From: Sue Muncaster
Sent: Saturday, July 14, 2012 7:18 AM
To: Angie Rutherford
Subject: registering one more comment

Not sure where to direct comments these days but in the Democratic numbers game of one voice, one vote per citizen I'd like to point out a concern:

I am well aware of the argument the VARD had a large influence on the plan. But at the very least it is totally public record who in our community is a supporter of VARD. I have on my desk a flier listing in the hundreds businesses and individual citizens who support VARD listed by name. Totally different is the strong comments from the Teton County Group for Property Rights (TCGPR) which represent an unnamed group of citizens. Before any more comments are taken from this group I believe the people behind it should be transparent. Is it 4 people? 40? 400?

It of course shouldn't matter how many or who the people are if it is truly a legal issue as the law is the law no matter who supports it. But general comments that are meant to show public support or opposition should be required to have a name.

Thanks! Sue Muncaster, Victor.

Teton County Board of County Commissioners
Teton County Planning and Zoning Commission
c/o Angie Rutherford
150 Courthouse Dr. Room 107
Driggs, ID 83422

Re: Comments on Draft Comprehensive Plan for Teton County Idaho (assessed via http://www.tetoncountyidaho.gov/pdf/additionalInfo/120710_TetonID_CompPlan_PZC_2.pdf , July 22, 2012)

July 30, 2012

Dear Ms. Rutherford:

After review of the Draft Comprehensive Plan (DCP) and accompanying appendices, documents, and map, we respectfully submit the following comments and add our endorsement of plan.

The planning staff and Commissioners are to be commended for the extensive public process undertaken to develop the vision for the plan and the resulting DCP. The vision and framework reflect the history, culture, and future of the County.

The comments to date on the DCP posted on the County's website can be generally grouped into those who feel that the plan would intrude on their ability to develop their property and others who feel that the plan does not go far enough in guiding future development. This split is evidence that the DCP probably strikes a reasonable balance. In developing a DCP every landowner and the community as a whole will realize both costs and benefits. Thus, the development of DCP can be viewed as a complex optimization problem with the objective to minimize the costs the landowners and the community as a whole and maximize the benefits for individuals and the community. The framework in the DCP provides an avenue to achieve this objective.

The DCP includes an outline for future growth as well ideas and plans for how the County will meet the needs of its citizens. If the population projections are correct and the county population doubles, triples or quadruples, Teton Valley will be a very different place. How well the county copes with increased traffic, sanitation needs and water supplies, water quality, as well as the new economy that results will be influenced by the DCP. The draft DCP will provide a framework by which to address all these issues and more.

There are a number of ideas in the DCP for future recreations facilities and amenities for the County. There have been a number of comments to date that indicate such facilities should not be supported by taxes. Alternatively it makes sense that some facilities might be supported by taxes particularly if they contribute to economic activity. Facilities that can be used to host events that will draw visitors to the community might be worth consideration for tax support. For example, fair grounds and arenas that could host multiday regional rodeo or equestrian events might be a good investment. The underlying idea would be that participants would stay in lodging, eat, and buy supplies locally contributing to the economy. Further economy activity could result if a few of these visitors choose to buy property, or build homes. Thus building materials suppliers, contractors and many others could see economic benefits. The key to realizing this type of synergy is that local rodeo/equestrian clubs would be willing to host larger events and that the local business community and government also step in and support these larger events. Investment in trail systems has been shown in numerous studies to increase property values and business activity. Completion of new trails including the rail trail link to Ashton and beyond to West Yellowstone would create new business opportunities and support many existing businesses.

Finally, Teton Valley is indeed a beautiful place, however, the issues of growth, land use planning, economic development, providing jobs for current and new residents while maintaining its identity and sense of community are not unique. Many communities have gone through the same process, struggled with the same issues and adopted comprehensive plans that have resulted in the long-term growth with a with a vibrant economy all the while nurturing the attributes of the community that make it a desirable place to live. The DCP can help achieve these same results. There is much work yet to be done and we support the adoption of DCP and its implementation.

Sincerely,
David Susong and Kelly Milligan
Sharlene and Tom Milligan
2410 Falcon Creek Dr.
Driggs, ID 83422

From: Richard Grundler
Sent: Tuesday, August 07, 2012 9:06 AM
To: Angie Rutherford
Subject: Comp. Plan

I feel that the "plan" should be passed as is with NO further changes. Already there have been too many changes but we can live with what we have. Sadly, the vocal minority have been able to have some changes made that will return to bite them when and if things change. Listening to these people, it seems that they can't see the mess we are in and would go forward with more of the same. The rest of the country long ago learned the hard way that yes you can tell others what they can do with their property. All this does is level the playing field and everyone is playing the same game. It's not what the fear mongers would have you believe, that we are trying to take over. After all, we must play by the same rules. Lets hope we all have learned by the past mistakes.
Richard Grundler

Comp Plan comments for 8/23 hearing

County Commissioners:

Following is a summary of my objections to the Comp Plan draft. These concerns have all been raised before in one form or another but have not been addressed.

- The implied downzoning and clustering requirements of ensuing zoning ordinances will single out agricultural land owners for a severe financial burden to the gain of others. This may be a violation of the 5th and 14th Amendments to the US Constitution.
- Farmers and ranchers should not be indirectly forced by regulation to continue to farm or ranch. This is government repression.
- Wildlife management is neither the purview nor responsibility of County Government or non-profit groups, but of State and Federal regulators. This is an over-reach by County Government.
- Rationales for development of sustainable or smart growth communities are very weak or bogus and in many cases have produced unintended bad consequences - not good enough to guide public policy.
- Exclusionary zoning (downzoning) will cause the value of existing single family homes on relatively small plots to skyrocket because of future limited supply and will make future construction of detached single family dwelling units, limited to very large parcels, prohibitive thus exacerbating socioeconomic class distinctions. This is government-enforced segregation and may be discriminatory.
- Future residents should not be indirectly forced by government to live in high density city impact zones. This limits freedom of association and equal protection under the law and is akin to government-enforced segregation.
- Selective encouraging/discouraging of certain businesses is an inappropriate and authoritarian use of government power. It is anti-free market – Fascist.
- Some of the tactics used in the draft Comp Plan process to justify what appear to be pre-determined policies are disingenuous if not duplicitous. This is divisive.
- The implied zoning ordinances which must be in accordance with the draft Comp Plan are expected to be in violation of provisions of Chapters 6508, 8002 and 8003 of Title 67 of Idaho Statutes and "Idaho Regulatory Takings Act Guidelines."

Approval of this Comp Plan draft will sacrifice the freedoms and rights of all of us for the lifestyle choice of a subset group. Which is more important? Since the Comp Plan sets our direction for the next 20 years in Teton County, it needs to be done right. I believe it is not ready for approval. Please consider all ramifications and vote to disapprove this draft.

Caroline Reynolds
Driggs

From: Alene Breckenridge
Sent: Monday, August 13, 2012 8:04 AM
To: Angie Rutherford
Subject: comp plan

commissioners,

a couple comments. first the wildlife overlay is still in and the fish and game have said we need to have more of a plan on what to do with the big game animals and I have seen no such plan. I feel that it is not america that I live in when we can not build subdivisions because there are to many. I see it doesn't matter with places to eat for we have way more than fits the number of people that live here.

The third is the most important is we have turned all control of city impacts over to the cities which is a huge mistake. What they want there is quite dif. than what the county would like and know we will not have any say in what goes on in them. It does bother me that a distillery can be passed with more ease than a church or a cement place which building wise is not a lot dif.

Thank you, David Breckenridge

Honorable County Commissioners:
I regret that I will be unable to attend the Public Hearing on Aug. 23/24, and I am submitting these written comments instead.

The minutes from the Planning and Zoning Public Hearing (including deliberation) on July 10 and 11 show that the Planning and Zoning Commission gave careful attention and consideration to oral and written comments that were received from staff and the public. Knowing that the Planning Commissioners discussed their recommended changes in much detail and strove for consensus, I encourage you to pass the version of the new Comp Plan as it has been recommended to you for this hearing, other than any minor changes or corrections that you find to be necessary or appropriate upon final review.

I think this recommended Plan is as close as our community will get to consensus on a comprehensive plan and therefore can see no reason to delay its passage. The Plan has gone through a long process of community involvement, during which changes were made at each stage in an attempt to accommodate concerns from the public, while maintaining the vision and goals that had been established at the beginning of the process.

Please pass this Comprehensive Plan for 2012-2030 so Teton County can move forward with writing ordinances and taking other actions necessary to implement the Plan.

Sincerely,
Alice Stevenson
Victor

Comp Plan Comments 8_10_2012
I am Glen D. Nelson and am a landowner in Teton County Idaho.
I am writing about 3 things which I think you should consider as you adopt the new comp. plan.
I am concerned about the reduction in lots available. Especially the method of selection for lots deleted. The 75 percent reduction should not be adopted in this plan.
I am also concerned about any type of overlay that will select individual parcels of land over another individual parcel of land because of the discrimination between landowners. This leads to my third concern which is corridors such as the wildlife corridor are a thinly concealed attempt to place that particular resource ahead of the landowners developed resource that he has grown and propagated according to his wishes over the period of time his land control. It is a mistaken concept that puts newly invented use or value above the traditional value of sustainable agricultural production.
In summary, the comp plan is being forced ahead too fast for proper consideration of its many facets. I propose , in the very least that a delay of its acceptance until a review of its real sources can be evaluated.
Remember, a consensus of opinion only can be had if the emerging and heretofore silent majority is yet to be heard.
Thank you for your time and consideration in such an important document 9the comp plan)that will affect lives and property rights in the future.

Board of County Commissioners,
I hope to attend the public hearing on August 23rd but wanted to get my comments in writing for public record.
The process for developing the Comprehensive Plan has been arduous, inclusive, thoughtful, and time consuming. Our community leaders, the county staff, volunteers and most importantly the valley citizens are to be commended for caring deeply about this place and its future. One thing we can all agree on is that we have a passion for Teton Valley.
I believe that planning our future is the best way to ensure a positive outcome, and as such, I support the Comprehensive Plan as currently written. Everyone plans. Business owners must plan for future sales growth and staffing needs. Families plan for holidays, vacations, and school needs. Nonprofits plan for fundraising and programming. Planning is how we create structure, and meet expectations.
As it relates to planning for the valley's future growth, I have heard the assertion "the Market will take care of itself," implying that that the free market will absorb the surplus lots in the valley. However, I have a different view. I believe markets react favorably when there is predictability. Predictability requires a strong plan that provides transparency and clarity. Prospective developers and homeowners want to know that their investment is sound. They want to have confidence that the Valley citizens are looking ahead and being calculated about the future.
We need to expand our economic base with jobs that pay well and are consistent. A development environment with predictability is the first step in cementing our economic base. A solid plan will encourage development that protects the property values for everyone in the valley.
The wildlife overlay must remain a strong tool to guide development. The overlay is designed to protect the character of the valley. Again, it is the this special character that attracts new homeowners and developers.
I ask the BOCC to approve the Comp Plan as it is written. I believe the Plan was created in as fair a manner as possible. The resulting document represents the broad values of this community and meets the requirements of State Statute 67-6508.
Thank you for your consideration and attention,
Kim Keeley
Victor, Idaho

From: Verna Lerwill
Sent: Monday, August 13, 2012 4:06 PM
To: Angie Rutherford
Subject: changes to the comp plan

Again, I am amazed at the changes made to the comp plan for Teton Valley.
I am so against the reduced densities. The changing of densities-zoning is rezoning.
I am so against the destruction of the ability of families to enjoy, use, sell, develop, or appreciate their land.
I am so against open space requirements. 75% is a taking! It is unfair!
It is a gross mistake for anyone to try to manage such an empty acreage.
It is wrong for anyone but the property owner to have any say in what is to be done with those acres.
I am against the wildlife overlay.

Teton County is overstepping.

Verna Lerwill
Tetonia, Idaho

Valley Advocates for Responsible Development

August 13, 2012

Teton County Board of County Commissioners
150 Courthouse Drive
Driggs, Idaho 83422

RE: Letter of support for adoption of the new Comprehensive Plan.

Dear Commissioners:

Two and a half years of compromise and consensus building have gone into the draft Comprehensive Plan being considered tonight. Crafted through a rigorous public process, this Plan passed through Planning and Zoning with a 6-to-0 unanimous endorsement. On behalf of the VARD staff, Board of Directors, and over 500 local members, we also endorse the proposed plan in its entirety.

The old Comp Plan failed to guide us through a decade-long real estate gold rush, and instead left of us with the lingering baggage of one of the country's largest boom/bust cycles. The final product of the Teton Valley 2020 campaign is a greatly improved Plan built on lessons learned. It offers protection from speculative development schemes, encourages financial planning for the provision of quality public services, and responsible use of taxpayer dollars. Simply put, the new Plan promotes investment in the amenities that support quality of life in Teton Valley.

I've personally attended many of the gatherings and outreach events for the Comp Plan, including citizen committee meetings, public workshops, and P&Z work sessions. The amount of thoughtful review, well-informed debate, and compromise that came out of these sessions is truly amazing. The language in front of you has been developed, evaluated, and approved by an astonishing number of very thoughtful, committed citizens. I encourage the Board to adopt the document as presented, in its entirety as a product of community input.

That said, we do support *adding* language to the document if it provides clarity or reduces ambiguity for the public officials who are tasked with carrying out the implementation of the new Plan. If changes are necessary to define a clearer path of action, please act judiciously to enhance the final product, rather than diminishing the intent and vision of the document.

Best regards,

Stacey Frisk
Executive Director
Valley Advocates for Responsible Development

285 E Little Ave, PO Box 1164, Driggs, Idaho 83422
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August 13, 2012

VIA EMAIL

Teton County Board of County Commissioners
c/o Angie Rutherford
150 Courthouse Dr., Room 107
Driggs, ID 83422

Email: CompPlan@co.teton.id.us
commissioners@co.teton.id.us
arutherford@co.teton.id.us
pzadmin@co.teton.id.us

RE: Comments From the Teton County Group for Property Rights ("TCGPR") Regarding Comprehensive Plan for Teton County, Idaho (Public Hearing Review Version dated August 23 & 24, 2012).

Dear Board of County Commissioners:

Our firm represents a group of individuals concerned with the property rights of individuals located in Teton County (the "County"), who call themselves the Teton County Group for Property Rights, or "TCGPR". TCGPR consists of a number of large and small landowners in Teton County. Our understanding is that we are to submit comments to you regarding the *Comprehensive Plan—A Vision and Framework 2012-2030, Teton County, Idaho* (the "Comprehensive Plan"), and these comments will be considered prior to further action by the Board of County Commissioners ("BOCC"). We have sent this letter by email to the email addresses set forth above, which we obtained from the Teton County website.

TCGPR previously submitted comments to the Teton County Planning and Zoning Commission ("P&Z") prior to P&Z's consideration and ultimate recommendation of the Comprehensive Plan to you. Letters were sent from TCGPR on May 24th, July 2nd, and July 9th. As you know, P&Z solicited comments from the public, both written and verbal. P&Z made some changes to the version before them based on these comments, and the result was the Comprehensive Plan version labeled "Public Hearing Review August 23 & 24, 2012." The BOCC has now similarly requested public comments, and it is pursuant to this request that these comments are submitted.

Before discussing these provisions, it does not appear that proper legal notice has been provided for the August 23-24 hearings. The legal announcement for the public hearing simply states: "The proposed Comprehensive Plan will guide growth, development and investment in Teton County for the next 20 years." Idaho Code § 67-6509 provides that at least fifteen (15) days before the public hearing on the Comprehensive Plan before the BOCC, the same notice and hearing procedures outlined in subpart (a) of this statute to the P&Z meeting apply to the upcoming BOCC meeting. Idaho Code § 67-6509(b). One of the notice requirements is publication of "a summary of the plan to be discussed…" Idaho Code § 67-6509(a). While there are no guidelines of which we are aware as to what constitutes an acceptable "summary," a very general one-sentence summary of the plan, in our view, is insufficient. We believe it would be appropriate for the BOCC to delay the August 23-24 hearings and publish an actual summary of the Comprehensive Plan before engaging in the public hearing. Notice is a fundamental concept for governmental bodies to follow, and we are concerned that without a sufficient summary of what the Comprehensive Plan is, proper notice has not been provided to the community in violation of Idaho Code § 67-6509.

With specific regard to the substance of the Comprehensive Plan, TCGPR remains concerned with the inclusion of some of the provisions in the Comprehensive Plan. While these comments are similar to the past comments we have submitted to P&Z, we wish to again state our concern with these provisions.

As an initial matter, the Comprehensive Plan contains numerous references to the County's goal of protecting private property rights. For example, the Comprehensive Plan contains the following statement:

> Property rights are often compared to a bundle of sticks where each stick represents a different right. Sticks within the landowner's property rights bundle most often include the right to occupy, sell, lease, mortgage, donate, grant easements, use and exclude. Rights that could be held by the owner or separated from the bundle include mineral rights, air rights, water rights or development rights.[1]

Comprehensive Plan at 7; See also *id.* at 12 (similar statement regarding property rights).

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[1]A prior version of the draft Comprehensive Plan stated this principle in a slightly different way: "Property rights associated within private property have been compared to a bundle of sticks where each stick represents an individual right. Some of these represented rights within the "bundle" are mineral resources, air rights, the ability to sell, lease mortgage, donate, grant easements **and to subdivide**." It is unclear why reference to the right to subdivide was removed in the latest draft, but clearly the right to subdivide would be part of a property owner's bundle of rights.

The Comprehensive Plan goes on to state "[t]his Plan strives to provide a balance between private and public property rights." *Id.* at 7. Further, "[w]hile few want to subdivide their property at this time, many land owners want the right to be able to subdivide if and when they so choose to do so in the future. This guidance is there not to impinge on future development but to protect it." *Id.* at 10.[2]

Additionally, P&Z has recently added: "Land use policies, restrictions, conditions and fees shall not violate private property protections provided in the state and federal constitutions. Paramount to future land use policies, restrictions and conditions are sustainable design, limited off-site impacts and viability of future development. But land use policies, restrictions, conditions and fees should not create unnecessary technical limitations on property." *Id.* at 11.

While TCGPR appreciates these important acknowledgements of private property rights, based upon our review of the Comprehensive Plan, the language set forth in some of the provisions of the Comprehensive Plan continues to embrace principles that are out of balance and potentially improperly infringe on the private property rights of landowners. These concerns were raised with P&Z, but little was done to address them.

We recognize the vision contained in any comprehensive plan is eventually given real meaning when such vision is implemented through county ordinances, and the final version of those ordinances will ultimately determine whether or not private property rights have been infringed upon in an unlawful manner.[3] However, because zoning ordinances must be in accordance with the Comprehensive Plan (Idaho Code §§ 67-6511 and 67-6535(a)), we want to be on the record with our concerns regarding language in the Comprehensive Plan because of how this language may be interpreted in the preparation and adoption of amended zoning ordinances.

Therefore, as further explained below, we request the following:

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[2] Page 13 also provides that in the context of the five major content areas of the Comprehensive Plan, P4P decided that this should be done ". . . recognizing that property rights was an important part of all of these pieces and would be considered at all categories throughout the process."

[3] "This Court has held that a comprehensive plan does not operate as legally controlling zoning law, but rather serves to guide and advise the governmental agencies responsible for making zoning decisions. The Board may, therefore, refer to the comprehensive plan as a general guide in instances involving zoning decisions such as revising or adopting a zoning ordinance. A zoning ordinance, by contrast, reflects the permitted uses allowed for various parcels with the jurisdiction." *Urrutia v. Blaine County*, 134 Idaho 353, 357-58, 2 P.3d 738, 742-43 (2000); "A comprehensive plan is not a legally controlling zoning law, . . ." *Evans v. Teton County*, 139 Idaho 71, 76, 73 P.3d 84, 89 (2003).

1. Remove the following key action item described on page 55 of the Comprehensive Plan: "Create a more sustainable supply of future potential residential lots based on projected population growth."

2. The Comprehensive Plan should be revised to simply include "residential" in the desired future character land uses for Rural Agriculture, Mixed Agriculture/Wetland, Mixed Agricultural/Rural Neighborhood, and Foothills, and the other density descriptions contained therein (i.e., "very low density," "low density," "medium-low density," etc.) should be removed.

3. Provisions should be added to the Comprehensive Plan stating that wildlife are only to be regulated by the Idaho Department of Fish & Game, and not by Teton County and its wildlife overlay. This would support the eventual removal of the wildlife overlay from the County's current zoning ordinance. The Comprehensive Plan should adopt and encourage partnerships with landowners to mitigate impacts to wildlife in the development process, and not penalize landowners who did not develop their land in the 1990s and 2000s.

4. Additional time should be taken to review recently-submitted information from the Idaho Department of Fish and Game.

Removal of Key Action Item to "[c]reate a more sustainable supply of future potential residential lots based on projected population growth."

TCGPR offered a number of comments on a prior iteration of this key action item. Initially, it called for an action to "[r]educe the future potential supply of residential lots by 75%." *Comprehensive Plan* at 55. The prior iteration somehow crept its way into the Comprehensive Plan very late in this process, and our concern is that the amended language is simply a different way of saying what it previously said, which is the County intends to reduce future lots by 75%. In either case, even the current language represents bad policy and is contradictory to the Comprehensive Plan's stated goals of balancing the property rights of County residents with the zoning ability of the County. It will effectively eliminate future residential developments, and further depress the County's economy by removing the jobs associated with future developments, which is also contradictory to the County's stated goal of establishing a "vibrant, diverse, and stable economy." *Comprehensive Plan* at 18. The County should let the free market decide whether lots are marketable, and allow landowners the ability to develop new projects in more desirable locations.

In order to create a more sustainable supply of residential lots, the appropriate focus is to reduce the supply of non-viable lots. This action is already called for under the key action items

on page 55 of the Comprehensive Plan, which calls for the County to "[m]itigate the economic impact of non-viable subdivisions." Also, on Page 62 of the Comprehensive Plan, it calls for an action item to "[i]ncentivize vacation of non-viable subdivisions in or near migration corridors or sensitive habitats." We believe addressing non-viable subdivisions is a good thing because we have always felt that the ability to market and sell real state is obviously dependent on location, and the majority of existing distressed subdivisions, in our opinion, are located in less than ideal locations.

We recognize the real estate market is less than ideal at the current time. However, there is a logical disconnect to the extent the Comprehensive Plan assumes that because there is an oversupply of subdivided lots, there is no need for future subdivisions to aid in the economic development (and recovery) of Teton County. To find that subdivisions at other locations should not be approved because they will "saturate[] an already weak real estate market," or must be done with a lesser density because existing higher density subdivisions are not marketable, presumes that every location in Teton County is the same. Common sense dictates that this is clearly not the case, and the maps contained in the Comprehensive Plan delineating different virtues and values associated with property in Teton County belie this logic as well. Economic recovery can and will occur with the development of more desirable subdivisions located in better locations. We therefore hope the Comprehensive Plan does not go too far in its regulation and treatment of future subdivisions based upon current unmarketable lots of some of the existing and less-desirable subdivisions. Each development should be considered on its own merits, and the Comprehensive Plan should respect each landowner's right to produce something better.

We therefore request that the key action item discussed herein be removed from the Comprehensive Plan.

Removal of Vague Residential Density Terms

Chapter 5 of the Comprehensive Plan describes "The Framework Plan." This chapter described different land uses, and the desired characteristics of those land uses. A prior draft of the Comprehensive Plan described the differing land uses to include categorizes such as "Rural Agriculture," "Mixed Agriculture/Wetland," "Mixed Agriculture B," "Foothills," and "Waterway Corridors." The prior draft also provided that in each of these categorized areas, the desired future land uses included "estate residential."

There was no definition of "estate residential" in the prior draft. The term inferred that land with these classifications—which, on the Framework Map, included **all** of the land west of the Teton River—could only have "estate residential" development lots.

In a more recent version of the Comprehensive Plan, land classifications have been changed and the term "estate residential" has been removed from the preferred land uses. In its place, the revised draft contains statements such as "low-density residential, with provisions for clustering/conservation developments to protect natural resources or rural character," "[v]ery low density residential development, with provisions for clustering/conservation developments to protect natural resources," and "low, to medium where appropriate density residential."

None of these densities are defined or described in any detail. It is unclear whether they are more or less restrictive densities than estate residential. The Comprehensive Plan should remove these vague density terms. Land use regulations should be sufficiently explicit so that a reasonable landowner can understand what is required to comply with the regulations and plan his or her land use accordingly. Local regulations should use clear and concise language, and should define terms so that the reader is left with little doubt as to what is required or intended. The current Teton County zoning designations are A2.5 and A20. Are the new categories of density contained in the draft Comprehensive Plan A2.5 and A20? Or does the County intend to reduce or change these densities? Is A20 considered "very low" density? Or does "very low" density mean something else? Does the County intend to rezone the entire County if this Comprehensive Plan is adopted? These are the types of questions that all landowners will be asking. The lack of definition for these terms will lead to confusion because the density categories are patently vague and ambiguous.

Given the lack of definitions, the Comprehensive Plan should be revised to simply include "residential" in the desired future character land uses described in the Comprehensive Plan, and the other density descriptions contained therein (i.e., "very low density," "low density," "medium-low density," etc.) should be removed.

Wildlife Overlay

We remain concerned with the application of the County's adopted wildlife overlay, which TCGPR believes infringes upon landowners' property rights because regulation of wildlife is likely outside of a county's police powers to regulate property for the health, safety, and morals of its citizens. The actions of local governing boards must be reasonable, and cannot be arbitrary, capricious, or discriminatory, and must bear a substantial relationship to the public health, safety, morals, and general welfare of its citizens.

Land ownership, and the rights incidental thereto, are perhaps best summarized as follows:

> The right to own and enjoy private property is fundamental. It is one of the natural, inherent and inalienable rights of free men. It is not a gift of our

> Constitutions, because it existed before them. Our Constitutions embrace and proclaim it as an essential in our conception of freedom.

State vs. Thompson, 136 Idaho 322 at 323-324, 33P.3d 213, 214-215 (Ct. App. Idaho 2001).

While we agree with the inherent right to enjoy private property, we also recognize property ownership in a modern society does not allow for unfettered use of the property, and planning and zoning of property is permitted by city and county governments under the Local Land Use Planning Act, or "LLUPA." However, zoning ordinances can be invalided if they are deemed to be unreasonable. *Dry Creek Partners, LLC v. Ada County Comm'rs, ex rel. State*, 148 Idaho 11, 19, 217 P.3d 1282, 1290 (2009). In that context, "a zoning ordinance is only unreasonable when it is arbitrary, capricious, or discriminatory. Such circumstances exist when the ordinance bears 'no substantial relationship to the public health, safety, morals, and general welfare.'" *Id.* (internal citations omitted).

With specific respect to wildlife, regulation of this resource occurs through the Idaho Department of Fish and Game as described in Title 36 of the Idaho Code. The Idaho Supreme Court has stated, with regard to police powers conferred on cities and counties:

> [T]he Constitution of the State of Idaho grants to cities the right to make and enforce, within their limits, all local police regulations that are not in conflict with their charters or with the general laws. This general granted police power, however, is limited by the restriction that ordinances enacted under the authority conferred by this constitutional provision must not be unreasonable or arbitrary.

Ciszek vs. Kootenai County Board of Commissioners, 254 P.3d 24, 32 (2011).

The individuals comprising TCGPR are conservation-minded landholders, who care for and are concerned about wildlife. The concern of TCGPR is that the Comprehensive Plan and its associated wildlife overlay go too far and therefore diminish property rights. To the extent the Comprehensive Plan and its associated ordinances relating to the wildlife overlay remain, TCGPR maintains this could potentially expose Teton County to a regulatory takings claim or other legal action.

Wildlife overlays and their lawfulness, in and of themselves, have not been addressed by the Idaho Supreme Court. Prior comments from VARD to the P&Z cited to the Idaho case of *Cowan v. Fremont County*, 143 Idaho 501, and 148 P.3d 1247 (2006) in support of the use of wildlife overlays in Teton County. However, in *Cowan*, the overlay itself was not challenged, rather, the County's discretion of awarding a score of zero for wildlife habitat was challenged. See *Cowan*, 143 Idaho 519 ("Cowan argues that the score of zero for wildlife habitat was error."). The issue of whether or not a wildlife overlay is a proper exercise of the County's

power remains an open question because it was not challenged by the appellant in *Cowan*. We should note further that Fremont County's ordinance and Teton County's ordinance on this issue are different and are applied differently. In Fremont County, wildlife is one component of a development's overall score. Teton County's ordinance is much broader, and could prevent development on the wildlife issue alone.

TCGPR's concern with the wildlife overlay is perhaps best demonstrated with the comments from a newspaper article published by the Teton Valley News in September of 2009, which is attached at Exhibit 1. The article summarizes the advocacy of an Idaho Department of Fish and Game Wildlife Biologist, who determined that the habitat assessment relative to that development was "grossly incomplete." IDFG should not take a position either for or against a project, which was apparently done in the instance described in the article (prior to the adoption of IDFG's new policy, as described below) where IDFG felt that the developer should have performed studies on the wintering habitat of mule deer and sharp-tailed grouse. This is not technical information that advises the process, rather, it is commentary from IDFG on the work performed. Injecting these issues into zoning decisions only further diminishes property rights.

We do not dispute the fact that the County should plan for natural resources because it is one of the categories they are to plan for, but it is limited to an analysis of uses of these resources. *See* Idaho Code § 67-6508(f) ("An analysis of the uses of rivers and other water, forests, range, soils, harbors, fisheries, wildlife, minerals, thermal waters, beaches, water sheds, and shorelines."). This provision does not grant the County a blanket authorization to assume the role of wildlife managers.

At this point it is still not entirely clear what effect the Comprehensive Plan will have on the county's current policies and zoning designations, and whether the next step after adoption of the Comprehensive Plan is a wholesale rezone of the County. However, the purpose of these comments is to point out that the County's regulations, which include zoning, cannot unreasonably infringe upon a landowner's reasonable investment-backed expectations. For example, in *Florida Rock Industries, Inc. vs. United States*, 45 Fed.Cl. 21, 49, ERC 1292, (1999), the Court of Federal Claims discussed a compensable partial regulatory taking of property and that a partial taking occurs when a regulation singles out a few property owners to bear burdens, while benefits are spread widely across the community. The wildlife overlay allows the urban residents of Teton County to benefit at the expense of a rural few who happen to own property away from the cities of Driggs, Victor, and Tetonia.

As a practical matter, perhaps the County should consider whether or not the County's approach to protection of wildlife is inconsistent with the approach taken by federal and state agencies working to protect non-endangered wildlife. For example, attached at Exhibit 2 is a copy of an information flyer for the "Sage-Grouse Initiative in Idaho," which is overseen by the National Resource Conservation Service ("NRCS"). In this document, the NRCS identifies

habitat loss as one of the main threats to sage-grouse. In response to this problem, the NRCS has not attempted to infringe on property rights or stymie development, but instead has funded a program that seeks *voluntary* conservation—"[v]oluntary conservation can play a key role in protecting and restoring sage-grouse habitat."

For the benefit of all, the NRCS provides financial assistance to landowners who engage in certain conservation practices. This is the model that Teton County should adopt—a voluntary approach to wildlife conservation that balances the rights of property owners with those that live in Teton Valley and enjoy its wildlife. Current homeowners should not be entitled to enjoy open space and habitat protection entirely at the expense of those landowners who own open space and habitat and who may elect to subdivide their property in the future. Yet this is exactly what the County intends to do. The most recent version of the Comprehensive Plan states expressly that with different land types the overlays should be used to limit development. For example, under the Foothills designation, it states: "Development regulated by overlays and development guidelines to protect natural resources."

The Comprehensive Plan should adopt and encourage private partnerships with landowners to mitigate impacts to wildlife in the development process.[4] Otherwise, by limiting development in this manner, the County will remove the incentive for County landholders to enter into conservation easement agreements with entities such as the Teton Regional Land Trust ("TRLT"). The Comprehensive Plan expressly supports "the preservation of open space, farmland, natural beauty, and critical environmental areas," *Comprehensive Plan* at 46, as well as acknowledging that there are voluntary options to preserve such lands on page 71 of the Comprehensive Plan through conservation easements, purchase or donation of development rights, and open space purchases. A recently-added key action item states that work should be done with "accredited land trusts to identify and negotiate development rights purchase and/or conservation easements." *Id.* at 67.

These goals of encouraging purchase of conservation easements and working voluntarily to preserve open space are contrary to the provisions of the Comprehensive Plan which seek to strengthen the wildlife overlay by presumably incorporating more regulation and further restriction at the County level. This will penalize responsible landowners who were wise enough not to sell or develop their land during the real estate boom period.

It should be noted that there are no laws or County ordinances of which we are aware that require a landowner to maintain wildlife habitat. A landowner could plow up his or her grassland, or clear timber from the property, to farm the property. A landowner could also fence off his or her property to keep wildlife out. Why, then, can the County expect to regulate

[4] This is mentioned on page 46 of the Comprehensive Plan, which lists as a goal a desire to develop means to compensate private property owners for large parcels of open space. However, greater emphasis should be placed on this goal throughout the Comprehensive Plan, and should replace discussion of the wildlife overlay.

development in wildlife areas when the wildlife could be excluded by the landowner in the first place? The point is that if the County regulates property to the point that a landowner views wildlife as a liability to their property interests, the actions of the County could very well become counterproductive and detrimental to wildlife. Because wildlife do not recognize political boundaries, it makes logical sense that they should be regulated, studied, and managed consistently throughout the entire State by the agency that has been statutorily mandated to manage our wildlife—the Idaho Department of Fish and Game—and not individual counties. For example, agents of IDFG have the ability to arrest those that harm wildlife or violate Idaho's wildlife laws. Counties do not. Teton County therefore has an opportunity to amend its Comprehensive Plan to include policies that are well within its police powers, and not on the fringes of those powers, by overlapping regulation on an issue entirely with an existing agency of the State of Idaho.

The Comprehensive Plan should turn away from the overlay approach because it is unpredictable and disorderly. Land use regulations should be sufficiently explicit so that a reasonable landowner can understand what is required to comply with the regulations and plan his or her land use accordingly. Local regulations should use clear and concise language, and should define terms so that the reader is left with little doubt as to what is required or intended. For example, the current zoning ordinances that address the wildlife overlay suggest that County officials will look for "indicator species" or "indicator habitat." Yet, there are no definitions or maps that show where these indicator items may be found, or what they are. These terms are vague and ambiguous, and are neither orderly nor predictable. The County has effectively delved into an area best left to the oversight of State and federal officials.

To be clear, TCGPR is not opposed to measures that may be *suggested* by the Idaho Department of Fish and Game to minimize impacts from development on fish and wildlife. For example, a suggestion that wildlife-friendly fencing be used within a subdivision is an appropriate suggestion. But these suggestions should come from IDFG, and certainly the County could solicit their comments on how impacts to a project could be mitigated. This principle is consistent with recently adopted IDFG policy. Pursuant to this policy, all formal, public comments submitted by IDFG to any public or private decision-making authority have to be prefaced with the following language:

> The purpose of these comments is to assist the decision making authority by providing the technical information addressing potential effects on wildlife and wildlife habitat and how any adverse effects might be mitigated. It is not the purpose of the Idaho Department of Fish and Game to support or oppose this proposal.

The key portion of this statement is that IDFG's policy mandates that they provide technical analysis of what impacts may be associated with a particular action, and how those

actions could be mitigated. IDFG's comments should be strictly technical, not adversarial to landowners or developers in general.

If the County wants to conserve and encourage the preservation of agriculture and habitat, there must be an economic incentive for the landowner to participate. By reducing development density, which the Comprehensive Plan clearly now attempts to do under its land use description and wildlife overlay provisions, the value of the baseline appraisal necessary for a conservation easement decreases, and the process is no longer economically viable. In a no-win situation for farmers—who have historically struggled to make farming work in the County, as acknowledged by the Comprehensive Plan[5]—not only are they supposed to continue to make agriculture work in an area with a short growing season and increased fertilizer and fuel costs, but the expectation now is to have them do it without the possibility of a conservation easement to fund that work into the future. The more wealthy urban citizens benefit, at no cost to them, while the farming and ranching citizens continue to struggle on. This does not promote a sense of community.

As we have explained before, the County should move away from a top-down regulation scheme to protect open space and habitat, and opt for a bottom-up voluntary process to protect these lands. This is what the NRCS and TRLT have done, and they have been effective in doing so. A voluntary approach to wildlife conservation balances the rights of property owners with those that live in Teton Valley and enjoy its wildlife and open spaces. Current homeowners should not be entitled to enjoy open space and habitat protection entirely at the expense of those landowners who own open space and habitat and who may elect to subdivide their property in the future.

In short, the most recent version of the Comprehensive Plan states expressly that with different land types the overlays should be used to limit development. This language should be removed. In its place, the Comprehensive Plan should adopt and encourage private partnerships with landowners to mitigate impacts to wildlife in the development process.[6]

We further request that provisions are added to the Comprehensive Plan stating that wildlife are only to be regulated by the Idaho Department of Fish & Game, and not by Teton County and its wildlife overlay. The Comprehensive Plan should adopt and encourage partnerships with landowners to mitigate impacts to wildlife in the development process. In the alternative, we request that statements in the Comprehensive Plan which support "strengthening"

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[5] "Teton County has traditionally relied on agriculture as its economic base, although this was never an easy way to make a living. At an elevation of over 6,000 feet, the area has a very short growing season and crops are currently limited to barely, seed potatoes, and several forms of grains." *Comprehensive Plan* at 53.

[6] This is mentioned in the Comprehensive Plan, which lists as a goal a desire to develop means to compensate private property owners for large parcels of open space. However, greater emphasis should be placed on this goal throughout the Comprehensive Plan, and should replace discussion of the wildlife overlay.

the wildlife overlay are removed. If anything, the wildlife overlay should be limited from its current application.

Adoption of the Comprehensive Plan should be delayed for six (6) months to review and comment on the Idaho Department of Fish and Game publication *A Summary of Key Fish and Wildlife Resources of Low Elevation Lands in Teton County, Idaho.*

Only since this past June has the IDFG document entitled *A Summary of Key Fish and Wildlife Resources of Low Elevation Lands in Teton County, Idaho* been made available for review. We cannot find any reference to this document in the Comprehensive Plan itself, and it is unclear what this document's relevance is to the Comprehensive Plan. Whatever it is, this is obviously a document that will support the County's actions, and no time has been allotted to review and comment on it. A time period of an additional six (6) months would be appropriate to review it and provide technical comments to IDFG.

We appreciate your consideration of the above comments, and the associated attached documents. In summary, we request the following:

1. Remove the following key action item described on page 55 of the Comprehensive Plan: "Create a more sustainable supply of future potential residential lots based on projected population growth."

2. The Comprehensive Plan should be revised to simply include "residential" in the desired future character land uses for Rural Agriculture, Mixed Agriculture/Wetland, Mixed Agricultural/Rural Neighborhood, and Foothills, and the other density descriptions contained therein (i.e., "very low density," "low density," "medium-low density," etc.) should be removed.

3. Provisions should be added to the Comprehensive Plan stating that wildlife are only to be regulated by the Idaho Department of Fish & Game, and not by Teton County and its wildlife overlay. This would support the eventual removal of the wildlife overlay from the County's current zoning ordinance. The Comprehensive Plan should adopt and encourage partnerships with landowners to mitigate impacts to wildlife in the development process, and not penalize landowners who did not develop their land in the 1990s and 2000s.

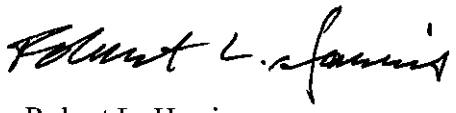
4. Additional time should be taken to review recently-submitted information from the Idaho Department of Fish and Game.

As we have explained above, we presume the real impact of the Comprehensive Plan will be delineated with the promulgation of zoning ordinances associated with it, which is why we

believe the comments we are providing must be taken into account now. Please do not forget about the property rights that landowners have.

Should you have any questions regarding these comments, you can contact me at 523-0620.

Best Regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

Enclosures

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P&Z tackles wildlife
September 09, 2009
By Hope Strong

New ordinance has county considering initial precedent

One of the largest proposed developments on the north end of Teton County came back to the county Planning and Zoning Commission with a fraction of units and challenging a newly adopted wildlife ordinance that may need further rehashing.

J Lazy H was the original development on the bench west of Felt that consisted of 5,432 acres with 842 units. Jeff Russell, who represented Hoopes Green LLC in the project, has attempted to keep the project alive through a new proposal, Canyon Farms. Canyon Farms, however, created a stir Tuesday evening as debate ensued over its location in and around Teton County's Wildlife Overlay.

"We didn't predict the market very well the first time around," Russell told the P&Z Commission Tuesday night regarding J Lazy H. "It's hard to say what's coming next."

Representing investors, Jeff Klausmann, one of the architects of the Wildlife Overlay Map, spoke on behalf of Canyon Farms, a 15-lot subdivision on 348 acres located directly north of the fi rst phase of the River Rim subdivision. The developer sought preliminary approval for a standard subdivision on ground zoned A-20, but the P&Z Commission continued the matter after struggling to interpret its Wildlife Overlay.

Rob Cavallaro, Wildlife Biologist for Idaho Fish and Game and another who helped draft the Wildlife Map, was adamant that the county acknowledge the spirit of the Wildlife Overlay, suggesting that the decision with Canyon Farms could likely set a precedent for future interpretation of the ordinance.

"Our goal is not to stop or slow down this project," Cavallaro said. "We are concerned with the bigger picture.

Interpretation here is paramount. We can all agree that Hoopes Green has done a lot of good work, but the question is not whether this is a good subdivision. If this doesn't meet the criteria, I don't know what will."

The criteria Cavallaro referred to was the point in question for the P&Z Commission and ultimately for this and any other developer attempting to navigate wildlife considerations in the future. Codicils in the Wildlife Overlay that took the burden of further analysis off a developer include language suggesting that land previously disturbed would fall into a different category. Whether or not traditional farm ground was considered "disturbed" was ambiguous. Likewise, clarification seemed necessary as to the scope of the Wildlife Overlay. The P&Z Commission struggled with the question of whether or not land "immediately adjacent" needed to be taken into consideration.

Russell had written in favor of the Wildlife Overlay on June 11, 2008 during a P&Z hearing with regard to the county's proposed PUD ordinance.

"Why will people buy lots in my project? Why will they come to Teton County? Why will they come here and not elsewhere?"

Russell's letter asked. "For him," Matt Landis answered, "The one thing that sets Teton Valley apart

from other small mountain towns in the west is the wealth of wildlife found in here, and urged the P&Z to continue with their efforts to protect this aspect of the valley."

"It seems these guys are bending over backwards," P&Z Commissioner Kent Wagener said on Tuesday night. "They're going out of their way to make a good subdivision."

"It doesn't matter if it's a good subdivision or a bad subdivision," P&Z Commissioner Jeff Carter responded. "The standard is the ordinance."

While Russell told the Commission that he has tried diligently to follow the county's ordinance with regard to wildlife, Cavallaro held fast to the belief that the habitat assessment done on the property by Intermountain Aquatics while accurate, was grossly incomplete by not considering critical transitional wintering habitat of mule deer and sharp-tail grouse in the canyon of the Teton River located in proximity to the proposed development.

"The assessment is incomplete because it doesn't consider indirect impact," Cavallaro said with regard to language in the Wildlife Overlay suggesting the need to identify indicator species and indicator habitat on property surrounding a development.

As the rubber hit the road with Teton County's new ordinance, P&Z Commissioners were concerned that a wildlife habitat assessment needed to be further fleshed out with a more extensive natural resource analysis on areas surrounding the proposed Canyon Farms Subdivision. To that end, the P&Z Commission voted to continue the matter in order that the developer work with Idaho Fish and Game to conduct a further review of the wildlife on the bench. Commissioner Wagener voted against the continuance with the belief that the developer had fully complied with the county's new ordinance.

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NRCS NATURAL RESOURCES CONSERVATION SERVICE

Sage-Grouse Initiative in Idaho

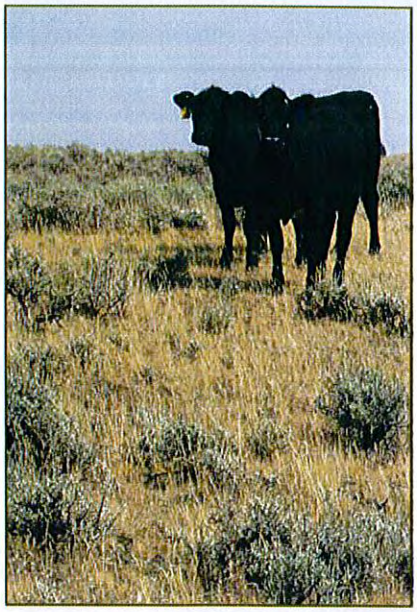
NRCS developed the Sage-grouse Initiative to help private landowners conserve sage-grouse populations and habitat on their lands.

The greater sage-grouse (*Centrocercus urophasianus*) is a large ground-dwelling bird that depends on large tracts of sagebrush grasslands. Habitat loss is one of the main threats to this species and has contributed to its decline. However, voluntary conservation can play a key role in protecting and restoring sage-grouse habitat.

Focusing on Manageable Threats

Using the Idaho Department of Fish and Game's 2006 *Conservation Plan for the Greater Sage-grouse in Idaho*, NRCS identified 10 threats to sage-grouse that private landowners could eliminate or reduce on their land. These include threats to birds, such as collisions with fences, escape from watering troughs and predation; and threats to sage-grouse habitat, like juniper encroachment, noxious weed spread, inadequate nesting cover, drained natural moist areas, or range health and condition.

NRCS technical and financial assistance available for implementing specific practices



The threats were matched with 23 specific range-related conservation practices. NRCS offers financial assistance through the Environmental Quality Incentives Program and the Wildlife Habitat Incentive Program to implement those conservation practices.

The following examples are conservation practices for which landowners may receive a financial incentive under the Sage-grouse Initiative:

- Removing fences or obstructions to assist bird movement
- Marking fence wires to increase visibility
- Applying management strategies that treat invasive species
- Restoring altered hydrology in spring or moist areas
- Planting native shrubs
- Implementing grazing strategies that improve range health, condition and increase cover for nesting

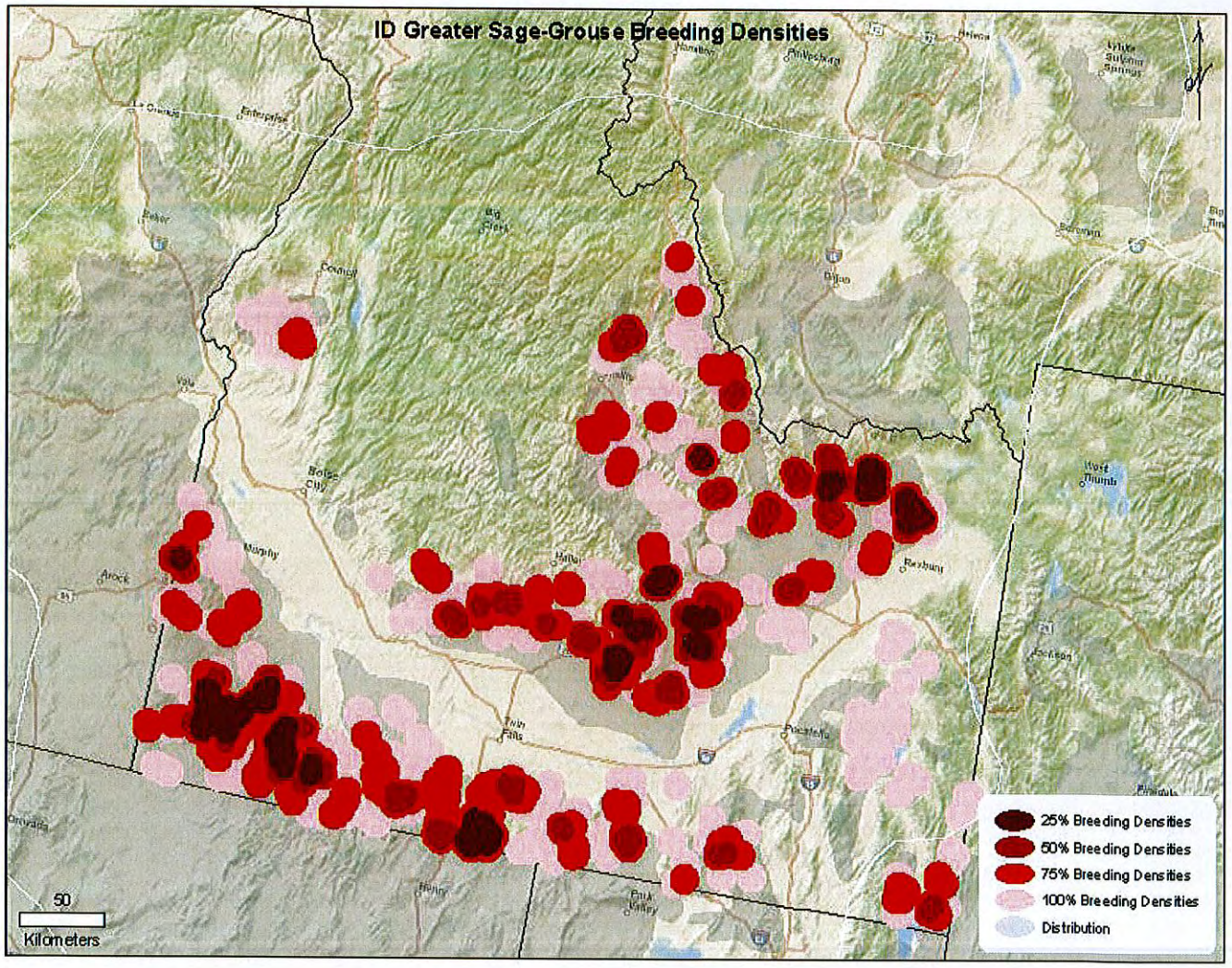
For the complete list of the conservation practices and the threats they address, visit the Idaho NRCS Web site at www.id.nrcs.programs.sagegrouse.gov/

A landowner owner does not have to treat all threats identified on his property, but the more threats that are addressed through the conservation practices, the higher their application will rank.

EXHIBIT 2

Idaho sage-grouse habitat priorities areas for NRCS ranking

Priority 1 - Areas within a 25% Breeding Density Area (contains 25% of breeding sage-grouse population)
Priority 2 - Areas within a 50% Breeding Density Area (contains 50% of breeding sage-grouse population)
Priority 3 - Areas within a 75% Breeding Density Area (contains 75% of breeding sage-grouse population)
Priority 4 - Areas within a 100% Breeding Density Area (contains 100% of breeding sage-grouse population)



For more information, visit the Idaho NRCS Web site at http://www.id.nrcs.usda.gov/programs/sage_grouse/index.html. Or, visit the NRCS office near you.

NRCS Idaho State Office, 9173 W. Barnes Drive, Suite C, Boise, ID 83709; 208-378-5700

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Updated Jan 2011

The following pages contain the Comments that were received after the August 13, 2012 - 5:00pm deadline.

These comments will be given to the Board the evening of the 23rd at the hearing.

From: Kitchener Head
Sent: Tuesday, August 14, 2012 10:24 AM
To: Angie Rutherford
Subject: opposition to the Comp Plan

We are opposed to the approval of the present Comprehensive Plan, it is a flawed plan for several reasons. First, as it's effect would be to confiscate private property for public use and "the public good", it is in contravention of the Constitution and Idaho State property laws. It would confiscate private property by forcing property owners to allow their land be accessed by the general public, and would also permanently devalue choice property by mandating it's use as only "agricultural" in perpetuity. This latter is not a matter of "a few dollars" as has been suggested, but a matter of hundreds of thousands and in some cases millions of dollars, and would permanently dictate how such land could be sold.

The plan also would dictate future land and lot sales in our county. In a recent public meeting David Henzel, Chairman of the P&Z committee. stated that he is opposed to the private investor, who comes early, and so has an advantage over the less motivated individual who wanders in after the ground work has been done and the way mapped out. He said his intention is "to make it fair for all," so that all developers would be on the same footing. This means that all would be held back to the level of the least talented or ambitious investor. This is antidevelopment and antigrowth and the effect would be to stall, permanently, Teton County's economic recovery.

This plan is also in compliance with the United Nation's Agenda 21. If you do not believe this then you must become familiar with the plan as outlined by the UN. It is the United Nations sole intent to take over the economy of this nation. The derision of our local Socialist/Progressives, for those of us who understand this, is a common tactic that often works to silence opposition. With the implementation of this plan and similar plans, nation wide, all property would become fair game for confiscation: homes, automobiles, bank accounts, savings plans, retirement accounts, rent money and the dollars in our wallets. There are well displayed examples of that very thing world wide, today.

Finally, in the last weeks of the writing of this plan, huge changes have been made. It is imperative that we have more time to study the ramification of these new elements. We oppose the plan in its entirety and ask you to forgo your endorsement to allow further study.

Kitchener and Sonja Head