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January 6, 2025

Board of Teton County Commissioners  
c/o Kim Keely, County Clerk  
150 Courthouse Drive  
Driggs Idaho 83422

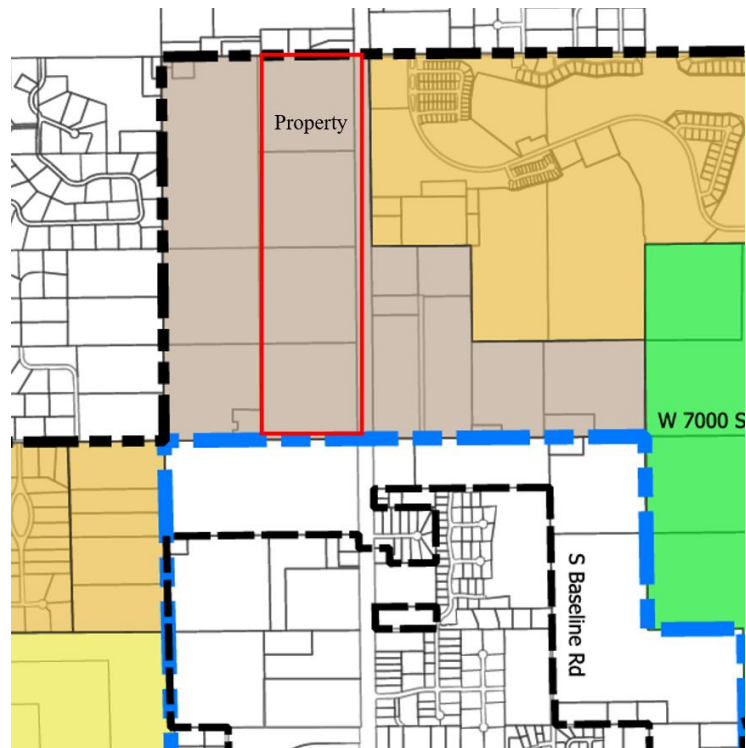
Via email to: [commissioners@tetoncountyidaho.gov](mailto:commissioners@tetoncountyidaho.gov)  
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RE: Request for Reconsideration - Area of City Impact of Victor Update and Rezone

Dear Teton County Commissioners:

Givens Pursley LLP represents Victor Outpost LLC (“**Outpost**”), and we respectfully request the Commissioners reconsider its approval of the amended Victor Area of Impact (“**AOI**”) and associated property rezone. The request is made pursuant to Idaho Code § 67-6535 and Teton County Land Development Code (“**LDC**”) 4-15. The specific decision for which Outpost seeks reconsideration is the County’s written decision issued on December 23, 2024 regarding the AOI boundary change and the rezone of Teton County parcel nos. RP04N45E356749, RP04N45E355250, RP04N45E354650, RP04N45E352850 (collectively, the “**Property**”) from AOI-2.5 to RR-20 (the “**Decision**”). A copy of the Decision is attached hereto as Exhibit A.<sup>1</sup>

This request asks the Teton County Board of County Commissioners (“**BOCC**”) to reconsider its Decision and zone the Property RN-5. Reconsideration is proper because the Decision does not meet the statutory requirements for a written decision, making it difficult to determine what criteria the BOCC relied upon in rezoning the Property. Additionally, the Property does not meet the County’s rezone criteria to be zoned RR-20, and should be zoned RN-5.



<sup>1</sup> A signed copy of the Decision was not available at the time of the submittal of this Request for Reconsideration.

## **I. Background**

As depicted above, the Property consists of four 40-acre parcels which were previously located with the Victor Area of Impact (AOI), and zoned AOI-2.5 (Area of Impact, Zone 1). Pursuant to the Decision and associated ordinance, the Property has been removed from the Victor AOI and rezoned to RR-20. Outpost objects to the rezone of its Property.

The City of Victor (“**City**”) and Teton County (the “**County**”) held several meetings to discuss the various amendments to Victor AOI and to rezone certain land. At the culmination of these meetings, the BOCC adopted the updated Victor AOI boundaries and rezoned certain land, including the Property.

## **II. Reconsideration is proper because the Decision fails to meet statutory requirements, and upon proper application of the statutory criteria, the Property should be zoned RN-5.**

Reconsideration is warranted because the Decision does not contain the reasoning of the BOCC as required by statute and, upon proper application of the correct criteria, improperly rezones the Property to RR-20.

### **a. The Property should be zoned RN-5 in conformance with the surrounding areas and the Teton Comprehensive Plan.**

Section 4-4 of the LDC provides the standards and criteria applicable to large-scale revision of the official zoning map. It requires an application, notice<sup>2</sup>, public hearing, and written findings. While the criteria related to a large-scale revision of the official zoning map are not set forth in the LDC, those criteria are included within I.C. § 67-6511(2)(b), which requires consideration of the comprehensive plan and other evidence gathered through the public hearing process. Similarly, Section 4-5 of the LDC includes the criteria for site-specific zoning map amendments. Criteria include, among other things, that the rezone not conflict with the comprehensive plan, that the amendment substantially conform to the stated purpose and intent of the LDC, and that there is a lack of a demonstrable adverse impact on properties in the vicinity of the subject property.

In making zoning determinations, both state law and the LDC require general conformance with the comprehensive plan. Nothing has changed in the comprehensive plan – it has not been amended. No findings have been made showing that the prior AOI-2.5 zoning (nor the Applicant’s proposed RN-5 zoning) did not comply with the comprehensive plan or that the new zoning designation is more in compliance with the comprehensive plan.

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<sup>2</sup> Applicant also maintains that notice was deficient because Applicant failed to receive notice as required by law for the prior public hearings before the City and County, and only received proper notice of the final hearing on December 16.



the direct vicinity to the north, south, east and west. The land surrounding this newly zoned area to the north, east and west are all zoned RN-5. Zoning the Property RN-5 is entirely consistent with the development of the surrounding area.

As discussed above, a rezone of land must meet certain statutory criteria. However, the discussion by the Commissioners indicated that the rezone was not based on applicable statutory criteria but rather on the Commissioner's own thoughts and feelings about the rezone. For example, at the hearing on December 16, Commissioner Riegel stated that since the Applicant had no current plans for development of the Property, he could just come back in the future and get it rezoned again for a particular project. This is not a legal basis to rezone the Property to RR-20.

Reconsideration is warranted because the BOCC failed to apply the appropriate criteria to the facts.

**b. The Decision lacks the reasoned statement required by State law prior to rezoning the Property.**

A large-scale revision to the official zoning map requires a written decision under both the LDC and State law. In issuing its Decision, the BOCC did not address the applicable criteria for approval as required by Idaho Code § 67-6535.<sup>6</sup> The Decision is devoid any reasoning, facts relied upon by the BOCC or the application of the requirements and criteria. Rather, the Decision includes a section on the procedural background, an outline of the hearing dates and meetings held the City of Victor and Teton County, the motion that was made at the hearing on December 16, and a conclusion. There is no discussion of any facts, statutory requirements or criteria, or the application of those facts to statutory criteria.

It is unclear what reasoning, if any, resulted in the significant downzone of the Property. The Decision lacks any discussion or analysis of the criteria used to support the rezone and how those criteria were met or the facts relied upon on making the zoning amendment. This is legally insufficient, and reconsideration is warranted on this basis alone.

**c. The Decision does not separate the findings required for each of the three separate actions it purports to take.**

Further, the Decision purports to (i) amend the Victor AOI boundaries, (ii) rezone the Property and surrounding lands, and (iii) adopt a new land development code. Although it may be possible (albeit difficult) to include each of these three topics within one decision, each of these approvals requires specific findings. None of the specific findings associated with each approval is included with the Decision. Not only is it incumbent that these findings be included within the Decision, it must be clear which findings are associated with each approval. The failure of the Decision to properly address the applicable criteria makes the decision invalid under Idaho law and leaves doubt about the efficacy of the action taken by the BOCC.

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<sup>6</sup> Idaho Code § 67-6535(2)(b) ("The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.").

### III. Conclusion.

For the reasons outlined above, we respectfully request the BOCC reconsider this matter, zone the Property RN-5, and issue a Decision that comports with Idaho law.

Sincerely,



Elizabeth A. Koeckeritz

cc. Torin Bjorklund, [tborklund@tetoncountyidaho.gov](mailto:tborklund@tetoncountyidaho.gov)  
Jade Krueger, [jkrueger@tetoncountyidaho.gov](mailto:jkrueger@tetoncountyidaho.gov)  
Bailey Smith, [baileysmith@tetoncountyidaho.gov](mailto:baileysmith@tetoncountyidaho.gov)

# EXHIBIT A – Written Decision: Area of City Impact of Victor Update



**TETON COUNTY, IDAHO | Board of County Commissioners**

## Written Decision: Area of City Impact of Victor Update

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### Overview

This is a written decision on the findings for the Area of Impact (AOI) update with the City of Victor. This update will be presented as an ordinance, amending the previous ordinance Title 7-3 of Teton County Code and Title 2 of Teton County, which references the composition of the planning and zoning commission.

- APPLICATION DATE: The City of Victor initiated the update of the Area of Impact with Teton County in April of 2021.
- PURPOSE OF APPLICATION: To update the Area of Impact of the City of Victor including the zone districts, lands being removed from the AOI and subsequent zone districts, the AOI Land Development Code, and plans to be implemented within the AOI

### Applicable Standards and Current Ordinances

- Idaho Statute 67-6526; Title 7 of Teton County Code

### Procedural Background

The AOI of Victor was last updated in 2011 via Ordinance 2011-1117 of Teton County. The current update has been ongoing since April of 2021, when the City of Victor initiated the renegotiation of the AOI with Teton County via letter.

The updated Area of Impact legislation specifies County control of the Area of Impact and requires reference to the County's adopted Comprehensive Plan in those lands. It also specifies that the AOI boundary include only anticipated commercial and residential growth, geographic factors for inclusion, areas where municipal or public sewer and water are expected to be provided within five (5) years, transportation infrastructure and systems, and that the AOI boundary does not extend more than two (2) miles from the existing City limits.

### PROCESS

The following is a brief overview of the AOI process with the City of Victor:

- Renegotiation initiation: City of Victor sent a letter to Teton County in April 2021.
- City and County Staff began meeting to discuss the AOI in December 2021 and met consistently throughout the process.
- Victor Planning and Zoning Commission work sessions: 11/30/2023, 01/18/2024, 5/9/2024
- Victor City Council work sessions: 5/22/2024, 8/14/2024
- Teton County Planning and Zoning Commission work sessions: 5/14/2024, 7/9/2024
- Teton County Board of County Commissioners work sessions: 6/10/2024, 8/12/2024

**ADOPTION**

*Planning and Zoning Commission Public Hearing for the Zone Change*

On September 10, 2024, the County PZC reviewed the application for a zone change associated with the Area of Impact of Victor. The PZC made the following recommendation to the BoCC:

**MOVER:** Carl Kohut

**SECONDER:** James Weber

Finding the criteria in LDC 4-4-F have been met, I move to recommend approval of the Victor Area of Impact Zone change for parcels being removed from the Victor AOI as presented in the staff report and request the BoCC reevaluate the AOI in consideration of following:

1. New AOI boundaries for properties either abutting high density or currently on city utilities;
2. Foothills zoning may or may not apply to lots on the valley floor;
3. RA-35 zoning apply to lots surrounding by 2.5 and 5 acre parcels
4. Public comments shared during 9/10 P&Z meeting and any additional public comment.

AYES        Tim Watters, Wade Kaufman, Carl Kohut, James Weber, and Wyatt  
 (5)         Penfold

**Adopted (5 to 0)**

**Board of County Commissioners Public Hearing**

NOTICE: The application was noticed in Teton Valley News on October 9 and October 16, 2024. Site postings were made at 8 locations at the exterior of the Victor AOI. Letters to affected property owners were mailed on October 1, 2024.

HEARING DATE: October 28, 2024 – continued to November 18, 2024

Board Members Present: Cindy Riegel, Michael Whitfield, and Bob Heneage.

Staff Present: Kim Kolner (City of Victor) and Jade Krueger, Teton County – Interim Planning Administrator

The public hearing opened at 3:02 PM. Public hearing closed at 3:42 PM. Seven members of the public spoke. The BoCC moved to continue the AOI update and zone change to November 18, 2024.

**MOVER:** Cindy Riegel

**SECONDER:** Bob Heneage

Continue the deliberation and decision on the Public Hearing for the Victor AOI to November 18 at 9 AM.

AYES (3)    Bob Heneage, Cindy Riegel, and Michael Whitfield

**Adopted (3 to 0)**

At the continued hearing on November 18, 2024, the BoCC continued their deliberation. During deliberation, the BoCC considered public comment received and the AOI boundary and proposed zone districts, with general direction to further shrink the AOI. The BoCC also requested amendments to the AOI Land Development Code, including a review of the use-

chart, and design standards for subdivision roads. The BoCC determined that given the proposed material changes, the AOI update and zone change should be re-noticed fully.

HEARING DATE: December 16, 2024

NOTICE: The application was noticed in Teton Valley News on November 27 and December 4, 2024. Notices to affected property owners were mailed on November 25, 2024. Site postings were made at 8 locations around the exterior of the Victor AOI on December 2, 2024.

Board Members Present: Cindy Riegel, Michael Whitfield, and Bob Heneage.

Staff Present: Kim Kolner (City of Victor) and Jade Krueger, Teton County – Interim Planning Administrator

The public hearing opened at 11:20AM AM. Public hearing closed at 11:44 AM. Six members of the public spoke. The BoCC reviewed the amended materials.

**MOTION:**

I move to approve the Area of Impact Update for the City of Victor as processed under Idaho Code 65-6726 in accordance with Teton County's Land Development Code Chapter 4-4 and the 2012 Teton County Comprehensive Plan as presented in the staff report with the following change - the include properties north of 9500 S. and south of Old Jackson to be designated AOI-2.5 up to the city limits.

This includes approval of the amended AOI boundary, the amended AOI zoning, the County zoning for parcels now removed from the AOI, and the AOI Land Development Code as presented in the staff report for the public hearing dated 12/16/24 - with only exception being the of the above mentioned change to the AOI boundary.

Motion approved unanimously.

**Conclusions**

Having given due consideration to the materials presented, the Teton County Board of County Commissioners hereby makes the following conclusions:

*In order to ensure compliance with State Statute 67-6526, Teton County hereby amends the Area of Impact Boundary for the City of Victor, zone districts within the Area of Impact, zone districts for parcels now removed from the Area of Impact, the City of Victor Land Development Code, and plans to be implemented in the Area of Impact.*

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Cindy Riegel  
Chair of Teton County Board of County Commissioners

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Date