

January 19, 2024

Dear Commissioners,

Please review before your meeting on January 31, 2024.

As you begin your elected office, you will be tasked with representing both Owners and Developers. Both the Land Owner and the Developer, is to present documents in "**Good Faith**".

However, you will run into a developer who is more interested into turning a profit, instead of being entirely truthful when presenting documents. It seems that the documents presented by Eustachy/Wysong Ranch, violate Teton County Idaho, provision of Title 9 Code, (Page 52 Title 9 revised 05-16-2013) which states, '**Revocation**' by Board of County Commissioners may revoke a subdivision upon "**Misrepresentation or Material Omissions made to the Board of County Commissioners (amd. 9-17-09)**".

The following documents are presented, so you can determine for yourself if they are 'Misleading' and not completely truthful:

1. Preliminary Plat Review, (page 8). Nutrient Pathogen Study prepared on 5-1-2024. The study Eustachy/Wysong submitted was based on 10 lots with one, 4 bedroom home on each lot.

However, Eustachy/Wysong report 'materially omitted' in the study they submitted, the 2nd guest home allowed to be built on each lot. This E/W report was reviewed by Teton County's Technical consultant's Harmony Design & Engineering. On 8-14-24, Harmony Design & Engineering, had the following findings: **Level 1 spreadsheet Hydraulic Conductivity "is outside of the corresponding reference range"**. The analysis should increase the number of homes in the analysis accordingly. Therefore, Harmony Design and Engineering stated their **conclusion of the Nutrient Pathogen report, "APPEARS INVALID"**.

2. Harmony Design & Engineering points out, "Additionally, the evaluation is for a maximum 300 gph of waste flow per lot. This is equal to a single home per lot".

E/W contested this report and submitted the following statement:

"The question of appropriate model parameter value for hydraulic conductivity is now based on a 'Well' adjacent to the proposed subdivision." However, the 'Well', E/W refers to, does not belong to

E/W and has only been used for the past 30 years for Irrigation, not Residential. The Well, can not be used in Hydraulic/ Nutrient Pathogen Study.

E/W's claim, once again Violates, Idaho Code Section 42-222 which states, "The director shall not approve a change in the nature of use from agriculture use where such change would significantly affect the agricultural base of the local area."

3. This discrepancy in the Nutrient Pathogen Study also impacts the fact that two lots (#9 and #10) are built on priority wetlands and requires a more advanced sewage system that can not be lumped in with the other 8 lot designs for approval.

4. Once again, on November 12, 2024, Eustachy /Wysong submits a document that acknowledges the document prepared by Teton County Fish and Game. E/W acknowledge the Natural Resource Overlays that : Indicates Priority Wetland Habitat on South Leigh Creek, presence of Songbird, Raptor and Winter habitat Big Game Migration Corridor. However, they mainly bring your attention to lots #1-8. Lots #9-#10 are briefly addressed but are paramount to the contamination of South Leigh Creek that flow into the Teton River.

Attached are color copies of documents prepared by Teton County Fish and Game which Contradicts any assessment to the contrary.

A picture is worth a 1000 words.

Thank you, Merri Moradian

This aerial map displays a large land parcel, primarily colored in light blue and green, with several distinct features and labels. The parcel is bounded by yellow lines, indicating property boundaries. Key labels include:

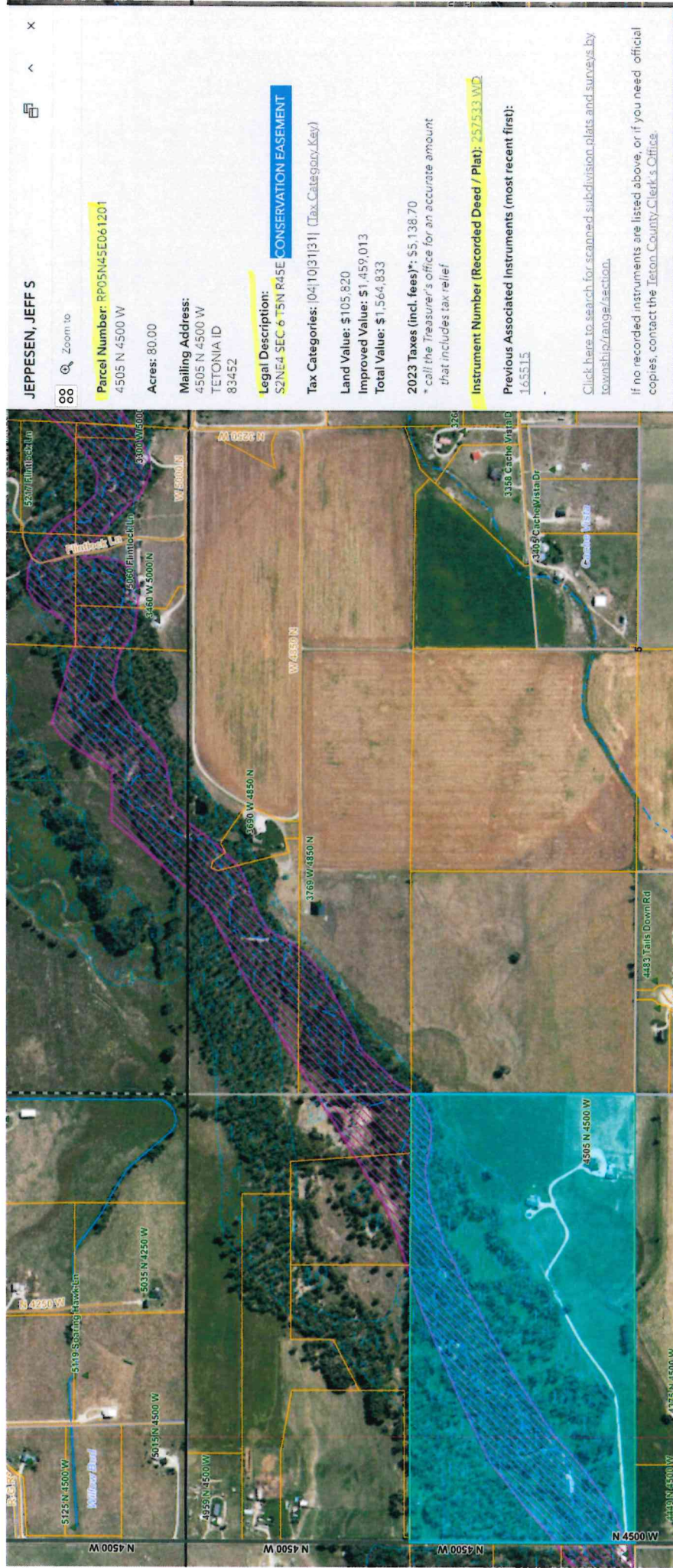
- Top Left:** "3100 W 5000 N" and "3000 W 5000 N".
- Top Center:** "3100 W 5000 N" and "3000 W 5000 N".
- Top Right:** "3100 W 5000 N" and "3000 W 5000 N".
- Center:** "3769 W 4550 N" and "3769 W 4550 N".
- Bottom Left:** "3769 W 4550 N" and "3769 W 4550 N".
- Bottom Center:** "3769 W 4550 N" and "3769 W 4550 N".
- Bottom Right:** "3769 W 4550 N" and "3769 W 4550 N".

The map also shows surrounding areas, including a large brown field to the left, a green field to the right, and a residential area with houses and trees at the bottom. A road labeled "3100 W 5000 N" runs vertically along the right side of the parcel. The overall layout suggests a large-scale land development or survey project.



[illegible]

Jeff Jeppesen Conservation Easement





- C. (HS) Hillside Overlay: Those areas designated as hillsides on Comprehensive Plan Map titled "The Critical Overlay Areas of Teton County."
- D. (SC) Scenic Corridor Overlay includes: All lands lying within 330 feet of both sides of the rights-of-way for Idaho State Highways 31, 32, 33 and Ski Hill Road from Driggs City limits to the Wyoming state line.
- E. (WH) Wildlife Habitat Overlay: Those areas designated as wildlife habitat on the Teton County Wildlife Overlay map, as adopted and amended.
- F. (WW) Wetlands and Waterways Overlay: Includes all lands defined and regulated as wetlands through the federal clean water act as administered by the U.S. Army Corps of Engineers and the streams listed below. Because the existing WW Overlay as mapped does not accurately identify all such areas, the WW will be applied to: (1) all wetland areas identified on the U.S. Fish and National Wetland Inventory Maps, unless a jurisdictional determination is secured from the U.S. Army Corps of Engineers (USACE) indicating the area as uplands; (2) all areas delineated as wetlands and verified as such by the USACE; and (3) those areas lying within 300 feet of the high water mark of the following waterways:

Badger Creek	Mahogany Creek
Bear Creek	Milk Creek
Bitch Creek	Moose Creek
Bull Elk Creek	North Leigh Creek
Darby Creek	Packsaddle Creek
Drake Creek	Patterson Creek
Dry Creek	South Leigh Creek
Fox Creek	Spring Creek
Game Creek	Teton Creek
Grouse Creek	Teton River
Grove Creek	Trail Creek
Henderson Creek	Twin Creek
Horseshoe Creek	Warm Creek
Little Pine Creek	

300 Feet

OWNERSHIP:

The individual, firm, association, syndicate, partnership or corporation having any interest in the land to be subdivided.

PALUSTRINE EMERGENT WETLANDS:

Wetlands dominated by rooted herbaceous wetland vegetation with less than 30% cover of woody plants (shrubs or trees). These wetlands are coarsely mapped on USFWS National Wetlands

Title 8 & Title 9 County and Idaho Statute issues with the E-W Proposed Development

I. Access:

THE PROBLEM: *P.55 (9-4-1(1) heading J states; The County may require multiple accesses into a subdivision where a primary access road is over 1,500 feet long and it serves at least 20 residential lots/dwellings.*

Currently, the Eustacy-Wysong (E-W) proposed development has one access which includes private roads W5000N, N3250W and W4850N. Their combined linear measurement is 4,330 ft., exceeding the 1,500 limit standard. Additionally, there are currently 26 residential lots/dwellings served by W5000N (11 of these are also served by N3250W and 8 also served by W4850N). E-W's "10 lot development" which is actually a 20 home development as described in their TIS, pp. 1 and 2, means that they can not add to the burden on W5000N without acquiring a second access route.

THE SOLUTION: Require two access points. If not possible, then deny the project. This solution spotlights the unwieldiness of the project as currently proposed.

II. Roads:

THE PROBLEM: Integral to access issues described above, if approved as currently presented, the E-W development would increase traffic on W5000N by over 200% while increasing traffic on N3250W and W4850N by 4000%. Road noise and traffic dust become paramount issues, along with public safety and traffic congestion concerns under these conditions.

Lastly, by approving the E-W project, the BOCC would allow illegal expansion of the scope of use for the W5000N easement from single-family dwellings/farming use to subdivision use. Marc Brilliant, owner of W5000N, has expressed in writing to the BOCC his opposition to such expansion for use of his private road easement.

Abbott v. Nampa Sch. Dist. No 131, 119 Idaho 544, 548, 808 P.2d 1289, 1293 (1991) found that: The use of an easement claimed under a grant or reservation must be confined strictly to the purpose for which it was granted or reserved, and in compliance with any restrictions imposed by the terms of the instrument. Where the grant or reservation of an easement is general in its terms, use of the easement includes those uses which are incidental or necessary to the reasonable and proper enjoyment of the easement, but is limited to those that burden the servient estate as little as possible...

THE SOLUTION: Require that all access roads be paved. Preferably, deny the project for unlawfully expanding the scope of W5000N's easement. This solution exposes the poor fit this project represents in our community and the negative impact on public safety that it poses.

III. Screening:

THE PROBLEM: *P.54, 9-4-1 (C-2) heading H. states; The county may request reasonable berming and plant landscaping, and other improvements to protect view corridors and vistas that protect the rural character of the county.*

P. 12-1 8-12-1 heading A states; A screen between developments of differing land uses adjoining one another, or separated from one another by only a private street or county road, shall comply with the standards listed below...

THE SOLUTION: Require the developer to create and maintain a 20 ft. easement to code (8-12-1-D), for planting a high impact screen with drip irrigation along all the northern boundary with Moradian, all along the eastern boundary with Brilliant and along the southern border with the McGaphee's and the Peterson's. This solution highlights the obtrusiveness of this project. The BOCC should deny the application..

Water Distribution:

THE PROBLEM: *P. 1-4, 8-3-6-B2 #6 states; Land in the agriculture base districts are subject to provisions of chapter 67-6529 and the right to farm act of the Idaho Code. Idaho Code 67-9710 states; A board of county commissioners having created an agriculture protection area shall encourage the continuity, development, and viability of agriculture used within the specific boundaries designated in the agriculture protection area by not enacting a local law, ordinance, or regulation that would restrict a farm structure or farming practices within the boundaries of the agriculture protection area, unless such farm structure or farming practice does not comply with generally recognized farming practices...*

THE SOLUTION: Require the developer to make Moradian, Leihi-Jones, Peterson and Duckwieller whole after removing the irrigation pivot by piping well water to each property owner, provide wheel line infrastructure and wheel lines as required to cover all currently irrigated acreage. This solution points to the destructiveness this project brings to the established ag commerce we all enjoy.

IN SUMMARY: This project DOES NOT meet county and Idaho code. In addition, nearly every county and state statute referenced above mentions the desire by the municipalities to maintain the rural nature and agricultural ambiance of Idaho. The property rights of full time, year round residents, as are all of the undersigned, should supersede that of non-resident speculators when all else is considered. The project does not fit and does not benefit the community. It is high-end housing in a valley that desperately needs housing for its county employees and business service workers. This project must be denied.


Glenn Moradian


Merri Moradian


Pattie Burr


Dan Burr


Patty Peterson


Brent Peterson

Adrian Curnow


Barb Curnow

Helen McGahee


Nel McGahee



Marc Brilliant


Susan Brilliant

Public Safety Concerns Regarding the Eustacy-Wysong Proposed Development

To: Teton County, Idaho County Commissioners and Fire Marshall Gillis

From: Glenn and Merri Moradian, 3690 W 4850 N Tetonia

Date: 1/21/2025

Re: Public Safety

Dear Commissioners:

We would like to call to your attention and ask for further review by Fire Marshal Gillis, and yourselves, the proposed Eustacy-Wysong development before you at this time. The development, as proposed, violates Title 9 code 9-4-1(1) if approved, in that its access road exceeds 1,500 ft by over 300% (4,633 ft). The recommended dwelling capacity of 20 lots/dwellings is exceeded by nearly 200% (46 lots/dwellings). To explain further, there currently are 26 lots/dwellings served by W5000N. The proposed development would add an additional 20 lots/dwellings.

On October 9, 2024, our enclave, where the proposed development is located, experienced a major fire event burning over 200 acres along S. Leigh Creek. County road N3000W was blocked-off by the county sheriff from Tetonia to Packsaddle road (W4000N) while Marshall Gillis' department fought the blaze. This stranded Dan Burr, whose property accesses W5000N. He was recuperating at home, being 3 days post major foot surgery. His wife had left to go to Tetonia immediately prior to the road blockage. She could not return because of the blockage. At this time, he received a phone text from the county advising to "prepare to evacuate". He was stuck! Fortunately, an evacuation order was never issued. This is the same situation experienced by many Pacific Palisades residents in L.A. during their recent catastrophic fire event.

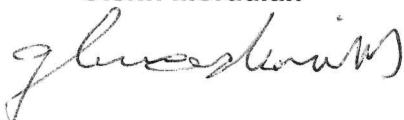
The proposed development MUST have a second access point other than W5000N, as recommended by county code 9-4-1(1). This public safety code does not address just potential public safety issues. We experienced its manifestation only 3 months ago.

Finally, in a related issue, the county preliminary plat review, p.14, Objective 11, Capital Improvement Plan, states, "ADU's included would not meet the CIP at 0.33 du/acre." In other words, as proposed, the development also violates CIP density regulations.

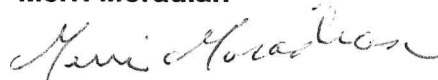
In summary, ANY proposed development of ANY size utilizing W5000N as an access, would violate lots/dwelling density requirements and access road length recommendations since there are already 26 existing lots/dwelling served by W5000N. A second access road to the proposed development therefore should be mandated. We are asking Marshall Gillis to concur with our concerns and recommendation prior to the 1/31/2025 BOCC meeting addressing this proposed project.

Thank you for your thoughtful consideration,

Glenn Moradian



Merri Moradian



Eustacy-Wysong Proposed Subdivision

External

Inbox x

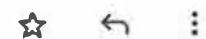


G

Glenn Moradian <moradiang@gmail.com>

to me, jkruger

Dec 24, 2024, 2:36 PM (2 days ago)



I have attached a Memorandum in opposition to the E-W development signed by all surrounding neighbors for your consideration. Attached is figure 1 referred to in the memorandum. Exhibit A is the drone video of the properties affected by this project and has been shown at a previous P&Z meeting and at the 11/12 BOCC meeting pertaining to E-W. Exhibit B is essentially the last 5 paragraphs of the letter from Don Cary, Esq. and pertains to the unlawful expansion of the scope of a private road easement across W5000N that this project intends to use. Thank you for your thoughtful review and we look forward to advocating at the January BOCC meeting, for the denial of this development which neither serves the community or fits well into it.

Glenn Moradian



Neighborhood memorandum regarding the Eustacy-Wysong proposed subdivision

To: The Teton Valley, Idaho B.O.C.C.

From: The Grand Teton Ranch and Cache Vista neighborhoods

Date: 1/10/2025

Dear B.O.C.C.

We the undersigned declare our united opposition to the Eustacy-Wysong proposed subdivision ("the property"). All signatories to this memorandum own property immediately contiguous with either "the property" or its access roads.

Easements to the property utilize three private farm roads owned by multiple signatories. In addition, two signatories own irrigated ag land producing barley and alfalfa that is currently served by an existing pivot located on "the property".

There are currently 15 existing single-family homes and developable lots served by W5000N in addition to four irrigated farm parcels totaling 165 acres, all irrigated by the above-mentioned pivot. Under the previous land use rules applicable to "the property", should the B.O.C.C. approve this subdivision, an additional 20 homes will be permitted, not 10 as depicted on their plat. The traffic burden on farm roads W5000N, N3250W and W4850N would be increased by at least 150%. The pivot will need to be removed by necessity, resulting in disruption of water distribution for farming to two signatories, both of whom for decades have benefited from the commerce, lifestyle and privacy afforded by irrigated ag land. Similar benefits have been and continue to be enjoyed by all signatories who abode contiguous with "the property". Please see Figure 1 which demonstrates the discontinuity of water distribution and disruption of agricultural production caused by removal of the pivot necessitated by the proposed subdivision.

Approval of this subdivision would further impact us negatively by diminishing our property values significantly. Traffic noise and traffic dust would be exponentially increased resulting in deterioration of the privacy and rural lifestyle we have collectively enjoyed for years. South Leigh Creek borders the northern and western boundaries of our enclave. It serves as a wildlife corridor for mammalian and avian species that to date, we have peacefully coexisted with. Please review this 3-minute video of our enclave to see for yourselves the beauty, lifestyle and ag commerce at risk by approving this subdivision (Exhibit A). Finally, we believe that the expansion of the scope of the easement from private farm road use (W5000N) to use for a subdivision would be unlawful should the B.O.C.C. approve this subdivision. Case law in Idaho documents such illegality (see exhibit B). Marc Brilliant, the owner of W5000N and a signatory to this memorandum, is on public record with the county strongly opposing such an expansion.

We take collective pride in maintaining our neighborhood. One signatory plows W5000N in the winter. Another sees that all properties are in compliance with the counties' noxious weed ordinance. We all contribute to road resurfacing when needed. The proposed subdivision represents an assault to the beauty, solitude and cohesiveness of our neighborhood. Some of us have gone so far as to hire a surveyor to

plot 2.5 acre lots for development in past years. Such plans were abandoned after living in the neighborhood for a short period of time. It became apparent that subdivision development would trash the special nature of this enclave of irrigated agriculture and that our property was worth more undeveloped rather than developed.

The developers of the proposed subdivision do not share the love and respect we have for our community since they are from out of state, do not live here, nor do they ever plan on living here. Yes, they have property rights, BUT so do we! They can opt to build a house and live here or rent it or sell their property at their leisure, just as we all can. They DO NOT have the right to shoehorn in a subdivision which disrupts the character and functionality of our neighborhood. Simply put, this proposed subdivision is a bad fit because it is landlocked, poorly platted because of the oblong shape of the land it sits on and disrupts agriculture commerce.

Our region has already contributed mightily to the suburbanization of rural Teton Valley. Within one mile of us are the following developments:

Saddle Bluff Ranch PUD-31home/lots

Silver Dollar Ranch-27

Gee PUD-29

Cache Tracts-16

Thornberry Acres-16

Moncur Ranch-4

Greenback Ranch-6

Crooked Creek-7

Rosewood Ranch-6

Gooseberry Ranch-4

Diamond D Ranch-6

That's a total of 158 approved homes and/or developable lots. As stated above, our existing enclave adds 15 for a Grand Total of 173. The Eustacy-Wysong proposed subdivision would permanently tear the heart out of our ag production, altering the entire character of our community UNLIKE the above listed developments, which all benefit from the presence of our barley and alfalfa production and DO NOT interfere with it.

So, in conclusion here we are, a farm community of 165 irrigated ag acres coexisting in harmony with a total of 173 existing homes/lots in our immediate vicinity. To approve this subdivision would add 20 more homes, but more significantly, would SUBTRACT 165 irrigated

acres of barley and alfalfa production. By any calculation, that represents bad math, kills the very attributes that make Teton Valley and our neighborhood as attractive as they are, and is in poor taste. For this enclave, PRESERVATION, not expansion is the reasonable consideration to be made. We ask that the B.O.C.C. deny the Eustacy-Wysong subdivision application.

Merri Moradian, R.D.H.

3690 W 4850 N, Teton

Glenn Moradian, M.D.

ditto

Patti Burr

3300 W 5000 N, Teton

Dan Burr

ditto

Patty Peterson

3405 Cache Vista Dr., Teton

Brent Peterson

ditto

Marc Brilliant

4851 N 3250 W, Teton

Susan Brilliant

ditto

Helen S. McGahee

3266 Cache Vista Dr., Teton

Neal McGahee

ditto

Adrian Curnow, M.D.

5026 N3000W, Teton

Barbara Curnow

ditto

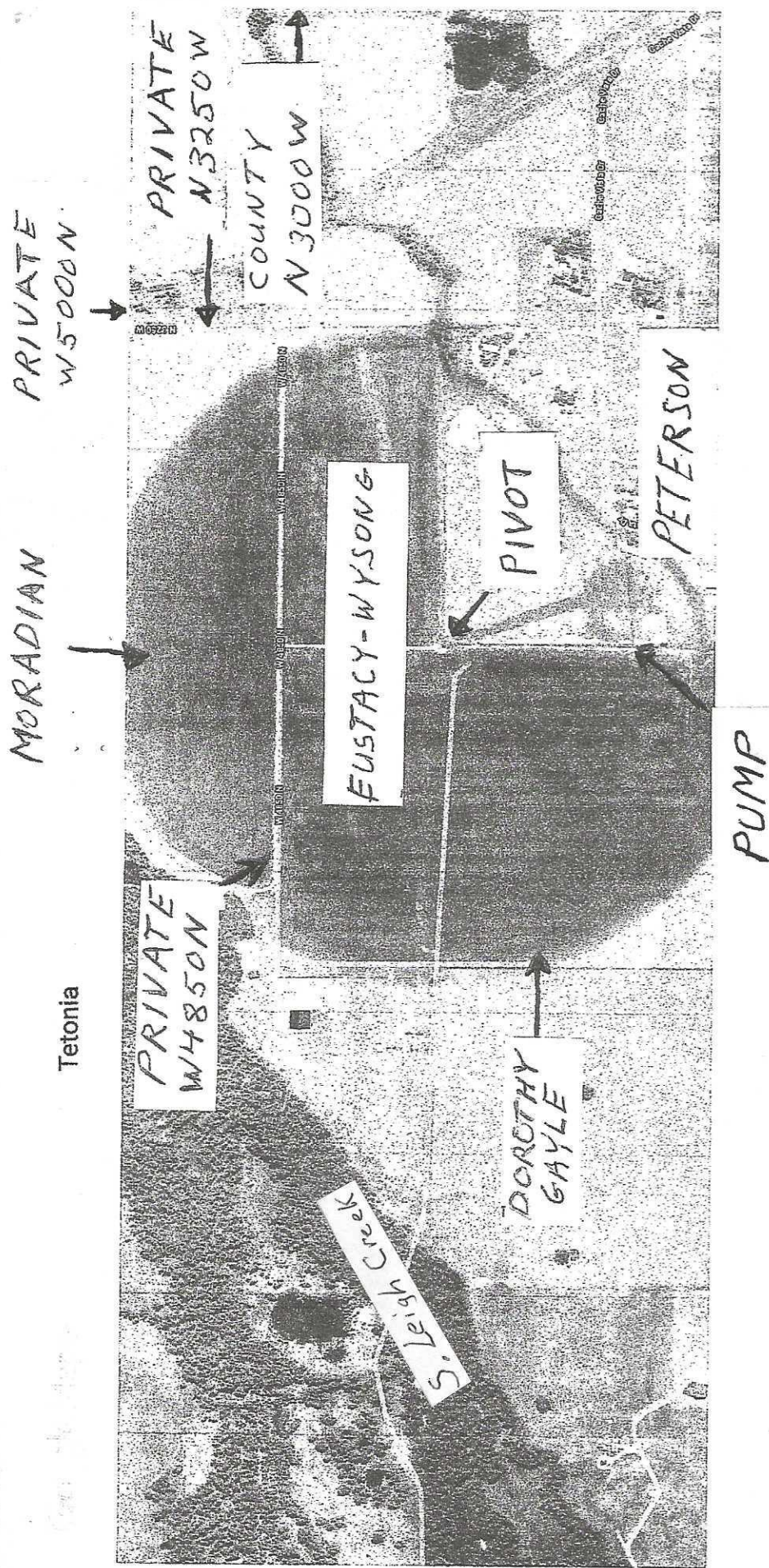


FIGURE 1

3/4 SWEEP OF PIVOT DEMONSTRATED. EUSTACY-WYSONG DEVELOPMENT BISECTS THE PIVOT SWEEP NECESSITATING REMOVAL OF THE PIVOT. DEVELOPMENT EASEMENT TRAVERSES THREE PRIVATE FARM ROADS (W4850N, N3250W AND W5000N) TO REACH COUNTY ROAD N3000W.

Donald F. Carey
dfc@careylawidaho.com

Licensed in
Idaho & Wyoming

Carey Law

The Experience You Want. The Results You Need.

Law Office of
Carey Law, PLLC
477 Shoup Ave Suite 203
Idaho Falls, Idaho 83402

April 11, 2024

Teton County Board of Commissioners
Teton Planning & Zoning Commission
150 Courthouse Dr., #107
Driggs, Idaho 83422

Re: Jones Lehi, LLC., - "Dorothy Gayle Ranch" Subdivision

Dear Commissioners,

I represent Glenn and Merri Moradian. My clients oppose the granting of the subdivision plat referenced above, to the extent that the road access to the subdivision will cross or run adjacent to their property. It is their position that no public road easement exists, and one cannot be created by fiat.

I am in receipt of a letter sent by Mr. Forest Fischer, dated September 28, 2023, asserting that an access easement for the subdivision already exists across my client's property from W 3000 N. I disagree. The road, W 3000 N is at least one mile south of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho. It is not adjacent or proximate to the proposed subdivision parcel. I suspect what Mr. Fischer is referring to is N 3000 W, which runs north and south along the eastern edge of Section 5.

Mr. Fischer's letter references Instrument number 148957, (copy attached) and he suggests that the proposed subdivision has access from W 3000 N (sic). Instrument number 148957 is a private road access and maintenance agreement entered into between Jared and Linda Nusbaum, and the Kerr Family Trust. The focus of the agreement rests upon the sale of three (3) parcels. It states that the farm road is adequate for one family home on each of the three parcels. It states that "*in the event any more parcels are sold for residential purposes, adequate roadways shown on Exhibit A may need to be constructed and utilized for access in lieu of the farm road.*" My clients are unable to find any Exhibit "A" of record in Teton County, attached to Instrument number 148957. In the absence of an Exhibit "A, there is considerable uncertainty with respect to the grant of easement¹.

¹ There is a very real question whether the instrument creates an easement over any *servant* estate, for the benefit of the *dominant* estate, in the first place. An easement is an interest in land and must be in writing to be enforced pursuant to the Statute of Frauds. "Although the writing need not necessarily use specific words to create an express easement, it must be clear from the writing that the parties intended to 'establish a servitude' over the land identified." *Sec. Inv'r Fund LLC v. Crumb*, 165 Idaho 280, 286, 443 P.3d 1036, 1042 (2019)(Overruled in part on an attorneys fee question unrelated to the easement issue.)

Carey Law, PLLC
477 Shoup Ave Suite 203 ■ Idaho Falls, ID 83402
Phone: 208.525.2604 ■ Fax: 208.525.8813

The chronology of the creation of the various instruments governing access to and across my clients property is important to review. My client bought their ranch in 2006. The only access easement of record was that contained in instrument number 148957, created in 2002. When my clients purchased their ranch it was surveyed, and that survey is filed as instrument number 183377, a copy is attached for your review. In the center of that document is the owner's certification indicating that the easement from the county road, N 3000 W is a 30' easement. The owners certifications state

[T]ogether with a 30 foot *private road* and utility easement along the northern boundary of the property, and a 60 foot *private road* and utility easement running in a southerly direction through said property. (Italics added for emphasis.)

Dr. Glenn and Merri Moradian purchased their lot in 2006, from Nusbaum. Directing your attention to a Warranty Deed dated August 16, 2021, instrument number 270431, copy attached, the grantor Teter LLP 401(k) sells to Jones Lehi LLC, the subdivision parcel at issue. In the document, identified as "Parcel 2" sets forth the grant of easement. However, Teter LLP 401(k) did not own my client's property in 2021. It should not need to be stated that one cannot grant an easement over property one does not own. Parcel 2 does reference Instrument number 228940, dated July 17, 2013, to describe the general course of the *presumed* easement. But again, the grantor, Wells Fargo did not own my clients property in 2013, when that instrument was created.

Directing your attention to the survey, instrument number 183377, the first observation that can be made is that access to the county road is limited to a *thirty-foot* easement, which I believe is insufficient to allow for the creation of a public road to allow access the proposed subdivision. Although there is ambiguity between the surveyor's descriptive inserts on the survey, the plain language contained in the Owners Certification should control the interpretation. Secondly, the survey clearly identifies the road as a private road. Using a private road for public access is clearly changing the scope of the easement.

The other instruments referencing the presumed easement are instruments number 228940, created in 2013, and instrument number 270431, created in 2021. Because the grantor's in either case did not own my client's property when those two instruments were created, the grantor's, respectively, could not burden my clients property by granting access over my clients property in a manner that exceeded the scope of the easement as it existed when my clients purchased their ranch.

Case law in Idaho prohibits any attempt to expand the scope of any general easement. Here, given the absence of the Exhibit A, in instrument number 148957, we simply don't know, and cannot know what the grantors intent was with respect to expanding the easement for the purpose of developing access to a proposed subdivision. Expanding a private access farm road, granting access to three (3) lots, is fundamentally different than creating a public road for subdivision access. This cannot be allowed, absent some proof by the grantor of that specific reservation. Idaho law is clear:

"The use of an easement claimed under a grant or reservation must be confined strictly to the purposes for which it was granted or reserved, and in compliance with any restrictions imposed by the terms of the instrument. Where the grant or reservation of an easement is general in its terms, use of the easement includes those uses which are incidental or necessary to the reasonable and proper enjoyment of the easement, but is limited to those that *burden the servient estate as little as possible*. In other words, an easement granted or reserved in general terms, without any limitations as to its use, is one of unlimited reasonable use. It is not restricted to use merely for such purposes of the dominant estate as are reasonably required at the time of the grant or reservation, but the right may be exercised by the dominant owner for those purposes to which that estate may be subsequently devoted. Thus, there may be an increase in the volume and kind of use of such an easement during the course of its enjoyment."(Italics added for emphasis.)

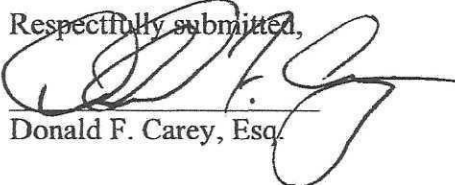
Abbott v. Nampa Sch. Dist. No. 131, 119 Idaho 544, 548, 808 P.2d 1289, 1293 (1991)

"The general rule concerning easements is that the right of an easement holder may not be enlarged and may not encompass more than is necessary to fulfill the easement." *Aizpitarte v. Minear*, 508 P.3d 1260, 1273 (Idaho 2022). Again, without production of the Exhibit A, there can be no determination whether the grantor intended to grant an easement for subdivision purposes, on the proposed location.

The Idaho Supreme Court considered the question whether an easement could be expanded to allow unrestricted public access to a subdivision in the case of *Sommer v. Misty Valley, Ltd. Liab. Co.*, 511 P.3d 833, 839 (Idaho 2021). The court rejected the expansion of the easement for subdivision purposes. The question was whether the deed creating the easement was unambiguous and whether it created an easement for any other property other than the property being conveyed by the deed.

Here, in the absence of Exhibit A to instrument number 148957, there can be no demonstration that the road access is intended to serve the proposed subdivision. In *Shinn v. Bd. of Cty. (In re Variance ZV2011-2)*, 156 Idaho 491, 495-96, 328 P.3d 471, 475-76 (2014), also cited by Mr. Fischer, the Supreme Court held that the Board of Commissioners may not approve a subdivision until the access is certain. Here, that means public access. There is no *certainty* with respect to public access to this subdivision, particularly over and across my client's property. Therefore, the subdivision cannot be approved absent a determination that proper and lawful public access exists. Given my review of the available data, I cannot conclude that the subdivision has any access, much less public access.

Respectfully submitted,



Donald F. Carey, Esq.

DFC/

11/12/24

To Teton County Board of Directors:

I am the owner of the private road, 3250 West, and am concerned about the effects upon my private road of Eustacy-Wysong's planned development in Tetonia- these effects pertain to ploughing in winter and dust and dirt produced by increased traffic during the rest of the year. If the application for development is approved, homeowners there will need to use my road for entry and exit. If that is the case, according to the submitted number of homes to be built, I anticipate there will be a radical increase in the use of my road for entry and exit, with a corresponding radical increase in dust and dirt especially. At the current number of households which use the road for entry and exit, we are able to adequately maintain the road. However, with the radical increase in traffic, I want to be sure that approval is dependent upon the board of directors' stipulation that Eustacy-Wysong incur the expense and ongoing maintenance expense of my road, 3250 West and keeping it plowed through the winter.

(I am unable to be present at the meeting and missed the November 1 deadline for email submission. As a result I am having my neighbors Meri and Glenn Moridian submit this at the meeting)

Sincerely,

Marc Brilliant

A handwritten signature in black ink, appearing to read 'Marc Brilliant', with a stylized, cursive flourish at the end.



Sharon Fox <sfox@co.teton.id.us>

Proposed Eustachy-Wysong Ranch Development

james jackson sr. <jacksonsr_james@yahoo.com>

Tue, Jul 12, 2022 at 11:05 AM

To: "pz@co.teton.id.us" <pz@co.teton.id.us>

Dear County Planning and Zoning Commissioners,

As a property owner near the proposed Eustachy-Wysong Ranch subdivision, I am opposed to proposed development of the 60 acres with 23 lots that could have up to 2 houses per lot or 46 houses. This proposed subdivision is within our Big Game Migration & songbird/raptor breeding habitat along South Leigh Creek. This area is a priority wetland habitat location.

It is also within a floodplain that affects the sub- water levels from the mountains winter snow melt We have an 'illegal' dump site located on the west side of 3000 W. right next to this potential development. Every summer this large 'borrow pit' fills with sub water that has water, dryers, refrigerators, drums of 'whatever' leaches these contaminated products into the water table. This chemicals migrate into the aquifer that the nearby home owners use as drinking, etc. Unfortunately, many of these residents have no idea of the dump & whats really happening to their drinking water because of this. Will the addition of 24 (possibly 46) more wells affect the current ground water table & increase the possible increase of contamination?

Will this development be outside the above mentioned overlays and floodplain & if so, will this requirement be in writing and enforced by the county or in a deed restriction, or similar means of prohibiting development in the overlays and flood plain?

The sub-water issue should also be taken into consideration with the additional septic fields in this proposed development. How will the county ensure that the 46 septic systems will not contaminate the S. Leigh Creek and surrounding wetlands & waterways over time?

Would this new sub division be required to have a 'fire pond' required by the county & our local fire department?

These are big questions that should be reviewed before decisions are made.

I have been an active airport board member for years & understand the depth of the time & research involved with making the correct action a board must make for the betterment of all in this beautiful valley.

Thank you for your community service.

Respectfully,

James K. Jackson Sr.

2612 Quartz Drive, Teton.

Edrie K. Brinker Living Trust
Douglas Brinker Durable POA
4965 Gooseberry Road
Tetonia, ID 83452
July 11, 2022

Teton County Planning and Building Department
Courthouse Way
Driggs, ID 83422

Re: Eustachy-Wysong Subdivision with density which would cause irreparable damage to the wetland environment and underground water table surrounding this development.

To whom it may concern:

The average density around this project is no less than 1 house per 25 acres. Jumping it up 10X to 1 House per 2.5 acre seems quite a bit. I would like to propose that the developers pay for a wetlands / Underground water survey and wildlife reports to see what the impact would be on our game corridor. The South Leigh creek and the Teton Creek are the main game thoroughfares to the Teton River from the Targhee mountains and they and their surrounding areas need to be protected.

A development of this magnitude in an actively farmed horticulture neighborhood is destructive to the milieu of South Leigh Creek. The proposed ingress/egress route is completely inadequate. A development of this size should have direct access to a main county road.

Sincerely,

Douglas Brinker
dtbrinker@yahoo.com

July 5, 2022

To: Teton County, Idaho P. & Z.

Regarding: Proposed Eustachy-Wysong Concept Hearing

I am writing concerning both the Eustachy-Wysong and Jones proposed developments in Tetonia. Both are adjacent to each other, use the same developer and propose to use the same ingress/egress route North of the both parcels accessing my farm road. Curt Behle (858-361-0888) is the developer. This route would be via roads W 4850 N headed east to N 3250 W headed North to W 5000 N headed East to N 3000 W.

The proposed access route is in violation of the Teton County Fire Protection District Fire Protection Resolution for Subdivisions, Resolution Number 3, Chapter 1, General Provisions. Page 2, section 2.1.4 is pertinent to the developments. Fire Marshall Earle Giles referred me to this document as the governing authority for this issue. An irrigation pivot is in place at the junction of the two parcels along their shared Eastern border. It pivots 270 degrees from East to West to South and back, across road W 4850 N, crossing it in two places in doing so with each pass. The clearance at maximum height for this pivot is 12' 6", well below the minimum requirement of 13' 6" mentioned in the above document. This alone should disqualify and render any proposed Northern ingress/egress route illegal by the Fire Marshall.

I own the water pump that supplies the pivot. The pump is currently located along the Eastern edge of the two proposed developments. I will continue to irrigate my barley with a pivot as I have done for years. If I need to move the current pivot location due to the proposed developments on my 60 acre property located immediately North of both parcels, I will. However, the pivot will still cross road W 4850 N as it currently does, thereby continuing to make the Northern ingress/egress route in violation of the fire code mentioned above. Thus under any condition, the Northern route will not work since I will continue to irrigate with a pivot regardless of whether an adjacent development is approved or not. An alternate ingress/egress route needs to be considered by P & Z. Thank you.

Sincerely.

Glenn Moradian, M.D.

3690 W 4850 N

Tetonia, ID

208-206-1708



Sharon Fox <sfox@co.teton.id.us>

Proposed Eustachy-Wysong Ranch Development

tetons2011@silverstar.com <tetons2011@silverstar.com>

Sun, Jul 10, 2022 at 12:02 PM

To: pz@co.teton.id.us

Dear County Planning and Zoning Commissioners,

As a property owner near the proposed Eustachy-Wysong Ranch subdivision, I am opposed to proposed development of the 60 acres with 23 lots that could have 2 houses per lot, 46 houses.

What county zoning and land development code will this development follow?

The proposed subdivision is within the Big Game Migration, songbird/raptor breeding habitat, and priority wetland habitat overlays. This subdivision is also within a floodplain. Will all buildings and development be outside the above mentioned overlays and floodplain, if so, will this requirement be in writing and enforced by the county or in a deed restriction, or similar means of prohibiting development in the overlays and flood plain?

How will the county ensure that the 46 septic systems will not contaminate the S. Leigh Creek and surrounding wetlands/waterways over time? This area has sub-water. Sub-water should also be taken into consideration with septic fields in this proposed development.

How will this proposed development be accessed? It appears that the proposed subdivision would have to use private roads to access the property, if this is the case, does the developer have permission to use the private roads?

Will the proposed subdivision be required to have a fire pond(s) to handle 46 homes?

Will the current center pivot irrigation system still be used once the subdivision is under development and becomes a subdivision? If so, how will that effect the additional subdivision's water wells, the surrounding existing water wells, and the water table?

Will the developer be required to perform any additional assessments to answer some of these questions?

Please take the above questions into consideration.

Thank you,

Judy Jackson
2621 Quartz Dr.
Tetonia, ID



Sharon Fox <sfox@co.teton.id.us>

Objections to the Eustachy-Wysong proposed 46 home Subdivision

1 message

Glenn Moradian <moradiang@gmail.com>
To: pz@co.teton.id.us

Fri, Jul 8, 2022 at 11:47 AM

Dear Commissioners,

I am an adjacent land owner of the Eustachy-Wysong proposed subdivision.

This proposed subdivision would sit in the middle of 260 acres of active historical agriculture that is currently being farmed. It is irrigated with a central pivot that crosses three adjoining properties and dirt farm roads. The Fire Marshall previously stated, this pivot irrigation system does not allow proper clearance for fire department or emergency vehicles access, to reach the proposed subdivision.

After the Commissioners reviewed and attached the overlay of the property, it clearly shows the property sits in a wildlife corridor and directly adjacent to South Leigh Creek.

I am surprised that the Commissioners would seriously consider approving this project!

First, there needs to be an impact study, in regards to contamination of the water table from leach fields from septic of 46 homes.

The underground water irrigates agricultural land and the run-off drains into the adjacent South Leigh Creek.

As you know, South Leigh Creek drains into the Teton River and is the water source for many communities downstream.

This health, safety, and general welfare of all surrounding neighborhoods is being brought to the attention of the Commissioners because it affects all our wells.

Sincerely,

Merri Moradian RDH

[3690 W/ 4850 N](#)[Tetonia, Idaho 83452](#)

To: Teton County, ID Planning and Zoning Committee and Board of County Commissioners

From: Brent Peterson, Tetonia, ID 83452

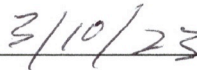
Re: Eustachy-Wysong proposed subdivision application

Date: 3/10/2023

The proposed subdivision application mention above should be immediately revoked for materially omitting to the P&Z that they do not have a legal easement across N 5000 W to public road W 3000 W. The governing authority for this request is contained in Title 9 Subdivision Regulation, Chapter 3, subtitle 'n', paragraph I, p. 52 where it is stated..."The Board of County Commissioners may revoke a subdivision or P.U.D. upon failure to comply with the conditions of approval of a final plat or subdivision extension , upon the violation of any of the provisions of this Title, or for misrepresentations or material omissions made to the Planning Commission or to the Board of County Commissioners (amd.9-17-09)."

A handwritten signature in dark ink, appearing to read "Brent Peterson", is written over a horizontal line.

Brent Peterson

A handwritten date "3/10/23" is written in dark ink over a horizontal line.

Date

To: Teton County Planning and Zoning
Regarding the proposed Eustachy-Wysong concept hearing

Dear Commissioners,

I am an adjacent land owner to the proposed subdivision and I have grave reservations about this project. This project will affect my entire North boundary of approximately 1,040 feet.

This subdivision will sit in the Middle of 260 acres of historical farm ground with a center-pivot irrigation system. This proposed subdivision also does not have access directly to any county roads. The access could only happen by crossing large parcels of land owned by others in order to reach a county road. By taking a portion out of the middle of irrigated ground for this purpose, it will make any farming financially prohibitive to achieve.

I strongly feel that 2.5 acre lots do NOT fit in with the well-established surrounding properties. There are 40, 60, 100 acre parcels, and ours at 25 acres. There is not a property less than 5 acres within a mile in any direction. There are currently 9 homes on the surrounding properties with-in 1 mile of the proposed development. This subdivision could add a total of 46 more homes.

Another concern about this subdivision is the impact of 46 new homes, each having their own well and septic system. Will there be a negative impact on the water table and the nearby creek and the wildlife that frequent that area??

This proposed subdivision should be denied in its present form. It does not fit in with the surrounding area. Also, with the new zoning and Land Development Code being passed by the BOCC (July 6, 2022), this subdivision should follow suit.

Sincerely,

Brent & Patty Petersen
3405 Cache Vista Dr.
Tetonia, ID 83452

Patty Petersen - 7/6/22


To: Teton County, Idaho Planning & Zoning Members and County Commissioners

From: Glenn and Merri Moradian, property owners at 3690 W 4850 N Tetonia, ID 83452, Marc Brilliant, property owner at 4851 N 3250 W Tetonia, ID 83452 and land owner of the private road W 5000 N.

Re: Eustacy-Wysong proposed subdivision application , parcel #RP05N45E053100

Date: February 7, 2023

This letter is to inform the P&Z committee and the County Commissioners that as of the date of this communication, the Eustachy-Wysong Ranch DOES NOT have documented access via a legal easement from their property to a county road. **Specifically, there is no documentation in Teton County records of an easement across W 5000 N, a private road.** All E-W Ranch application materials to date state, "The Concept Master Plan describes the main access to the development from W 4850 N approximately 600 feet south of the intersection of W 5000 N and N 3000 W.

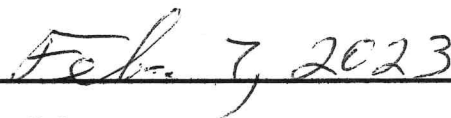
This description is fallacious in that 600 feet south of W 4850 N **DOES NOT** put them at the intersection of W 5000N and N 3000 W. It in fact puts them approximately $\frac{1}{4}$ of a mile west of the stated intersection. Again, what is missing is access across the $\frac{1}{4}$ mile private road, W 5000 N.

This project was determined to be sufficient on 9/13/2022. In article 1. General Provisions I Div. 1.8. Transitional Provisions, it states that, "An application that is substantially changed following being determined sufficient, or an application that fails to comply with the required time frames or any terms or conditions of its approval, shall expire and future applications shall be subject to the current LDR's".

We challenge the Eustachy-Wysong Ranch to produce legal documentation of access across W 5000 N and ask that the county immediately, upon documentation of the lack of access described above, declare the application on record expired for reasons stated in Div. 1.8. Transitional Provisions. Owner of the land under W 5000 N (Marc Brilliant) hereby declares his refusal to grant E-W Ranch access across N 5000 W for purposes of a subdivision development.



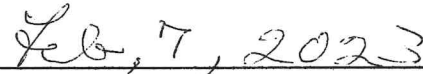
Glenn Moradian




Date



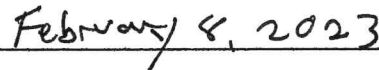
Merri Moradian



Date



Marc Brilliant



Date