (1963). Thus, the “compelling interest standard ... is not ‘water[ed] ... down’ but ‘really means what it says.’” *Lukumi*, 508 U.S. at 546 (quoting *Smith*, 494 U.S. at 888). Therefore, it is well-established that the government’s generalized interest in enforcing its zoning ordinance does not constitute a compelling state interest:

[The position that zoning itself is a compelling state interest . . . has been rejected by this Court and by the [U.S.] Supreme Court. Although the government’s interest in the public welfare in general, and in preserving a common character of land areas and use in particular, is certainly legitimate when properly motivated and appropriately directed, the assertion that zoning ordinances are per se superior to fundamental, constitutional rights, such as the free exercise of religion, must fairly be regarded as indefensible.

Barr v. City of Sinton, 295 S.W.3d 287, 305-06 (Tex. 2009) (citing, e.g., *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981) (internal quotations omitted)); *accord*, e.g., *Rocky Mountain Christian Church v. Board of County Com’rs of Boulder County*, 612 F.Supp.2d 1163, 1175 (D. Colo. 2009) (“lack of harmony with the character of the neighborhood, incompatibility with the surrounding area, [and] incompatibility with the [Town’s] comprehensive plan,” “although legitimate in many senses, do not constitute compelling governmental interests.”), *aff’d*, 613 F.3d 1229 (10th Cir. 2010), *cert. denied*, 131 S. Ct. 978 (2011); *Westchester Day School v. Village of Mamaronek et al.*, 504 F.3d 338, 353 (2d. Cir. 2007) (generalized “interest in enforcing zoning [and] traffic regulations” not compelling).

The LDS Church is aware of no compelling governmental interest that would justify denial of the proposed steeple. The steeple will not materially impact views of the surrounding area. Again, the proposed church is purposefully located outside the Scenic Corridor. Like the building itself, the steeple's design is understated and elegant. There are no lights, bells, or other accoutrements that would detract from the steeple's simplistic beauty and its spiritual significance.

Importantly, however, concerns about the alleged aesthetic impact of the steeple, even if such were established, do not amount to compelling state interests. See *Whitton v. City of Gladstone*, 54 F.3d 1400, 1408 (8th Cir. 1995) (“asserted interests in . . . aesthetics, while significant, have never been held to be compelling”); *Westchester Day School v. Village of Mamaronek et al.*, 417 F. Supp. 2d 477, 554 (S.D.N.Y. 2006) (neighbors’ concern about the “adverse visual impact[]” of renovations/construction of religious school “does not implicate a compelling government interest”), *aff’d*, 504 F.3d 338 (2d. Cir. 2007); *accord Fortress Bible Church v. Feiner*, 734 F.Supp.2d 409, 508 (S.D.N.Y. 2010) and *Munns v. Martin*, 930 P.2d 318, 322 (Wash. 1997). Likewise, preservation goals do not constitute compelling interests. See *Church of the Foursquare Gospel*, 2011 WL 1518980 at *11 (“preservation of industrial lands for industrial uses does not by itself constitute a ‘compelling interest’ for purposes of RLUIPA”) (citation omitted). There has certainly been no asserted health or safety issue that can be linked to construction of the steeple. *Cf. Roles v. Townsend*, 64 P.3d 338, 340 (Id. Ct. App. 2003) (state has compelling health and safety interest in tobacco free policy).

And even assuming a compelling interest were established, outright denial of the LDS Church’s application is not the least restrictive means of achieving that goal where the City can make reasonable conditions of approval. RLUIPA and FERPA require that “no alternative forms of regulation would combat such abuses without infringing First Amendment rights.” *Sherbert*, 374 U.S. at 407; *see also* Idaho Code § 73-402(3); *Church of the Foursquare Gospel*, 2011 WL 1518980 at *12.

Denial of the Steeple Would Violate Federal and State Constitutional Rights.

A denial of the LDS Church’s application would invoke constitutional protections for two reasons. First, because the LDS Church doctrinally requires a steeple of appropriate height, a denial would impermissibly interfere with the LDS Church’s free exercise of religion. U.S. Const. Amend. 1; *Lukumi*, 508 U.S. at 540-47. Second, the steeple expresses an identifiable message; therefore, construction of the steeple is a constitutionally protected form of speech. U.S. Const. Amend. 1. The United States Supreme Court has acknowledged that symbolic speech, including architectural elements, is a constitutionally protected right. See *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 632 (1942) (“Symbolism is a primitive but effective way of communicating ideas. . . . [J]ust as t]he State announces rank, function, and authority through crowns and maces, uniforms and black robes; the church speaks through the Cross, the Crucifix, the altar and shrine, and clerical raiment.”); *see also Widmar v. Vincent*, 454 U.S. 263, 269 & n. 6 (1981) (holding that symbolic speech is no less protected than political or commercial speech); *First Covenant Church v. Seattle*, 840 P.2d 174, 182 (Wash. 1992) (“The relationship between theological doctrine and architectural design is well recognized.”) (citations omitted).

As discussed above, a steeple conveys an unmistakable message of belief in God that is of particular importance to LDS Church members. As no compelling state interest can be advanced to justify impinging on the LDS Church's right to religious expression, *see Lukumi*, 508 U.S. at 546, a denial of the variance would amount to a federal constitutional violation. These rights are independently protected under state law, including FERPA and the Idaho Constitution. *See Idaho Const. art. I, §§ 4, 9.*

Again, however, the statutory and constitutional mandates discussed herein need not come into play. As Congress noted, the best way to "avoid the preemptive force" of RLUIPA (and its state counterpart) is to grant the requested variance and/or construe discretionary land use criteria in favor of the steeple. 42 U.S.C. § 2000cc-3(e). The LDS Church affirms its willingness to accept reasonable conditions of approval, if needed.

Conclusion

For all of the foregoing reasons, we respectfully urge the approval of the LDS Church's application.

AW Engineering

Box 139, Victor, Idaho

208-787-2952 office, 787-2957 fax aweng@ida.net

TETON COUNTY
PLANNING & ZONING

DEC 02 2011

RECEIVED

Att: Teton County Planning and Zoning Department
Kurt Moore, Driggs Idaho

November 29, 2011

Reference LDS Church Building Site
Victor Area, Victor Idaho

The following are responses to your letter to Tom Muir on Oct 17, 2011. They are numbered according to your letter numbers.

A permit to complete work within Teton County right-of-way will be submitted at the time the construction plans are completed. It will be submitted as a package for all the work required for this project. This would include County road work, approaches to parking area, sewer line installation, and new water lines in the county roadway.

GENERAL ITEMS TO ADDRESS

1. Approach type marked incorrectly: This was completed by A-W Engineering, correcting the application at the County P&Z office.
2. Culvert sizing for parking access in County borrow Pit: Culvert to be installed is 18" cmp.
See Report included for Culvert Analysis.
3. Mail box to be installed: Marked as no on the application by A-W Engineering.
4. Approaches should be spaced at 330 feet apart: This was corrected and the plan redrawn by NPW.
See included Site Plan Sheet by NBW Architects
5. Project Traffic Study: See Traffic Study included from A-W Engineering.

CONDITIONAL USE PERMIT

1. Full set of stamped construction drawings: These will be provided after the conditional use permit is completed and the land is purchased by the LDS Church.
2. Schematic layout of sewer and water Lines from City of Victor System: See included Sketch drawing for proposed City Victor lines and connections.
3. Parking Space calculations: This is to be provided by NBW Architects.
The Church building parking spaces are more than twice the requirement of the Teton County Ordinance.
4. Pathway connection to Rails for Trails: See A-W Engineering's statement and investigation for pathway connection to Rails for Trails, which is included.
5. Storm Water Study and report for runoff:
Percolation test hole was dug in November, 2011 by A-W Engineering at the site of the proposed Storm Water Pond at a 3 foot depth that tested at 1" per 3minutes of percolation.
Soils were 2.0 feet of silt loamy gravel topsoil, loamy gravel at + 2 ft.
See A-W Engineering Storm Water Report included in the appendix.

SITE PLAN NOTES

- | | |
|-----------------------------|--------|
| 1. Legend on Site Plan | NBW |
| 2. Snow Storage Location | NBW |
| 3. Identify Curb and Gutter | NBW |
| 4. Show Surface types | NBW |
| 5. Show proposed Utilities | AW Eng |
| 6. Signage proposed. | None |

Arnold Woolstenhulme



AW Engineering
Box 139, Victor, Idaho
208-787-2952 office,

Statement on Pathway

The evaluation of a pathway from the proposed LDS Church to the Rails to Trails pathway does not justify nor sustain a pathway at this time for the following reasons:

- 1- There is only one residence within ½ mile of this pathway system at this time.
- 2- There are no active or proposed subdivisions within 1.5 miles East or South of this path way system.
- 3- Placing a pathway adjacent to the improved county road is dangerous.
- 4- The present proposed land purchase by the LDS Church does not include land on which a pathway could be built across from the North side of the project.
- 5- Because of the nature of LDS Church meetings, which almost always include small children, walking any distance is not an option for most families.
- 6- We live in a non densely populated agricultural community where most LDS members either do not or cannot walk to church meetings.

For the above reasons A-W Engineering does not feel that a pathway would be justified and or sufficiently utilized to support constructing any significant pathway system to the proposed Church site from the Rails to Trails pathway system.

A 5 foot wide widening the roadway improvement along the north side of 7000 South would be a possibility. There are safety issues any time you place a path way along a road way without at least 10 feet of separation.

Arnold Woolstenhulme



LDS Church

7000.50

Scale 1" = 1000'

= 714' this plot



East West Co Rd

Well

WATER

2

976'

2780'

LAKE

SEWER LINE CONST

Sunset Village

KIND

CONST

Bacley Prop

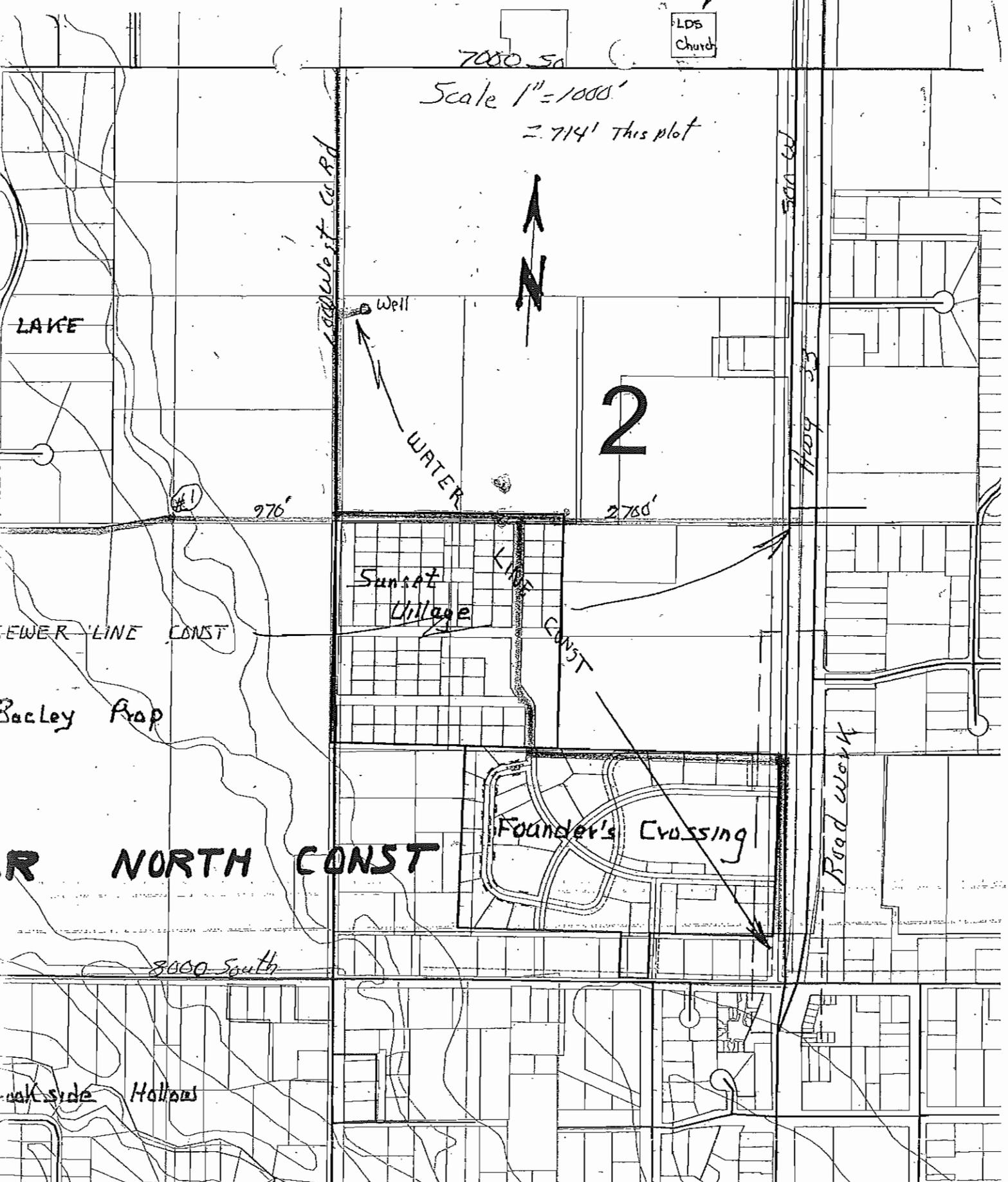
Road work

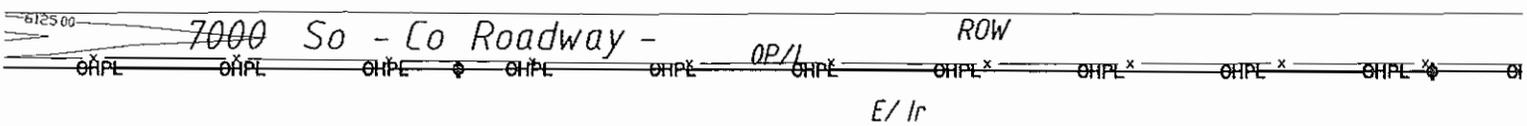
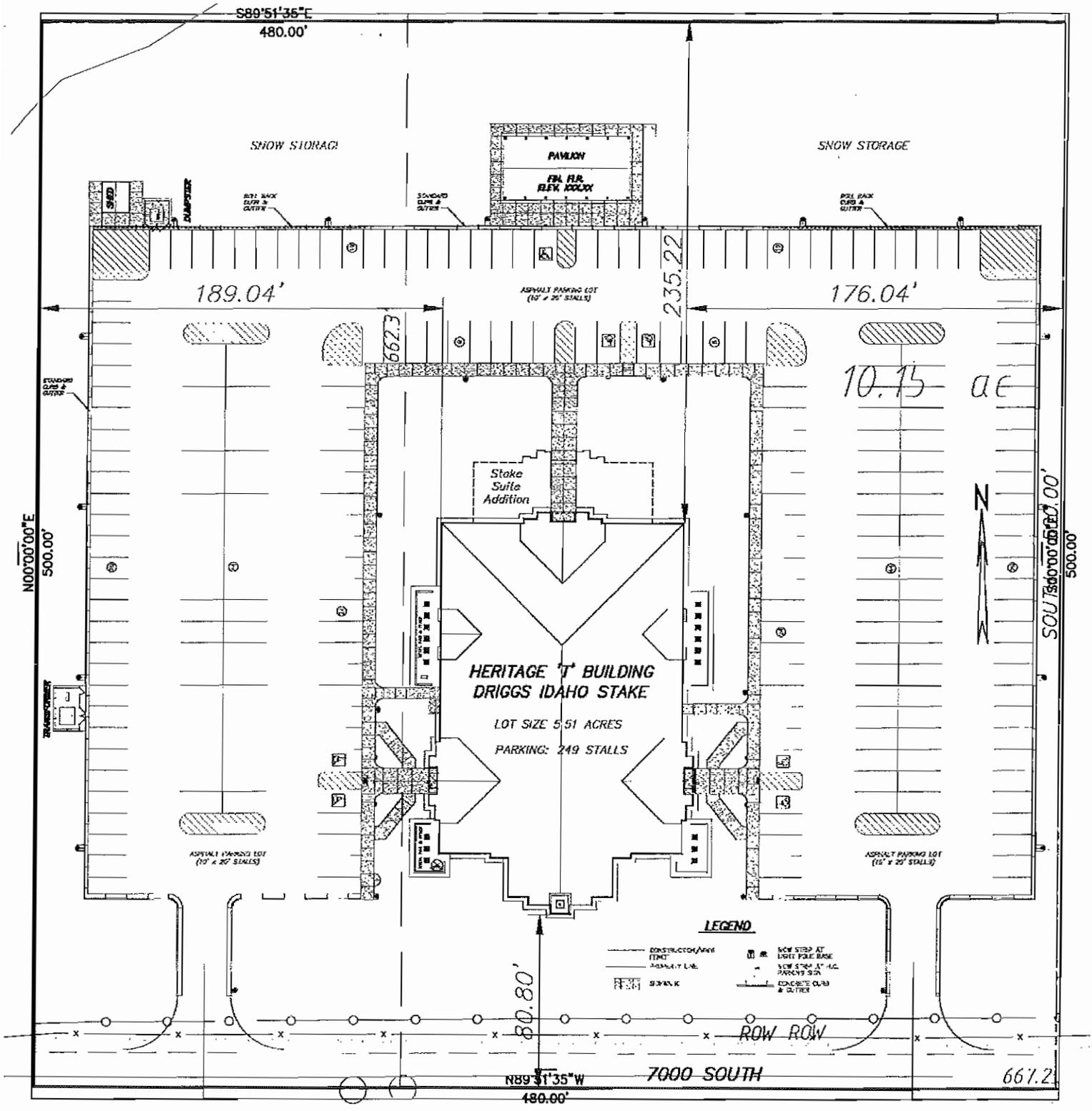
Founder's Crossing

R NORTH CONST

8000 South

Wakside Hollow

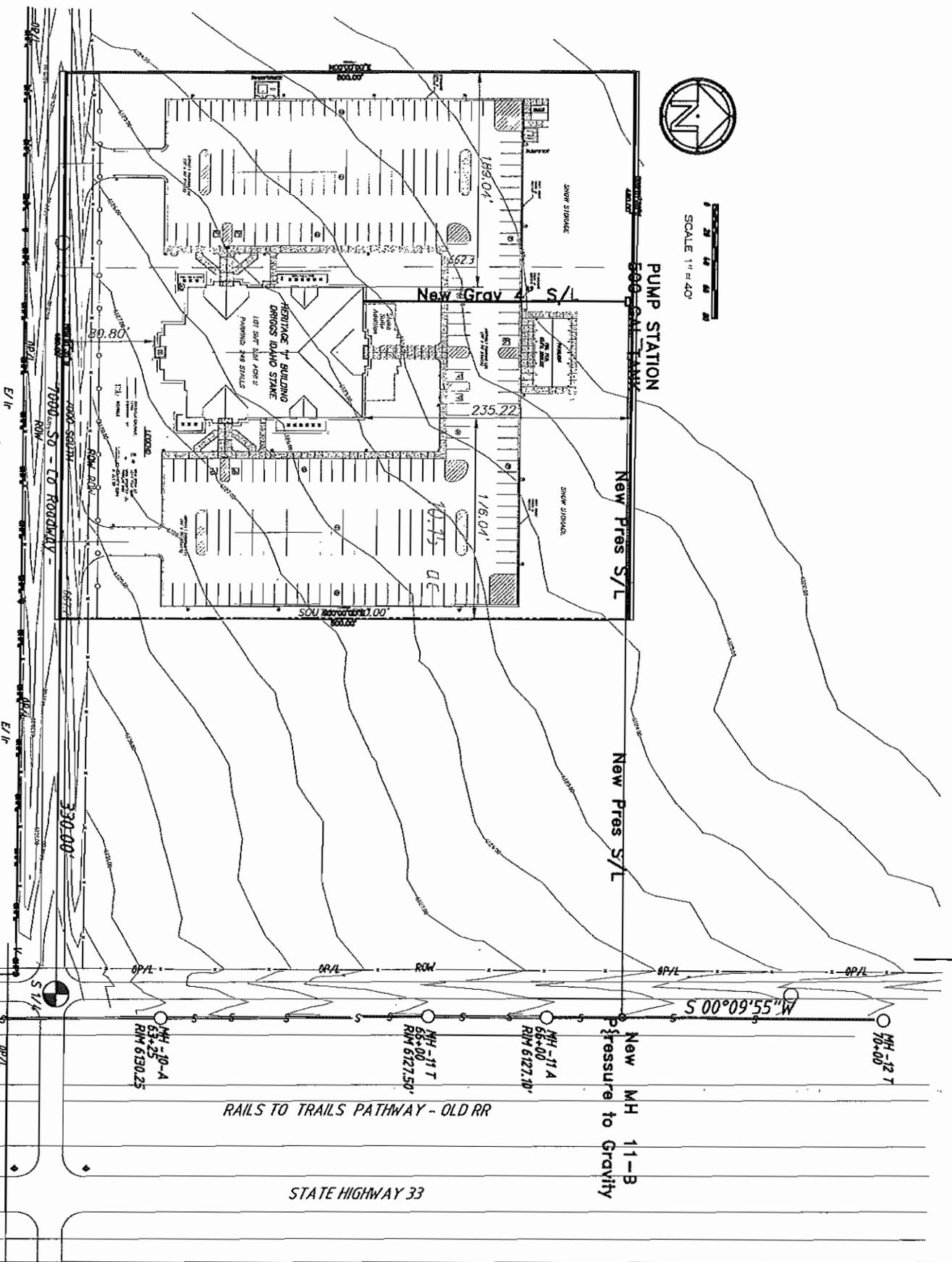




HERITAGE T STAKE LDS CHURCH BUILDING SITE
 7000 South Victor Area, Teton Co. Id



SCALE 1" = 40'

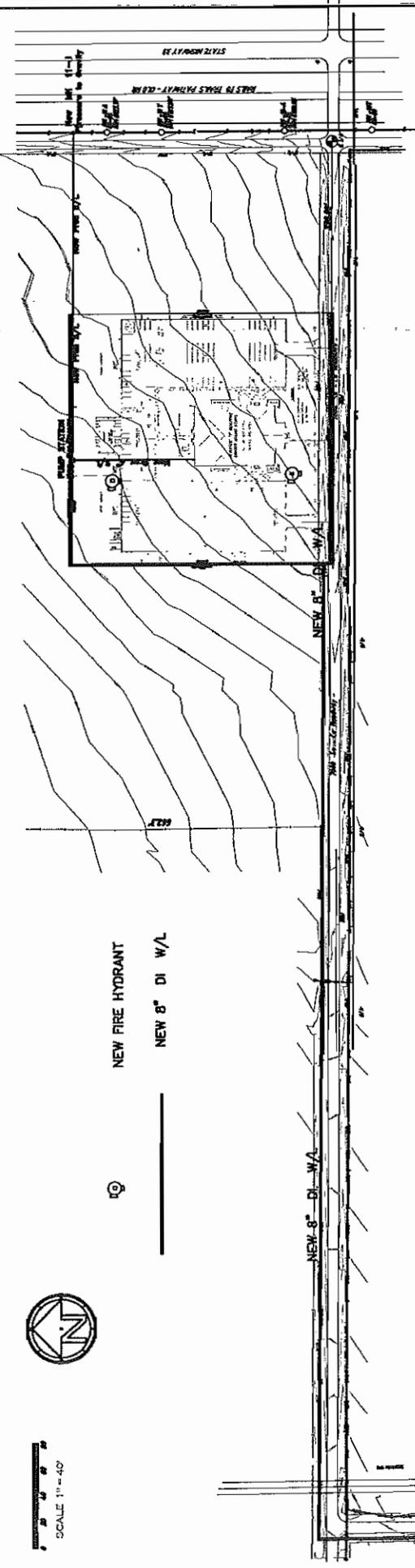


SEWER PLAN - TOPO
 HERITAGE T STAKE



SCALE 1" = 40'

NEW FIRE HYDRANT
NEW 8" DI W/L

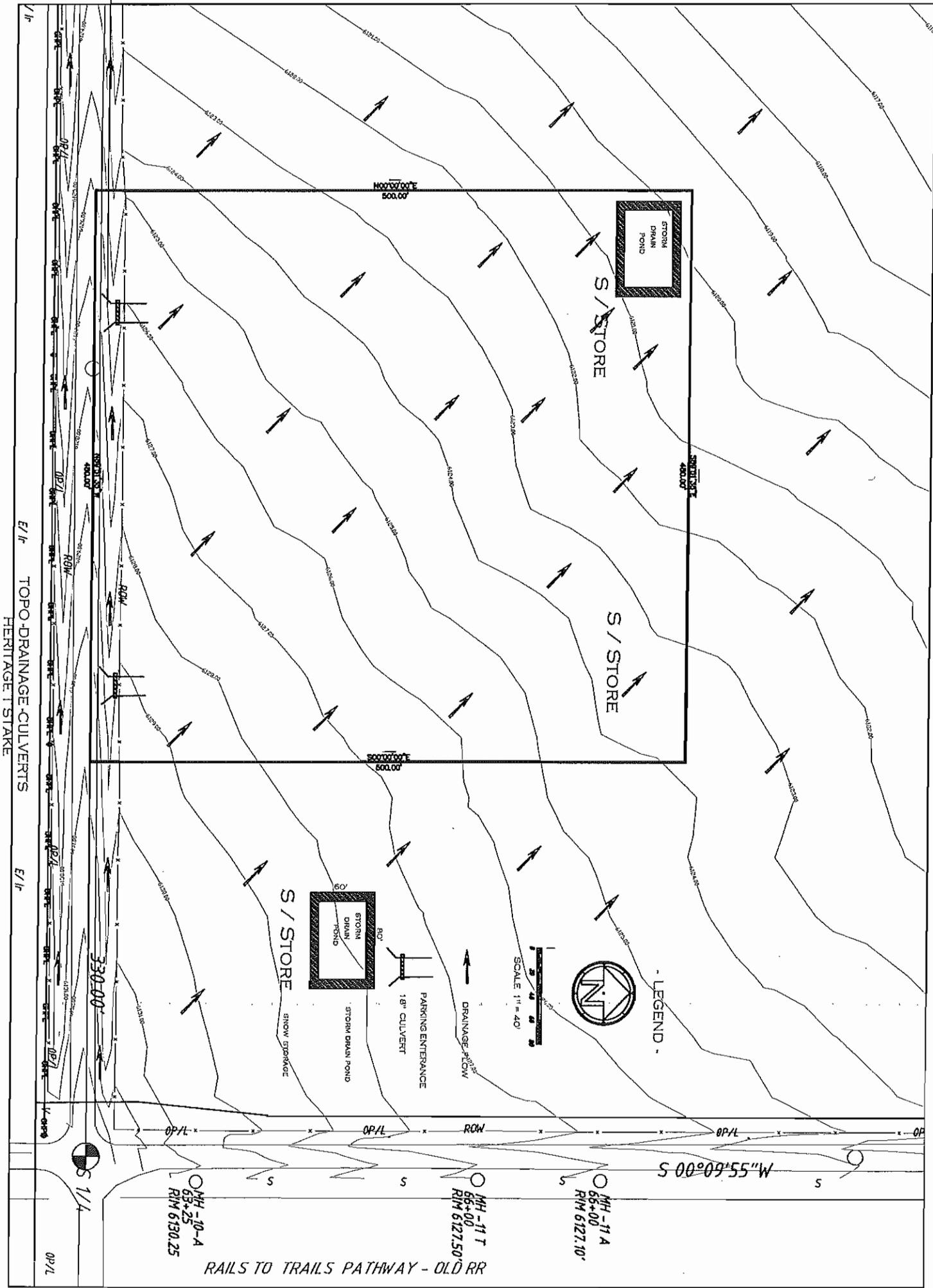


WATER LAYOUT PLAN

HERITAGE T STAKE LDS CHURCH
VICTOR AREA , TETON COUNTY, IDAHO

EXISTING WELL
City of Victor

TOPOGRAPHICAL SURVEY HERITAGE T STAKE	
PART OF THE SURVEY IS LOCATED IN TWP. 44N. R10E. S2E, TETON COUNTY, IDAHO	
LDS CHURCH 270 NEW ARCHDEACONS SOUTH OF VICTOR VICTOR FALLS, IDAHO 83452	
PROJECT NO. 2014-001	



E/I/ TOPO-DRAINAGE-CULVERTS
HERITAGE-T STAKE

E/I/

330.00'

MH-10-A
63+25
RIM 6130.25

MH-11 T
66+00
RIM 6127.50

MH-11 A
65+00
RIM 6127.10'

RAILS TO TRAILS PATHWAY - OLD RR

S 00°09'55"W

SCALE 1" = 40'



- LEGEND -

DRAINAGE FLOW

PARKING ENTRANCE
18" CULVERT

STORM DRAIN POND

SNOW STORAGE

S / STORE

S / STORE

S / STORE

STORM DRAIN POND

500.00'

500.00'

500.00'

500.00'



MH-11 A
65+00
RIM 6127.10'

OP/L

OP/L

OP/L

ROW

OP/L



TETON COUNTY
PLANNING & ZONING

FEB 03 2014

RECEIVED

VARIANCE APPLICATION

Teton County, Idaho

The planning staff is available to discuss this application and answer questions. Once a complete application is received, it will be reviewed by the planning administrator or his designee and then scheduled for a public hearing with the Board of Adjustment, who will make the final decision at a public hearing. It is recommended that the applicant review Title 8 of the Teton County Code and 67-6516 of the Idaho Code. Application materials may be viewed on the Teton County Idaho website at www.tetoncountyidaho.gov.

To expedite the review of your application, please be sure to address each of the following items.

SECTION I: PERSONAL AND PROPERTY RELATED DATA

Owner: BLACKFOOT FARMS, LLC

Applicant: TOM MUIR E-mail: TOM_MUIR@huntsman.com

Phone: (801) 584-5700 Mailing Address: 500 HUNTSMAN WAY

City: SALT LAKE CITY State: UT Zip Code: 84108

Engineering Firm: AW ENGINEERING Contact Person: ARNOLD Phone: (208) 787-2952

Address: 255 S. MAIN, VICTOR, ID 83485 E-mail: aweng@ida.net

Location and Zoning District:

Address: _____ Parcel Number: _____

Section: 35 Township: 4N Range: 45E Total Acreage: 5.59

Present Zoning District: AR-2.5 Requested Zoning District: _____

- Latest Recorded Deed to the Property Affidavit of Legal Interest
- Fee in accordance with current fee schedule

I, the undersigned, have reviewed the attached information and found it to be correct. I also understand that the items listed below are required for my application to be considered complete and for it to be scheduled on the agenda for the Board of County Commissioners public hearing.

• Applicant Signature: [Signature] Date: 12/12/14

I, the undersigned, am the owner of the referenced property and do hereby give my permission to _____ to be my agent and represent me in the matters of this application. I have read the attached information regarding the application and property and find it to be correct.

Owner Signature: _____ Date: 12/12/11

Fees are non-refundable.

SECTION II: CRITERIA FOR RECOMMENDATIONS AND DECISIONS

A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots.

1. Attach a site plan of the property under consideration, drawn to scale showing:
 - Perimeter, dimensions and topography of the property;
 - The names and locations of all streets bordering the property;
 - The location of all easements or rights-of-way;
 - The location and dimensions of present and proposed structures;
 - The distance from all structures to the property lines.

2. Undue Hardship: A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon showing of:
 - Undue hardship because of characteristics of the site;
 - The variance is not in conflict with public interest or the general land conditions in the vicinity of the application;
 - The variance will not be a material detriment to public health, safety or welfare nor to neighboring property owners.
 - Any other information necessary to assure the fullest presentation of facts and evaluation.

SECTION III: SPECIFIC REQUIREMENTS FOR PUBLIC HEARING AND NOTICE

Notification is required in accordance with Title 67, Chapter 65; Section 6509 of the Idaho Code. Notice shall be provided by mail to property owners within the land being considered, and within three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be impacted by the proposed change. Notice shall also be posted on the premises not less than one (1) week prior to the hearing. At least fifteen (15) days prior to the hearing, notice of the time, date and place and a summary of the plan to be discussed shall be published in the paper of general circulation within the jurisdiction. This procedure will be completed by the planning staff.

SECTION IV: STAFF SUMMARY ANALYSIS, REASONING AND FACT FINDING

SECTION V: PLANNING AND ZONING COMMISSION (BOARD OF ADJUSTMENT) ACTION

January 25, 2012

Curt Moore
Planner, Teton County Idaho
Driggs Idaho 83422

TETON COUNTY
PLANNING DEPARTMENT

FEB 03 2012

RECEIVED

Re: Variance Application – Church Steeple

Dear Curt,

Attached is our application requesting a variance for the construction of a steeple on a new church proposed for construction in Teton County near the City of Victor. The Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints (the “Church”) hereby requests a variance to the Teton County Title 8 Zoning Ordinance [8-4-4 Height, Setback and Lot Size], which limits structures to 30’ feet tall, to allow a steeple approximately seventy feet tall.

Undue Hardship believed to justify this request:

The “undue hardship” that enforcement of the height ordinance would impose on the Church and its members is fully detailed in the accompanying supplement letter. In short, the Church doctrinally requires a steeple of appropriate height (specifically, 70’0” tall), and the height restriction imposed by section 8-4-4 would prohibit construction of such a steeple in violation of The Religious Land Use and Institutionalized Persons Act (“RLUIPA”).

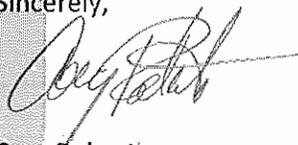
The variance, if granted, will not alter the essential character of the surrounding neighborhood. Like the chapel itself, the steeple is understated in design and in keeping with the surrounding neighborhood. And a steeple of appropriate height will only enhance the beauty of an already attractive building.

The following items are included as part of our variance application as noted in Section I and Section II of the Variance Application.

- Variance Application and Fee
- Warranty Deed
- Proposed Site plan
- Supplemental Letter (RLUIPA) from the Church of Jesus Christ of Latter-day Saints

If there are questions from the committed or further information is desired please let us know and we will provide whatever may be necessary.

Sincerely,



Cory Roberts



Scott L. Nielson, A.I.A. Kevin R. Bodily, A.I.A. James H. Wyatt, A.I.A.
Members of the American Institute of Architects



Section 1 Item 6 Narrative
September 22, 2011

1. Compatibility with other uses: Currently the only use for land surrounding the proposed church property is agricultural. The site is a distance from the City of Victor and there are no established residences or commercial properties in the immediate area. It is anticipated that as this area develops that the commercial growth will happen along the state highway and that residential uses will fill in the area immediately around the church. There are no apparent conflicts of use that would preclude the church from functioning for its intended purpose at this location, nor does it appear to become a detrimental factor in considering current or proposed surrounding land uses.
2. The church has obtained a Memorandum of Understanding or "Will Serve" letter from the City of Victor stating that their services will be made available to this site and will be adequate based on projected demands that have been provided to the city by the church. In turn the church will assume financial responsibility for extending these services to the site in cooperation with the City of Victor.
3. The site is large enough to accommodate the proposed building, parking facilities, ample landscape, storm water retention and ingress/egress facilities. This site size is typical for these functions based on previous planning and construction of other similar facilities by the church.
4. We believe that the proposed use is in compliance with and supports the goals, policies and objectives of the Comprehensive Plan. We anticipate that county staff will provide input regarding any items of interest in relation to compliance with these aforementioned requirements and the church will be prepared to address and resolve any concerns that arise. The LDS church is commonly known throughout the country and even the world for providing attractive, quality, well thought out facilities and grounds, for being a conscientious neighbor and for enhancing the areas in which their buildings reside. We will stand ready to work with the county to meet requirements as needed.

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History of Application

The LDS Church critically needs the proposed building for two local congregations whose members reside in the vicinity of the site. Those congregations currently travel to other churches that are overcrowded with congregations of their own and can no longer accommodate the visiting congregations. The LDS Church identified this site for the proposed church after an extended search, considering many other locations. The LDS Church was sensitive of potential environmental concerns and only considered sites outside of the nearby Scenic Corridor. Local Church leaders authorities sought, and then received, divine confirmation that the chosen site fulfilled the LDS Church's temporal and spiritual criteria, or, in other words, that the site was acceptable to God.

Accordingly, the LDS Church entered into a contract to purchase the site, contingent on receiving the necessary permits. Initial discussions with planning staff were positive. The Church complied with staff requests and all requirements of the Teton County Zoning Ordinance and received approval for single-lot plat adjustment for the 5.5 acre parcel. Subsequently, concern was raised over the proposed roof ridgeline of the building, which exceeded the Zoning Ordinance height limitation by nine inches. Accordingly, the LDS Church has agreed to reconfigure building plans and lower the vaulted roofline to bring it into compliance with the County's Zoning Ordinance.

Staff also notified the LDS Church that the proposed steeple exceeded the County's height limitation. Unlike many jurisdictions, and despite the rigorous protections afforded by Idaho's religious freedom statute, Teton County's Zoning Ordinance affords no exception to the height limitation to accommodate religious use from steeples or cupolas. As the LDS Church has demonstrated, it has been and remains willing to compromise by altering building plans to reflect changes that do not substantially burden religious exercise. However, as explained below, any alteration to the proposed steeple would severely hamper the Church's and its members' ability to worship according to the dictates of the LDS faith. The LDS Church therefore requests a variance to allow it to construct a steeple that adequately reflects its religious beliefs.

Critical Religious Need for the Proposed Steeple

The proposed steeple is imbued with religious meaning. It is the building's most distinctive architectural feature, an age-old symbol of Christianity that readily identifies to all that the church is a place of worship. The steeple also expresses symbolically core doctrinal teachings of the LDS Church, including faith and devotion to God. By literally lifting the adherent's eye heavenward, it conveys the belief in ascension to God. It has no other function but to convey these religious messages. Indeed, courts have recognized the importance of steeples in LDS Church beliefs. *See Martin v. Corp. of Presiding Bishop of The Church of Jesus Christ of Latter-day Saints*, 747 N.E.2d 131, 137 (Mass. 2001) ("It is clearly part of Mormon theology to reflect, in their buildings, the belief of an ascension towards heaven" and "that steeples, by pointing towards heaven, serve the purpose of lifting Mormons' eyes and thoughts towards heaven" (internal quotations omitted)).

As one LDS Church president taught:

Latter-day Saint chapels are more than just houses of worship. The stakes and districts of Zion are symbolic of the holy places spoken of by the Lord where His Saints are to gather in the last days as a refuge from the storm. You and your children will gather here to worship; to do sacred ordinances, to socialize, to learn, to perform in music, dance, drama, athletics, and to generally improve yourselves and one another. It is often thought significant that our chapels have on them a steeple, with spires toward the heavens symbolic of how our lives ought to be ever moving upward toward God.

Ezra Taft Benson, *Teachings of Ezra Taft Benson*, p. 151-52. Or as stated long ago by one of the LDS Church's founding leaders: "[An] elevated steeple point[s] to heaven, as much as to say, 'I stand here in honor of that God who created the heavens and the earth, and who framed the materials of which I am composed.'" (Oliver Cowdery, *Messenger and Advocate* (Feb. 1835), p.75)

Notably, the LDS Church experimented with other types of steeples. However, those steeples did not effectively identify the church as a place of worship or express the LDS Church's intended message of devotion to God. Thus, per ecclesiastical policy, all new churches are constructed with traditional, roof-mounted steeples. In 1997, the LDS Church adopted a program to retrofit older churches and install roof-mounted steeples to better convey the intended message. A traditional steeple that is proportional to the church in height, width and design is an expression of LDS Church beliefs.

Construction of the Steeple is Protected by State and Federal Religious Freedom Statutes.

In addition to any other statutory or constitutional claims the LDS Church may assert, and given the substantial religious burdens a denial of the proposed steeple would have on the Church and its members, any denial of the Church's effort to build the proposed steeple would violate the federal Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") and the Idaho Free Exercise of Religion Protected Act ("FERPA").

RLUIPA and FERPA protect churches from unduly burdensome land use regulations.

Passed unanimously by both Houses of Congress and signed by President Clinton in 2000, RLUIPA erects rigorous protections against land use regulations that burden the free exercise of religion, subjecting them to the most exacting judicial scrutiny. In other words, RLUIPA prohibits any land use regulation that substantially burdens the exercise of religion, except in extraordinary circumstances where the government can demonstrate that the regulation

is “the least restrictive means” of furthering a “compelling” government interest. 42 U.S.C. § 2000cc(a)(1)(B).¹

Idaho’s FERPA was enacted the year after RLUIPA and, as discussed below, is closely patterned after the federal act, *see* Idaho Code § 73-402, although its protections are even broader than RLUIPA’s. *See State v. White*, 2011 WL 6183613, fn. 2 (Id. Ct. App. Dec. 14, 2011). Both statutes create a private right of action for aggrieved churches to challenge ordinances that burden religion in the civil courts. 42 U.S.C. § 2000cc-2(a); Idaho Code § 73-402(4). Moreover, the statutes compel the government to pay the attorneys’ fees of churches that successfully assert religious exercise claims. 42 U.S.C. § 1988(b); Idaho Code § 73-402(4).

Faced with a denial of the proposed steeple, the Church easily could state a prima facie case under RLUIPA and FERPA.

To establish a prima facie case under RLUIPA and FERPA, and thereby invoke the compelling interest test, a religious claimant² must show that their religious exercise has been substantially burdened.³ 42 U.S.C. § 2000cc(a)(1); Idaho Code § 73-402(2). Once a claimant makes a prima facie case under RLUIPA and FERPA, the burden shifts to the government to prove that the challenged regulation is the least restrictive means of furthering a compelling government interest. 42 U.S.C. § 2000cc-2(b); Idaho Code § 73-402(3). (Alternatively, the

¹ RLUIPA also contains an anti-discrimination provision, prohibiting governments from (1) treating religious assemblies on less than “equal terms” with nonreligious assemblies, (2) discriminating on the basis of religion, and (3) imposing land use regulations that exclude or unreasonably limit religious assemblies from a jurisdiction. 42 U.S.C. § 2000cc(b).

² The LDS Church is a “religious claimant” under RLUIPA because it has a property interest in the regulated land in the form of a purchase contract. 42 U.S.C. § 2000cc-5(5).

³ RLUIPA applies to “land use regulation(s)”, 42 U.S.C. § 2000cc(a), while FERPA casts a much wider net: it applies to “all state laws and local ordinances.” Idaho Code § 73-403(1) (emphasis added). For a court to exercise jurisdiction over a RLUIPA claim, the plaintiff must show either: (1) that the challenged decision involves an “individualized assessment[] of the proposed uses for the property involved,” or (2) that the challenged regulation(s) affect interstate or foreign commerce. 42 U.S.C. § 2000cc(a)(2)(A)-(C). In this case, both tests are met. First, the County’s decision to grant or deny the LDS Church’s application clearly involves an individualized assessment. Federal courts have held that “zoning ordinances . . . by their nature impose individual assessment regimes.” *Freedom Bapt. Church of Del. v. Tp. of Middleton*, 204 F. Supp. 2d 857, 868 (E.D. Pa. 2002); *accord, e.g., Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 326 F. Supp. 2d 1140, 1160 n. 10 (E.D. Ca. 2003), *aff’d*, 456 F.3d 978 (9th Cir. 2006). Moreover, the land use regulation(s) at issue impact interstate commerce because construction of the proposed church would employ labor and materials that originate out of state or are transported via interstate carriers, and construction would be financed through tithe moneys donated by Church members from across the United States. *See Cottonwood Christian Center v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203,1221 (C.D. Cal. 2002) (stating that churches “are ‘major participants in interstate markets’” and “construction of [churches] affect commerce”) (citation omitted); *accord, e.g., Rocky Mountain Christian Church v. Board of County Com’rs of Boulder County*, 612 F.Supp.2d 1163, 1173 (D. Colo. March 30, 2009), *aff’d* 613 F.3d 1229 (10th Cir. 2010), *cert. denied*, 131 S. Ct. 978 (2011). Again, FERPA contains no such jurisdictional requirements—it applies to “all state laws and local ordinances and the implementation of those laws and ordinances, whether statutory or otherwise[.]” Idaho Code § 73-403(1).

government may avoid violations of these acts by exempting the religious exercise from the challenged regulation, such as through a variance. *See* 42 U.S.C. § 2000cc-3(e).

Both RLUIPA and its state counterpart protect a broad range of religious activity. *See* 42 U.S.C. § 2000cc-3(g) (RLUIPA “shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the] Act and the Constitution”). Religious exercise is expansively defined in both statutes. *See* 42 U.S.C. § 2000cc-5(7)(A)-(B) (“religious exercise” “includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief,” including “[t]he use, building, or conversion of real property for the purpose of religious exercise”); Idaho Code § 73-401(2) (“‘Exercise of religion’ means the ability to act or refusal to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.”).

RLUIPA does not define “substantial burden” in the statute itself, but the Ninth Circuit has stated that “[a] substantial burden exists where the governmental authority puts ‘substantial pressure on an adherent to modify his behavior and to violate his beliefs.’” *Int’l Church of the Foursquare Gospel v. City of San Leandro*, 2011 WL 1518980, *7 (9th Cir. April 22, 2011) (citing *Guru Nanak Sikh Soc. v. County of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006) (other citation omitted); *see also Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 899-901 (7th Cir. 2005) (“That the burden would not be insuperable would not make it insubstantial.”). Thus, preventing or making it unreasonably difficult to build a worship site, restricting the size of a congregation, or otherwise limiting religious observance have all been held to be “substantial burdens” under RLUIPA.⁴

FERPA defines “substantial burden” more expansively than courts have interpreted its federal counterpart. A “substantial burden” under FERPA is anything that “inhibit[s] or curtail[s] religiously motivated practices.” Idaho Code § 73-401(5). Importantly, even neutral and generally applicable zoning ordinances can constitute a substantial burden under RLUIPA and FERPA. *See* Idaho Code § 73-402(1)-(2) (“Free exercise of religion is a fundamental right that applies in this state, *even if laws, rules or other government actions are facially neutral*”; [absent a compelling governmental interest] government shall not substantially burden a person’s exercise of religion *even if the burden results from a rule of general applicability*”) (emphasis added); *Church of the Foursquare Gospel*, 2011 WL 1518980 at **6-7 (“We have never held that a zoning regulation cannot impose a substantial burden under RLUIPA simply by the fact that it is a zoning regulation. . . . This conclusion misinterprets our precedent and effectively writes RLUIPA’s substantial burden provision out of RLUIPA.”).

⁴ *See id.*; *see also Fortress Bible Church v. Feiner*, 734 F.Supp.2d 409, 503-04 (S.D.N.Y. 2010); *Westchester Day Sch. v. Mamaroneck*, 504 F.3d 338, 350-53 (2d Cir. 2007); *Rocky Mountain Christian Church v. Board of County Com’rs of Boulder County*, 612 F.Supp.2d 1163, 1172 (D. Colo. March 30, 2009), *aff’d*, 613 F.3d 1229 (10th Cir. 2010), *cert. denied*, 131 S. Ct. 978 (2011); *Grace Church v. City of San Diego*, 555 F.Supp.2d 1126, 1136-37 (S.D. Cal. 2008); *Reaching Hearts Int’l, Inc. v. Prince George’s County*, 584 F. Supp. 2d 766, 784 (D. Md. 2008), *aff’d*, 368 Fed. Appx. 370 (4th Cir. 2010); *Lighthouse Comty. Church of God v. City of Southfield*, 2007 U.S. Dist. LEXIS 28, *24 (E.D. Mich. Jan. 3, 2007); *Mintz v. Roman Catholic Bishop*, 424 F. Supp. 2d 309, 320-21 (D. Mass. 2006); *Cottonwood Christian Center v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1226-27 (C.D. Cal. 2002); *Barr v. City of Sinton*, 295 S.W.3d 287, 302-03 (Tex. 2009).

Therefore, even if Teton County's height restriction is a neutral and generally applicable zoning ordinance, denial of the requested variance would constitute a substantial burden under both RLUIPA and FERPA because, as detailed above, there is critical religious need for the proposed new steeple. Constructing a steeple that adequately expresses its religious tenets is an integral part of and central to the religious exercise of the LDS Church and its members. It is true that the proposed steeple will not impact the functionality of the existing church as a gathering place for members. However, a separate, equally important purpose of a house of worship is to express, symbolically, the LDS Church's faith to members and others. "[C]hurches have long built steeples to 'express elevation toward the infinite, [their] spires soaring into the heavens,' J. Sallis, *Stone* 63 (Ind. Univ. Press 1994), and a steeple is the precise architectural feature that most often makes the public identify the building as a religious structure." *Martin*, 747 N.E.2d at 140 (overturning denial of height variance to build steeple on existing CPB temple). To members of The Church of Jesus Christ of Latter-day Saints, an appropriate steeple affirms faith. To those not of the Church, the steeple proclaims faith. It bespeaks a universally recognized message of reverence and ascension to God.

Moreover, it is part of worship for LDS Church members to speak with a united voice to proclaim a religious vision. The LDS Church takes literally the biblical edict to "preach the gospel to every creature," Mark 16:15, including to "proclaim [the gospel] upon the housetops." Luke 12:3. Though it speaks symbolically — and through an understated design — the proposed steeple intends to partly fulfill this command on behalf of the congregations who meet in the church. Absent the steeple, the building would not communicate the inspirational message the LDS Church intends to convey or adequately distinguish the church as a place of worship. Detractors may not agree with or understand the LDS Church's need for a steeple that adequately reflects its religious beliefs, but both RLUIPA and FERPA prohibit any inquiry "into the truth or falsity of stated religious beliefs." *Church of the Foursquare Gospel*, 2011 WL 1518980 at *9 (citing *United States v. Ballard*, 322 U.S. 78, 86–87 (1944)); *see also* Idaho Code § 73-401(2) (religious exercise protected "whether or not the exercise is compulsory or central to a larger system of religious belief").

Houses of worship are central to religious exercise because "religious activity derives meaning in large measure from participation in a larger religious community." *Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring); *see also Church of the Foursquare Gospel*, 2011 WL 1518980 at *10 ("a place of worship ... is at the very core of the free exercise of religion"). And not just any house of worship will do:

Churches and synagogues cannot function without a physical space adequate to their needs and *consistent with their theological requirements*. The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes.

Id. (quoting 146 Cong. Rec. S7774–01, Exhibit 1 (daily ed. July 27, 2000) (joint statement of Senator Hatch and Senator Kennedy on RLUIPA of 2000) (emphasis added)).

For these reasons, a denial of the requested variance would “pressure” the LDS Church and its members “to modify [their] behavior and to violate [their] beliefs”; it would “inhibit or curtail [the LDS Church’s] religious motivated practices” described above. *Church of the Foursquare Gospel*, 2011 WL 1518980 at *7; Idaho Code § 73-401(5). In short, preventing construction of the proposed steeple would substantially burden the Church’s and its members’ religious exercise in violation of RLUIPA and FERPA, which necessarily constitutes an undue hardship under section 8-8-1 of the Teton County Zoning Ordinance.

Denying the proposed steeple would not further a compelling governmental interest through the least restrictive means.

Once a religious claimant shows that a land use decision substantially burdens religion, the burden shifts to the government to prove that the challenged regulation is the least restrictive means of furthering a compelling government interest. 42 U.S.C. § 2000cc-2(b); Idaho Code § 73-402(3). Federal interpretations of the compelling interest test apply with equal force to the compelling interest test of FERPA. *See Hyde v. Fisher*, 203 P.3d 712, 732 (Id. Ct. App. 2009) (compelling interest test of FERPA and RLUIPA “uses identical language” and “there is no indication that the two statutes should be applied differently”).

The compelling interest standard poses a formidable obstacle: “a law restrictive of religious practice must advance interests of the highest order” because “only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.” *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546 (1993); *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972); *accord Sherbert v. Verner*, 374 U.S. 398, 406 (1963). Thus, the “compelling interest standard ... is not ‘water[ed] ... down’ but ‘really means what it says.’” *Lukumi*, 508 U.S. at 546 (quoting *Smith*, 494 U.S. at 888). Therefore, it is well-established that the government’s generalized interest in enforcing its zoning ordinance does not constitute a compelling state interest:

[The position that zoning itself is a compelling state interest . . . has been rejected by this Court and by the [U.S.] Supreme Court. Although the government’s interest in the public welfare in general, and in preserving a common character of land areas and use in particular, is certainly legitimate when properly motivated and appropriately directed, the assertion that zoning ordinances are per se superior to fundamental, constitutional rights, such as the free exercise of religion, must fairly be regarded as indefensible.

Barr v. City of Sinton, 295 S.W.3d 287, 305-06 (Tex. 2009) (citing, e.g., *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981) (internal quotations omitted)); *accord*, e.g., *Rocky Mountain Christian Church v. Board of County Com’rs of Boulder County*, 612 F.Supp.2d 1163, 1175 (D. Colo. 2009) (“lack of harmony with the character of the neighborhood, incompatibility with the surrounding area, [and] incompatibility with the [Town’s] comprehensive plan,” “although legitimate in many senses, do not constitute compelling governmental interests.”), *aff’d*, 613 F.3d 1229 (10th Cir. 2010), *cert. denied*, 131 S. Ct. 978 (2011); *Westchester Day School v. Village of Mamaronek et al.*, 504 F.3d 338, 353 (2d. Cir. 2007) (generalized “interest in enforcing zoning [and] traffic regulations” not compelling).

The LDS Church is aware of no compelling governmental interest that would justify denial of the proposed steeple. The steeple will not materially impact views of the surrounding area. Again, the proposed church is purposefully located outside the Scenic Corridor. Like the building itself, the steeple's design is understated and elegant. There are no lights, bells, or other accoutrements that would detract from the steeple's simplistic beauty and its spiritual significance.

Importantly, however, concerns about the alleged aesthetic impact of the steeple, even if such were established, do not amount to compelling state interests. See *Whitton v. City of Gladstone*, 54 F.3d 1400, 1408 (8th Cir. 1995) ("asserted interests in . . . aesthetics, while significant, have never been held to be compelling"); *Westchester Day School v. Village of Mamaronek et al.*, 417 F. Supp. 2d 477, 554 (S.D.N.Y. 2006) (neighbors' concern about the "adverse visual impact[]" of renovations/construction of religious school "does not implicate a compelling government interest"), *aff'd*, 504 F.3d 338 (2d. Cir. 2007); *accord Fortress Bible Church v. Feiner*, 734 F.Supp.2d 409, 508 (S.D.N.Y. 2010) and *Munns v. Martin*, 930 P.2d 318, 322 (Wash. 1997). Likewise, preservation goals do not constitute compelling interests. See *Church of the Foursquare Gospel*, 2011 WL 1518980 at *11 ("preservation of industrial lands for industrial uses does not by itself constitute a 'compelling interest' for purposes of RLUIPA") (citation omitted). There has certainly been no asserted health or safety issue that can be linked to construction of the steeple. Cf. *Roles v. Townsend*, 64 P.3d 338, 340 (Id. Ct. App. 2003) (state has compelling health and safety interest in tobacco free policy).

And even assuming a compelling interest were established, outright denial of the LDS Church's application is not the least restrictive means of achieving that goal where the City can make reasonable conditions of approval. RLUIPA and FERPA require that "no alternative forms of regulation would combat such abuses without infringing First Amendment rights." *Sherbert*, 374 U.S. at 407; see also Idaho Code § 73-402(3); *Church of the Foursquare Gospel*, 2011 WL 1518980 at *12.

Denial of the Steeple Would Violate Federal and State Constitutional Rights.

A denial of the LDS Church's application would invoke constitutional protections for two reasons. First, because the LDS Church doctrinally requires a steeple of appropriate height, a denial would impermissibly interfere with the LDS Church's free exercise of religion. U.S. Const. Amend. 1; *Lukumi*, 508 U.S. at 540-47. Second, the steeple expresses an identifiable message; therefore, construction of the steeple is a constitutionally protected form of speech. U.S. Const. Amend. 1. The United States Supreme Court has acknowledged that symbolic speech, including architectural elements, is a constitutionally protected right. See *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 632 (1942) ("Symbolism is a primitive but effective way of communicating ideas. . . . [Just as t]he State announces rank, function, and authority through crowns and maces, uniforms and black robes; the church speaks through the Cross, the Crucifix, the altar and shrine, and clerical raiment."); see also *Widmar v. Vincent*, 454 U.S. 263, 269 & n. 6 (1981) (holding that symbolic speech is no less protected than political or commercial speech); *First Covenant Church v. Seattle*, 840 P.2d 174, 182 (Wash. 1992) ("The relationship between theological doctrine and architectural design is well recognized.") (citations omitted).

As discussed above, a steeple conveys an unmistakable message of belief in God that is of particular importance to LDS Church members. As no compelling state interest can be advanced to justify impinging on the LDS Church's right to religious expression, *see Lukumi*, 508 U.S. at 546, a denial of the variance would amount to a federal constitutional violation. These rights are independently protected under state law, including FERPA and the Idaho Constitution. *See* Idaho Const. art. I, §§ 4, 9.

Again, however, the statutory and constitutional mandates discussed herein need not come into play. As Congress noted, the best way to "avoid the preemptive force" of RLUIPA (and its state counterpart) is to grant the requested variance and/or construe discretionary land use criteria in favor of the steeple. 42 U.S.C. § 2000cc-3(e). The LDS Church affirms its willingness to accept reasonable conditions of approval, if needed.

Conclusion

For all of the foregoing reasons, we respectfully urge the approval of the LDS Church's application.

**CORPORATION OF THE PRESIDING BISHOP OF
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS**

Supplement to Land Use Application

January 25, 2012

These explanatory materials supplement the Applicant's other submissions and aim to (1) outline the religious significance of the steeple's design, and (2) summarize the substantial religious burden a denial of the application would impose on members of The Church of Jesus Christ of Latter-day Saints (herein, the "Church" or the "LDS Church").

Introduction

As detailed below and in the other submissions, the proposed steeple has no other functional purpose but to convey a religious message. It expresses symbolically core doctrinal teachings of the LDS Church and identifies the building as a house of worship. Like the church itself, the steeple is understated in design and in keeping with the beauty of the surrounding area. It is the smallest possible design that will accommodate worship needs. There are no lights or bells in the steeple. The church is located outside the nearby Scenic Corridor and the steeple's impact on the area is minimal. Nonetheless, some opposition to the steeple appears to have surfaced. However, we respectfully submit that a denial would violate the state and federally protected right of churches to construct houses of worship consistent with their religious needs. The Idaho Free Exercise of Religion Protected Act ("FERPA"), the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), and other statutory and constitutional provisions preclude any denial — even a denial resulting from a neutral or generally applicable regulation — if the impact of the denial constitutes a "substantial burden" on religious exercise. Here, a denial would significantly impair the ability of the LDS Church and its members to worship according to their faith, constituting a substantial burden and an "undue hardship" under section 8-8-1 of the Teton County Zoning Ordinance. Accordingly, for these reasons, as well as for the reasons stated in the accompanying submissions, we urge the approval of the LDS Church's application.

February 2, 2012

Curt Moore
Teton County
150 Courthouse Drive
Driggs, Idaho 83422

Project: Victor Meetinghouse - Driggs Idaho Stake
Re: Additional Info/Responses to Review Questions

Response to County Planner Comments

Please find enclosed additional drawings/documents:

- Lighting/Photometric Plan showing the extent of proposed site lighting.
- Landscape Plan showing proposed tree layouts for side yard screening.
- Building Use Narrative
- Quick Facts – Building Use

Response to County Engineer Comments

Permit to Work within the County Right of Way:

Item #4: See enclosed full sized Site Plan to scale.

Conditional Use Permit:

Item #3: The additional parking stalls are to prevent the need for off site or street parking by the members. With overlapping meeting schedules, two congregations will be meeting at the same time. (See Quick Facts Sheet). The LDS Church has determined through past projects that 250 stalls meet the needs of the building in question and prevents any off site parking on surrounding streets.

Site Plan:

- Items #1 - #5: See enclosed revised Site Plan to scale with requested information. Utilities are shown where they would connect to building. See drawing by AW Engineering for proposed or existing City utilities.
- Item #6: See enclosed detail of building sign. Sign to be mounted on front (south) of building.



Scott L. Nielson, A.I.A. Kevin R. Bodily, A.I.A. James H. Wyatt, A.I.A.
Members of the American Institute of Architects

Proposed LDS Meetinghouse
Victor Idaho

Building Usage Narrative

The proposed meetinghouse is designed to accommodate from one to three wards or congregations. Typical ward size is 300 to 500 members and typical activity rate is 40-60%. It is anticipated that there will be one to two wards in this building at the time of occupancy depending on growth of church membership in the south end of Teton valley prior to the time of its completion. The above membership numbers are typical of the ward sizes that currently exist in Victor, Driggs and Tetonia. This building is not being designed to serve as a stake center. A stake is comprised of a group of wards in a geographical area. In size it is typically from six to 12 wards or congregations. The current stake center is in the City of Driggs and members of the LDS church in Tetonia, Driggs, Victor and Jackson are currently members of the Driggs Idaho Stake. The stake center in Driggs will continue to serve as the stake center for this membership after the completion of this facility.

The meetinghouse proposed by the LDS church to be constructed on 7000 South west of Highway 33 will be utilized as follows:

Weekday use:

Monday:

Use of the building on Mondays is prohibited by the church. That day and evening are set aside as a time for members to spend at home with their families. No meetings or activities are to be scheduled or held in the building on Mondays

Tuesday:

Day use is minimal and only incidental. Typically Tuesday evening is a night for the church youth ages 12- 18 to gather for activities. They are divided by gender and into three separate age groups. Since the youth comprise a small percentage of the ward membership these groups are typically small and could range from two or three youth up to perhaps ten or twelve in each of the six groups. They meet separately and often one or more of the groups will pursue an activity at a location other than the church. This is especially true in the summer months when outdoor activities are scheduled in public venues, members yards etc.. Very occasionally all of the youth meet together for a common activity but not typically. The impact on the building and site on Tuesday evenings including traffic is minimal. The activities typically start at 7pm and are completed by 9:00-9:30pm. The wards may choose an evening other than Tuesday but traditionally that is the particular night of the week that they meet.



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Members of the American Institute of Architects

Wednesday, Thursday, Friday and Saturdays

Day use is minimal and incidental. These evenings are available for small components of the ward membership to use for classes, activities etc. For instance, the women's auxiliary (Relief Society) may convene to learn a craft, a homemaking skill or work together on a humanitarian project. The frequency may be monthly but not weekly and the groups are typically 20-30 women or commonly less since a lot of the activities are special interest in nature and many of the women are otherwise engaged or chose not to attend.

Typically once or twice per year the entire ward will come together for an activity at the building such as a Christmas dinner or summer activity. Attendance at these activities usually is 50% or less of the total membership of the ward. Other activities during the week may be cub scout pack meetings or leadership meetings involving 6 people or less. The majority of the evenings throughout the year on Wednesday through Saturday there are no activities at the building at all.

Sunday use:

The primary use of the building is on Sunday. A typical usage for one ward would be for the ward to begin meetings at 9am and leave at 12 pm. In the event of two wards occupying the building there are two options. Option one would be for the first ward to come to the building from 9-12 and the other ward from 1-4pm. The other option is for the first ward to come at 9am and leave at 12pm. The second ward would come at 11am and leave at 2pm. Both would utilize a 3 hour block of meetings. With either option there is never more that one ward arriving at or leaving the site at the same time in order to avoid traffic congestion and best utilize the facility.

Special Activities or functions:

Stake Conferences:

Some concerns have been noted regarding "Stake Conferences" to be held at this building. A Stake Conference is a semi-annual meeting where all of the wards in the stake, or in this case, in the Teton Valley come together for a conference. As stated above this building is not being designed as a stake center and so that particular activity would not be convened here. The Stake Center in Driggs will continue to serve that function and the stake leadership offices will continue to be housed in the Driggs facility. The current operative procedure for stake conference for the church on a church wide basis is as follows: In order to avoid building large facilities and large parking lots to serve this semi-annual conference the church has adopted the policy of holding the stake conference in the designated stake center (Driggs in this

case) and to broadcast the proceedings to the other buildings throughout the valley via the internet to save outlying members travel time and expense. This does away with the traditional practice of bringing all of the stake members to one location and allows the members to attend the building closest to them and participate in the conference by way of the broadcast. Citizens of the county who have been aware of the large gatherings in the past will or perhaps have already seen this change become effective. A stake conference will not be a concern at this facility.

Funerals and Weddings:

This facility will be available for wedding receptions and funerals primarily for members who attend church at this particular location. This service is offered free of charge to the members to help them save costs. Receptions are typically held on Friday or Saturday evenings and funerals on weekdays as needed. Both of these types of activities are infrequent and occasional. The church will discourage wedding receptions for members who do not attend at this location so receptions do not constitute a regular use of the building and are considered as occasional. Receptions are not a generator of revenue for the church as would be the case with commercial reception centers.

The description of usage above is not all inclusive but intends to identify and describe the customary and expected use of the building. Other activities can and may be held but will be lesser in consequence and impact.

In a nutshell, our lighting will be 18' poles with shoebox fixtures at an 80' spacing and cut off shields if necessary. The church is accustomed to building in dense residential neighbor hoods and has no problem in accommodating these requirements. Our buildings are intended to be of a scale that will comfortably fit into a residential setting and that is typically the scenario under which they are built. If the commission requires a photometric diagram for the lighting to be submitted with the building permit submittal we will be happy to provide that. The parking lights are typically turned on by photo cell at dusk and turned off by time clock at around 10:30 or 11 pm. Building mounted lights are minimal and placed only at entrances for security reasons. They are typically shielded down lights. Steeples are not lighted on meeting house such as is proposed here. We can certainly address the screening issues that you mention. We will provide a narrative for the use of the building. The current philosophy for a stake center is not to bring a large number of people together to one facility on a semi-annual basis as has been done historically. To reduce building size from previous stake center sizes and to reduce parking requirements their current operational practice is to broadcast the stake conference meetings to multiple meeting houses via the internet so that there are smaller numbers of people in more buildings for those occasions. We foresee that this will be their operation practice for the future. Currently this building is not anticipated to be a stake center but if it were that would simply mean that there

would be a small office suite in the building to provide space for the stake leaders. This is typically one executive office, one clerk or secretarial type of office and a conference size meeting room. This operating philosophy of broadcasting the stake conferences is reducing parking and traffic significantly on those twice per year events. There are minimal activities during the week, typically on Tuesday evenings there are activities for the youth. Then on an infrequent basis there are auxiliary organizations activities that may bring smaller groups of people together on weekday evenings but the impact is minimal. The primary use of the facility is on Sundays. There are no meetings or activities held on Monday night since that time is reserved for the members to spend at home with their families. We generally don't see any significant things happening on Wednesday or Thursday evenings other than the small group activities mentioned above. On special occasions such as we are experiencing now with the Christmas seasons the wards or congregations may come together for an activity or dinner but those are infrequent and occasional.

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

QUICK FACTS

This statement supplements the accompanying application for a chapel of The Church of Jesus Christ of Latter-day Saints. It answers questions about how the chapel will be used and its impact on the neighborhood. It also briefly explains the chapel's religious importance to The Church of Jesus Christ of Latter-day Saints (sometimes called the Mormon Church) and its local members.

What will the chapel look like?

While the basic elements of the chapel will be dictated by worship needs, the Church solicits the input of neighbors as to aspects of the design that do not impact religious needs. Key features will include a traditional steeple, a sanctuary that can seat those who typically attend the Sunday worship services of one congregation, classrooms for religious instruction, clergy offices where the Church's lay clergy can confidentially counsel members and coordinate ministries, and a multipurpose room for instruction and the religious activities of ministries. The Church will propose the smallest plan that will reasonably accommodate the Church's religious needs.

How will the chapel be used?

The chapel will be used on Sundays and, on a limited basis, two or three weekday evenings. There is no day school, day care, soup kitchen, bingo or any other commercial or political use. There is no daytime administrative staff apart from occasional maintenance personnel.

Sunday Worship: Sunday services last three hours, consisting of a congregational meeting in the sanctuary (about an hour) followed by two sessions of classroom instruction.

Key to Mormon Terminology

Ward or Branch – a local congregation of members living in a geographically defined area
Stake – a diocese-like grouping of 8-10 congregations
Bishop – the lay minister of a congregation
Stake President – the lay leader of a stake
Meetinghouse – another word for the chapel
Cultural Hall – a multipurpose room used for classroom space, overflow seating, and weekday youth and women's activities
Relief Society – the women's ministry
Primary – the children's ministry
Young Men's and **Young Women's** – the two halves of the congregation's youth ministry
Priesthood – all males ages 12 and over participate in the Church's lay priesthood; priesthood status does not signify clergy.
Calling – all congregation members serve in "callings" to staff the congregation (e.g., teaching Sunday School, leading the music, coordinating youth activities); there is no professional clergy or staff.

Classroom instruction is age and sometimes gender-specific so that children, youth and adults receive the gospel in specialized classes according to their own interests and levels of understanding.

For a description of worship services and a schedule of nearby Sunday meetings, visit <http://mormon.org/worship/>. Visitors are always welcome.

If needed, by staggering meeting times, up to three small congregations can share the chapel with minimal impact on the neighborhood. This sharing prevents having to build other chapels in the area, but *does not increase the size of the chapel*. Exactly the same features are needed regardless

of whether the chapel is used by one, two or three congregations. When the first congregation separates for classroom instruction, the next congregation can enter the sanctuary, and so forth:

* Sample Schedule	9 ⁰⁰	10 ⁰⁰	11 ⁰⁰	12 ^{pm}	1 ⁰⁰	2 ⁰⁰	3 ⁰⁰
Congregation 1	sanctuary	classrooms					
Congregation 2			sanctuary	classrooms			
Congregation 3					sanctuary	classrooms	

Limited use on Weekdays: Besides Sunday services, each congregation may use the proposed chapel on one weekday evening – Tuesday, Wednesday or Thursday – for its youth ministry, scouting, or women’s meetings. Evening activities are usually small and seldom last past 9:00 p.m. There may also be a one-hour, early morning gospel study class for teenagers on school days. Friday night or Saturday activities are seldom, and are limited to religious or family-themed gatherings. When food is involved it is prepared at home and brought to the gathering. All activities have a central purpose to knit together the religious community, provide Christian service, and strengthen faith.

How will the chapel impact neighbors?

- **Traffic:** With virtually no daytime use during the week, the chapel will be quiet and will bring almost no traffic during commute times for six days of the week. Staggering Sunday meetings reduces traffic at any one time on Sundays. The parking lot meets all code criteria and will be sufficient to accommodate time-honored parking needs.
- **Local Use Only:** The chapel will not become a “megachurch.” Unique religious beliefs of The Church of Jesus Christ of Latter-day Saints ensure limited use:
 - In the LDS Church, members attend services where they live. All congregations have geographic boundaries. This means the proposed chapel will be regularly used only by people who live within those defined boundaries.
 - Also, the LDS Church caps the size of its congregations for religious reasons. There is no paid ministry. Local members run the Church by participating in volunteer “callings.” Church doctrine teaches that all members need the opportunity to actively participate, and that can only happen if congregations remain small.
 - Congregations subdivide when average attendance exceeds a certain limit. If three congregations share a chapel and those congregations grow too large, another chapel is built elsewhere so the congregations have space to subdivide.
- **Aesthetics:** The chapel is designed to be a respectful, though understated, tribute to God. It is the smallest possible design that will accommodate worship needs. The steeple, in particular, figuratively expresses a message of faith and devotion to God (literally lifting the eye heavenward) and is an age-old symbol identifying the building as a house of worship. There are no lights or bells in the steeple. Well-maintained landscaping physically separates the chapel from other structures and promotes an atmosphere of quiet contemplation.