



FINAL PLAT REVIEW PUBLIC HEARING

FOR: Dorothy Gayle Subdivision
WHERE: S of W 4850 N, SW of the City of Tetonia
PREPARED FOR: BoCC – Public Hearing of June 09, 2025

APPLICANT & OWNER: Jones Lehi LLC, Dorthy & Harry V Jones Family LLC
ENGINEER/SURVEYOR: Curt Behle & Civilize LLC

OVERVIEW: Jones Lehi, LLC and Harry V Jones Family LLC, represented by Curt Behle and Civilize Engineering, have applied for a 7 lot subdivision near W 4850 N, SW of the City of Tetonia. The application was originally for 16 lots but has reduced to 6 residential lots at the Preliminary Plat stage and one lot being a proposed Open Space Lot to accommodate a fire pond. The parcel includes the Big Game Migration Corridor & Seasonal Range.

The preliminary plat was heard by the PZC on November 13, 2023 and continued to February 13, 2024 for additional information related to lot sizes meeting minimum lot size requirements, legal review of access, surface water rights information, NRA revision or footprints “envelopes.” Applicant supplied additional information and had a continued review with the PZC on February 13, 2024. The Board of County Commissioners also reviewed and approved the preliminary plat on July 8, 2024 with a number of conditions of approval.

APPLICABLE COUNTY CODE: Subdivision Final Plat Review pursuant to Title 9, Chapter 3-2, Teton County Subdivision Ordinance, (revised 5/16/2013); Teton County Comprehensive Plan (A Vision & Framework 2012-2030)

LEGAL DESCRIPTION: RP05N45E054650; TAX #6770 SEC 5 T5N R45E

LOCATION: W 4850 N;

ZONING DISTRICT: A/RR-2.5

PROPERTY SIZE: 40.46 acres

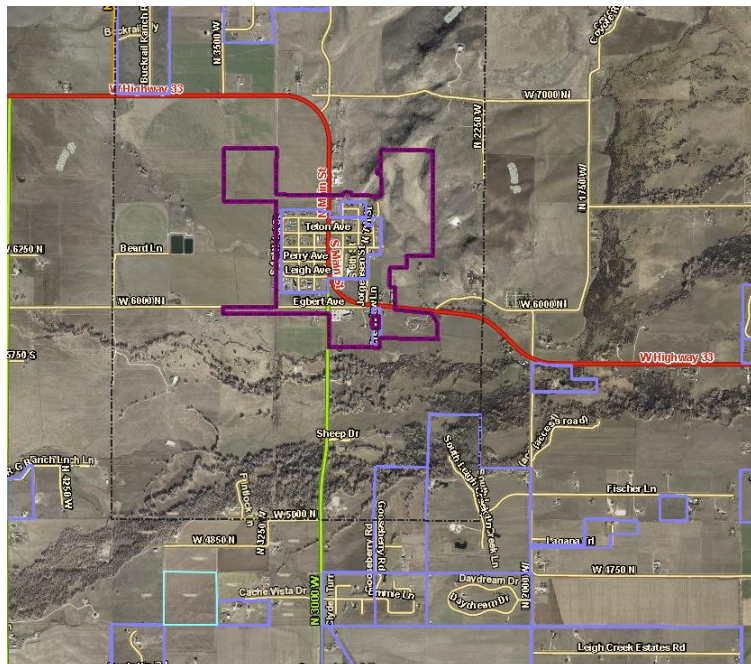




Figure 2. Aerial Image; shows the existing conditions of the property.



Figure 3. NROs on the property. Brown indicates Big Game Migration Corridor & Seasonal Range (per current Natural Resource Overlay maps)

PROJECT BACKGROUND

A pre-application conference was completed November 12, 2021. The first step in the subdivision process is a Concept Plan Review (9-3-2B).

Concept Review: The Planning & Zoning Commission Reviewed the concept plan November 9, 2021 and approved it with the following motion and conditions of approval:

1. Conduct required studies/ plans for Preliminary Review: NRA and Wildlife Habitat Assessment
2. Demonstrate legal access to the site from W 5000 North.

Other conditions added by PZC include:

1. Deed restrictions be shown
2. Traffic analysis be done based on potential units
3. All required studies done

Meeting minutes below: Staff Comment – applicant did not provide the deed restrictions.

Item #4. – PUBLIC HEARING: Sackett Ranch Subdivision Concept Hearing Jones Lehi LLC has submitted an application for a 16 lot subdivision on 40.46 acres located 1.5 miles southwest of Tetonia and south of W 4850 N. The parcel is zoned Ag/RR-2.5-Acre Min. Lot Size and is in the Big Game Migration Corridor overlay. Proposed lot size is 2.5 acres.

Legal Description: RP05N45E054650; TAX #6770 SEC 5 T5N R45E

Mr. Chase reviewed the request for a 16 lot subdivision on 40.46 acres located in the Big Game Migration corridor. He discussed the access concerns because the existing roads would not adequately support the increased traffic. Due to the scale of the project and the existing access roads, a Traffic Impact study would be required.

Mr. Curt Behle, representing the applicant, commented he has been working with Public Works and the neighbors who have a 60' easement through the center of their property in order to improve the access location for those lots and be less intrusive to the neighbors. He noted they had received subdivision approval from EIPH and that he had been working with the neighboring Greenback subdivision and was aware of the studies required prior to submitting for Preliminary.

PUBLIC COMMENT:

Mr. Brent Peterson, adjacent land owner to the east, was concerned that it did not fit with the neighborhood parcel sizes and was concerned with the access.

Mrs. Merri Moradian, adjacent property owner, requested the subdivision be denied because it is in the Big Game Migration Corridor and the Waterbird Migration Corridor and she did not want to see it developed. She was also concerned it would interfere with the adjacent farming that is done on their lot. She cited language from CC&Rs that are tied to this parcel that prevents lot splits of less than 10 acres. Mr. Glenn Moradian felt the access should be from Packsaddle Road via Silver Dollar Subdivision rather than through the easements provided.

Mr. Dan Burr, adjacent property owner, was concerned with the road that is being used for access is not sufficient to accommodate the traffic. Mrs. Patty Burr was also not in favor of this application and believed the sellers of the property in question stipulated it to stay in ag use.

Mr. Curt Behle, representing the applicant, commented he has signed access agreements for the proposed parcel and commented he has not seen the CC&Rs referenced by Ms. Moradian because they were not presented to the current owners of the property, so he could not address those.

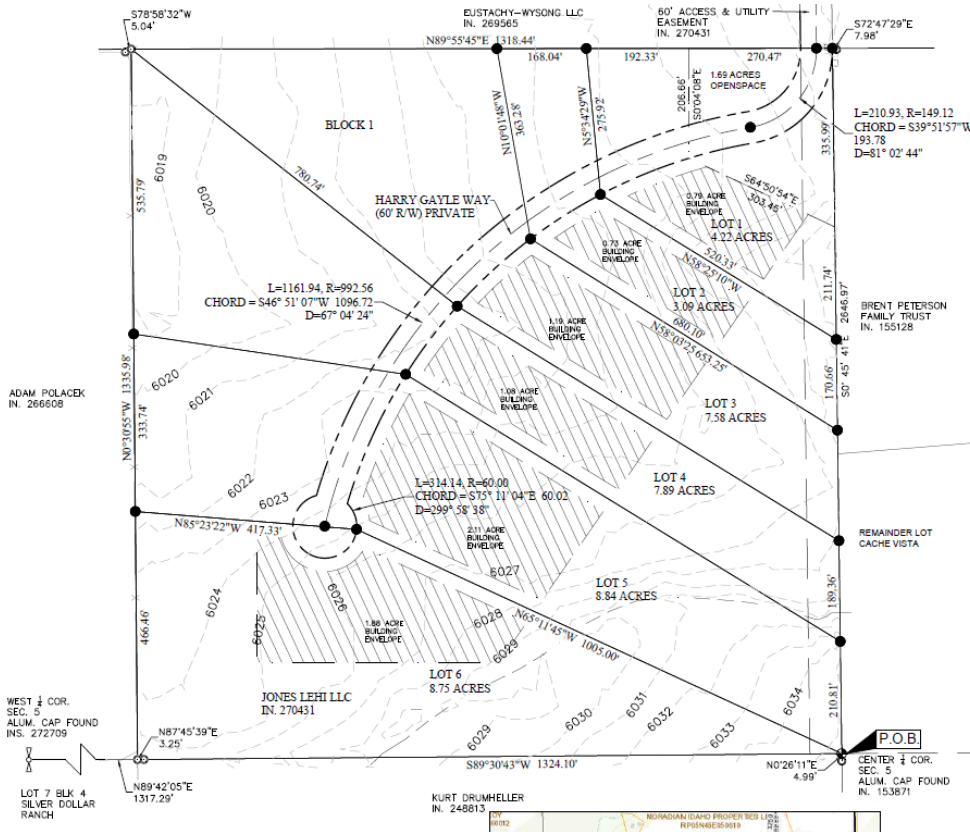
COMMISSION DELIBERATION:

Ms. Tremblay commented that the CC&Rs were not mentioned by the applicant and the County cannot enforce them, but if there is a deed restriction on the deed that should be considered and should be addressed prior to Preliminary.

Mr. Watters commented he was concerned with the traffic impact and the access and wanted to make sure the total number of potential dwelling units based on 2 residences per lot be used on the traffic study. Mr. Michelbacher was concerned with the potential deed restriction, but felt that could be dealt with before Preliminary.

MOTION: Having concluded that the Criteria for Approval of a Subdivision Concept Plan found in Title 9-3-2(B-4) can be satisfied I move to APPROVE the Concept Plan for Sackett Ranch Subdivision as described in the application materials submitted August 23, 2021 and as updated with additional applicant information attached to this staff report with the following conditions: 1) All required studies done, 2) Deed restrictions be shown; 3) Traffic Analysis required based on total potential units.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Wyatt Penfold, Commissioner
SECONDER:	J.A. Michelbacher, Vice Chairman
AYES:	Jack Haddox, Chairman, J.A. Michelbacher, Vice Chairman, Erica Tremblay, Commissioner, Timothy Watters, Commissioner, Wyatt Penfold, Commissioner, Rebeca Nolan, Commissioner



TETON COUNTY REVIEW SURVEYOR _____ DATE _____

HEALTH DEPARTMENT CERTIFICATE
 SANITARY RESTRICTIONS AS REQUIRED BY IDAHO CODE, TITLE 50, C
 HAVE BEEN SATISFIED. SANITARY RESTRICTIONS MAY BE REIN
 ACCORDANCE WITH SECTION 50-1326, IDAHO CODE, BY THE ISSU
 CERTIFICATE OF DISAPPROVAL.

EASTERN IDAHO PUBLIC HEALTH

ENVIRONMENTAL HEALTH SPECIALIST _____ DATE _____

TREASURER'S AND ASSESSOR'S CERTIFICATE
 WE THE UNDERSIGNED COUNTY TREASURER AND COUNTY ASSESSOR I
 THE COUNTY OF TETON, STATE OF IDAHO, HAVING REVIEWED THIS PL
 REQUIREMENTS OF IDAHO CODE 50-1308, DO HEREBY CERTIFY THAT
 TAXES FOR THE PROPERTY SHOWN AND DESCRIBED ON THIS PLAT
 SUBDIVIDED ARE CURRENT.

TETON COUNTY TREASURER _____ DATE _____ TETON COUNTY ASSESSOR _____

COUNTY COMMISSIONERS APPROVAL
 THIS PLAT WAS DULY ACCEPTED AND APPROVED BY THE TETON CO.
 OF COMMISSIONERS, ON THE FOLLOWING DATE.

CHAIRMAN, COUNTY COMMISSIONERS _____ DATE _____

PLANNING AND ZONING CERTIFICATE
 PRESENTED TO THE TETON COUNTY PLANNING AND ZONING ADMIN
 THE FOLLOWING DATE AT WHICH TIME THIS PLAT WAS APPROVED AND

ADMINISTRATOR, PLANNING AND ZONING _____ DATE _____

COUNTY FIRE MARSHALL
 I HEREBY CERTIFY THAT THE PROVISIONS FOR FIRE PROTECTION FOR
 MEET TETON COUNTY FIRE CODE AND HAVE BEEN APPROVED BY MY D

TETON COUNTY FIRE MARSHAL _____ DATE _____

FLOOD ZONE NOTICE
 THIS SUBDIVISION FALLS OUTSIDE THE 100 YEAR FLOOD PLANE AS
 MAP NO. 16081C 0100C, EFFECTIVE DATE 8-4-1988.

REFERENCES:
 AW ENGINEERING ROS IN. 238813
 AW ENGINEERING ROS IN. 263416
 CACHE VISTA IN. 120090

MOTION: *I move to continue the public hearing for Dorothy Gayle Preliminary Plat in order to obtain additional information from the applicant or other agencies to the February 13, 2024 hearing with the following request for additional information:*

- 1. A revised plat showing Lots 1 & 2 combined for a total of six lots;*
- 2. A legal review of the access proposed;*
- 3. A revised NRA or footprints placed on the east side of the subdivision road;*
and
- 4. Surface water rights passing through the property be noted on the plat.*

RESULTADOPTED [Unanimous]

MOVER Rebecca Nolan **SECONDER:** James Weber

AYES Wyatt Penfold, Rebecca Nolan, James Weber, Tyler Wertenbruch

NAYES None

ABSTAIN None

Staff comment: Applicant has submitted materials addressing PZC concerns from the continued hearing.

PZC reviewed the Preliminary Plat again February 13, 2024 at the continued public hearing:

MOTION: *Having concluded that the Criteria for Approval of a Preliminary Plat found in Title 9-3-2-C can be satisfied, I move to recommend APPROVAL of the Preliminary Plat for Dorothy Gayle Subdivision as described in the application materials submitted on August 10, 2023 and additional information attached to the staff report with the conditions of approval as listed in the staff report with the additional condition: 1) Because the County does not have the authority to adjudicate private easements approval is conditioned on judicial or other resolution between the affected private parties of the issue of whether the development has legal access via W 4850 N and N 3250 W to CR N 3000 W sufficient to allow improvement of the roads to meet County local road standards required by Title 9.*

RESULTADOPTED

MOVER Lindsey Love **SECONDER:** Wyatt Penfold

AYES Lindsey Love, Tim Watters, Wyatt Penfold, Wade Kaufman, James

NAYES Weber

ABSTAIN Tyler Wertenbruch

None

After the 2/13/24 PZC, the applicant submitted a narrative with the easements indicating the existing access and noted this on the plat. This was the first time staff reviewed the proposed access to the property. Staff received a letter dated 4/11/23 from the neighboring property owners indicating they were contesting the easement documents previously submitted by the applicant and attorney Forrest Fischer.

REVIEW & INTER-AGENCY COMMENTS

The County has solicited comments from other agencies and has received comments from the following entities.

ROADS & UTILITIES: The Public Works Director made the following comments (letter attached and dated 10/30/23):

- Improvement Plans – Fire pond profile does not show finished elevation. *(Staff comment: Addressed).*
- Culverts should be incorporated at all road profile low points. *(Staff comment: Applicant has questions and should schedule a meeting with Planning & Public works to review).*

- Legal access has been a topic of discussion in the past. Comment received suggest that the Board has no authority to adjudicate easements. However, legal access that is in compliance with County Local Road standards (50-foot minimum right-of-way) should be confirmed as a condition of approval.

FIRE PROTECTION: The proposal is more than 2 lots and therefore does trigger fire suppression. A fire pond is proposed on lot 1 (open space) of the development. Teton County Fire Marshal, made the following comment (also attached to this staff report):

- Is approved for fire department access and the proposed fire pond.

WASTE WATER TREATMENT: The applicant has coordinated directly with EIPH and received Preliminary Approval 10/25/2021 No triggers for a Nutrient Pathogen Evaluation were discovered in this review.

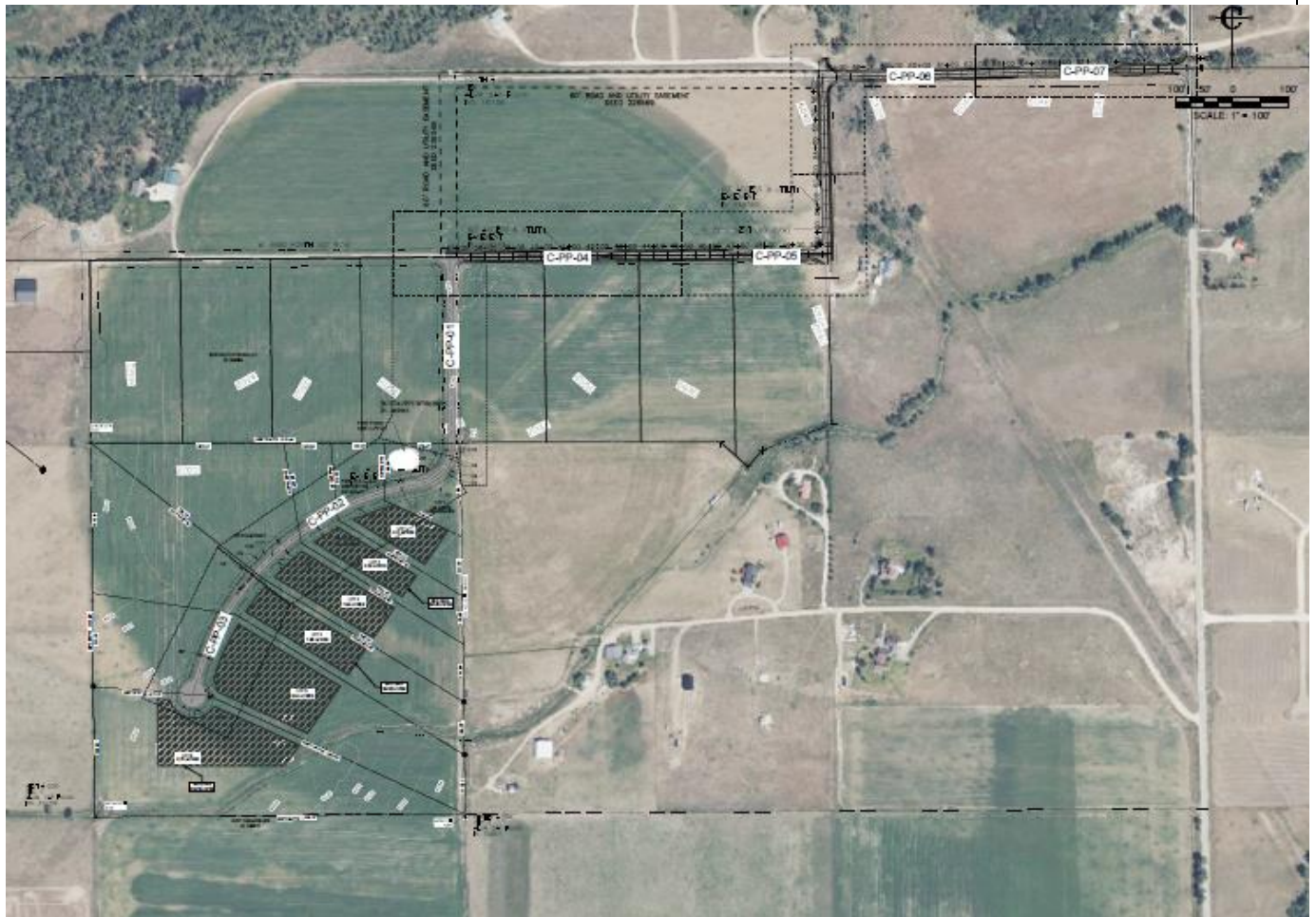
PLANS & STUDIES: Because there is Big Game Migration Corridor & Seasonal Range on the property, a Natural Resource Analysis and Wildlife Habitat Assessment were triggered.

Objective 8. Discussion from Preliminary Plat staff report is still relevant for review at this time.

Objective: 8. If the application is for land that is not adjacent to a state highway or a maintained county road, the applicant will bear the costs of constructing roads to connect the proposed development to at least one state highway or a maintained county road, and adequate for anticipated traffic, and will be constructed to County Road Standards.

The project is proposing access from private road W 4850 N through an easement running across the parcel to the north. The plat indicates that the owners of this parcel have a 60' access and utility easement from Instrument # 270431.

Applicant in March of 2024 finally provided an easement description and access plan to the property, which does not follow the proposed roads previously suggested.



Improvement Plans from March 2024 – indicating the proposed access. This access, however, does not follow the access provided in the title report. A title report for the applicant reflected the following (easements also provided):

Good Morning,

Attached you will find the support documents requested.

I will briefly try to explain each.

Beginning with Easement 107553. This is the easement that gets us from County Road 3000 W across the current Marc Brilliant Property.

It reflects the benefitted property which includes the Gayle Property. Survey attached. (96435) which was the Huff and Hatch property at the time of the grant.

169399 is the deed that Nusbaum Sells the property and gives the easement.

190435 reflects the same easement.

226569 reflects the same easement.

228940 reflects the same easement

238814 references the same easement, but further qualifies it to the existing road

270431 references the same easement, but further qualifies it to the existing road.

I have also attached various surveys for reference that reflect the subject property and easement.

238813

228698

183377

Hopefully this is sufficient.

Let us know if you have any further questions.

Thanks

The project incorporates an interior subdivision road to serve all 6 lots, and the improvement plans show plans of building to County local road standards.

Applicant submitted revised improvement plans bringing all roads to County Local Road Standards on March 26, 2024 and an updated cost estimate on April 17, 2024 for the improvements. However, the improvement plans don't match the legal access provided by the title report to access the property.

As it pertains to the question of legal access – applicant provided easements and documentation (all included in attachment K). Staff has spent hours reviewing multiple documents and submissions. Previous legal counsel has also reviewed. *The recommended condition from PZC appears to still apply:*

Staff Recommendation at Preliminary Plat:

1) Applicant was advised and reminded that the latest materials could be submitted for the requested scheduled date of April 22 was March 25, 2024. Materials came late and were not fully reviewed by public works. It appears the improvement plans building the roads to County Local Road standards to the subdivision access do not match the legal easements provided in the title search by the applicant and Chris Moss. The roads and easements

removed to the staff report from the conditions of approval as noted in the staff report with the additional condition: 1) Because the County does not have the authority to adjudicate private easements approval is conditioned on judicial or other resolution between the affected private parties of the issue of whether the development has legal access via W 4850 N and N 3250 W to CR N 3000 W sufficient to allow improvement of the roads to meet County local road standards required by Title 9.

Staff does not know whether or not this means the BoCC could approve a final plat with this condition or only the preliminary plat.

provided as documentation for legal access should be the road easements used for the application.

Further, as it pertains to legal access, the PZC recommended approval with the condition listed below (1):

removed to the staff report from the conditions of approval as noted in the staff report with the additional condition: 1) Because the County does not have the authority to adjudicate private easements approval is conditioned on judicial or other resolution between the affected private parties of the issue of whether the development has legal access via W 4850 N and N 3250 W to CR N 3000 W sufficient to allow improvement of the roads to meet County local road standards required by Title 9.

SPECIFIC REQUIREMENTS FOR PUBLIC HEARING NOTICE

Idaho Code, Title 67, Section 67-6509, and Title 9, Section 3-2-(D-2) of the Teton County Code. The public hearing for the BoCC was duly noticed in the Teton Valley News on May 21 and May 28, 2025. Notifications were sent via mail to surrounding property owners within a 300-foot radius of the property on May 16, 2025. A notice was also posted on the property on May 30, 2025 providing information about the public.

PUBLIC COMMENT:

Staff has received one new public comment on this application as of 6/3/2025.

OVERVIEW OF FINAL PLAT APPROVAL (9-3-2-D2):

This phase of the subdivision/PUD process is to present the Board of County Commissioners the completed documentation as required by this Ordinance for a final review before rendering a decision to approve, deny, amend or remand this application. If the Board elects to amend the application, additional findings and reasoning shall be made in writing in accordance with State code. Otherwise the findings and reasoning should be contained in the Master Plan / Development Agreement / and Final Plat. (amd. 06-05)

CONSIDERATION OF APPROVAL:

In conjunction with the decision for approval, approval with conditions, or denial of an application for a subdivision or PUD, the Board shall make written findings with respect to the items required with the submission of the application and the criteria below. Additional written findings are not necessary where the public documents or records of the public hearing already provide a written record.

- i. Each exception to otherwise applicable restrictions shall be identified and the reasons supporting the exceptions stated.
- ii. The subdivision or PUD is consistent with the public health, safety and welfare of the County and with all applicable provisions of Title 9 and Title 8 of the Teton County code. (amd. 11-14-08)
- iii. The information required in the application has been verified and is correct.

FINDINGS:

A number of conditions of approval were imposed on the application at the time of Preliminary Plat approval. These were addressed by the applicant in the following narrative.

PREVIOUS CONDITIONS OF APPROVAL FROM PRELIMINARY PLAT

Applicant's Response to Board of County Commissioners' Comments **Conditions of Approval**

1. The financial guarantee (125% of the cost estimate) needs to be fully provided by the time of final plat application. The draft letter provided is adequate for a draft only.

A financial surety is provided in Appendix F of the Final Plat Application Supplement.

2. The CCRs should be updated to include:

a. Teton County Dark Sky lighting requirements.

Teton County Dark Sky lighting requirements have been added to the CC&Rs.

b. Fencing should be wildlife friendly fencing given the location of the NROs and suggestions from the Wildlife Biologist as a mitigation measure. All mitigation measures provided should be included in the CCRs.

Recommending wildlife-friendly fencing has been added to the CC&Rs.

c. Trail maintenance is in the CCRs but a pathway isn't provided with the application

Trail maintenance has been removed from the CC&Rs.

d. General septic tank maintenance per current DEQ and EIPH recommendations

General septic tank maintenance per DEQ and EIPH recommendations has been added to the CC&Rs .

e. Include the owner of the property – Currently Curt Behle is listed as the owner of the property in the CCRs but there is not ownership documentation.

The owner listed in the CC&Rs has been updated.

3. Improvement Plans need to be reviewed and approved by the Public Works Director (before final plat application).

The improvement plans have been approved by the public works director in Teton County, Idaho.

4. Address Public Works Comments: a. Culverts should be incorporated at all road profile low points.

A culvert has been added to the engineering improvement drawings at station 26 + 20.00 as per public works comments.

5. Address the fire marshal's review of the access for the subdivision (6/19/24) to ensure that Fire and EMS have access.

The fire marshal has reviewed and again approved the access for the subdivision pending removal of the pivot.

6. Demonstrate that the development has legal access via W4850N and N3250W to County Road N3000W sufficient to allow improvement of the roads to meet County local road standards required by Title 9 through judicial court order or other legal resolution between the affected private parties through signed agreement.

The developer is currently working with Joshua Chase and the legal team to confirm the necessary documentation. We will ensure that the relevant documents are included in the project packet for consideration as part of the official record. We are taking care to confirm the sufficiency of these documents before making them public, as past instances have shown that our documents, which are public records, have been used to delay the project.

7. Any change or review of water rights on this property as they might affect other property owners have been documented and resolved and approved by IDWR

Included with this document for condition #5 is the agreement between Eustachy/Wysong, Jones and the farmer Ralph Egbert. Ralph Egbert owns the pivot and is pulling the pivot this spring 2025. The Board

of County Commissioners has asked that water rights on this property to be approved by IDWR. First, IDWR does not adjudicate the pipelines, pivots or other means to distribute the water, that is a civil matter. The water rights are with the private water rights owner and IDWR and their decision as to where they will be accessing their single point of diversion is not a matter of the county. We have shared the agreement with Ralph Egbert which goes into detail and addresses the pivot complaint where the fire marshal understood from the complainant that the pivot was not Ralph's. That was an untrue statement and only used to try and sway the fire marshal from being able to approve the fire suppression. The Egbert farming plan letter is attached to this response document.

8. Legal assessment and resolution of prior CC&Rs that might apply to this property to ensure that approval of this proposal does not violate any valid prior landowner agreements

Included in the appendix are two key documents relevant to this matter. The first document, dated 2005, outlines the original covenants, conditions, and restrictions (CC&Rs) associated with the property. The second document, dated 2007, provides the release, vacation, and termination of the 2005 CC&Rs, effectively nullifying them. As a result, the 2007 document is the current and binding CC&Rs governing the property. The legal review ensures that the approval of the current development proposal does not conflict with any valid and enforceable prior agreements, and that the 2007 release stands as the governing document for any future development.

9. A plat note should be added to note that the State of Idaho holds all the mineral rights on this Property. **Addressed in a plat note**

STAFF ANALYSIS

Each of these Conditions appear to have been addressed from the perspective of planning staff except for matters related to the access easements (Condition 6) and to the matter of previously recorded CCR's (Condition 8) in spite of the fact that the application was granted an extension. **While the applicants have asserted that the access easement documents previously provided to the County sufficiently establish the required easements and resolve any dispute raised by adjacent landowners, Condition 6 specifically required that this issue be resolved either through judicial order or other legal resolution between the affected private parties through signed agreement. No documents have been received that indicate that this resolution has been pursued or reached with neighboring parties and no judicial order or agreement has been submitted.**

Similarly, no new information has been provided in regards to the question of previous CCRs. Specifically, a document has not been produced that casts doubt on the efficacy or legality of the vacation of the previously recorded CCR's. Nor has the issue been clearly addressed by the applicant through any new information. This matter is less clearly tied to specific provisions of Title 9, however as the County policy has generally been that CCR's are private agreements between landowners and are not enforced by the County. However, the current Land Development Code codifies this policy and specifically states *"This Land Development Code does not nullify any private agreement or covenant, and each shall apply as provided by law and the terms of the private agreement. Teton County will not enforce any private agreement or covenant."* (1-1C.3.e.). Providing access to proposed subdivision lots is clearly stated in several instances including Objective 8., above and in the following:

9-4-1 (B) SPECIFICATIONS

Street right-of-way widths, grades, design, and alignment shall conform to the County Road Standards for Teton County, Idaho as amended...

9-4-1(J) ACCESS

Required: Each lot shall have legal and physical access provided and must abut and /or have access to a public or private street or road. Emergency secondary access roads shall not be used to provide the primary means of access to a lot.

These sections of code require that both physical and legal access is provided for subdivision lots and that the access meets all the requirements of both title 9 and current adopted county Road standards. Information presented has

brought into question whether this access requirement has been met.

BOARD OF COUNTY COMMISSIONER ACTIONS

- A. Approve the Final Plat, with the possible conditions of approval listed in this staff report, having provided the reasons and justifications for the approval.
- B. Approve the Final Plat, with modifications to the application, or adding conditions of approval, having provided the reasons and justifications for the approval and any modifications or conditions.
- C. Deny the Final Plat application and provide the reasons and justifications for the denial.
- D. Continue to a future BoCC Public Hearing with reasons given as to the continuation or need for additional information.

MOTIONS

The following motions could provide a reasoned statement if a Commissioner wanted to move to approve or deny the application:

APPROVAL

Having concluded that the Criteria for Approval of a Final Plat found in Title 9-3-2-D can be satisfied, I move to APPROVE the Final Plat for **Dorothy Gayle Subdivision** as described in the application materials submitted on August 10, 2023 and additional information attached to the staff report. (with the following conditions of approval...)

DENIAL

Having concluded that the Criteria for Approval of a Final Plat found in Title 9-3-2-D have not been satisfied, I move to DENY the Final Plat for **Dorothy Gayle Subdivision** as described in the application materials submitted on August 10, 2023 and additional information attached to the staff report, based on the following findings:
The following could be done to obtain approval
1.....

CONTINUATION

I move to continue the public hearing for **Dorothy Gayle Subdivision** Final Plat in order to obtain additional information from the applicant or other agencies *for the following hearing date and time...*

Joshua Chase, Planning Administrator

ATTACHMENTS:

- | | |
|----------------------|-----------------------------|
| A) Application | F) Development Agreement |
| B) Improvement Plans | G) Cost Estimate |
| C) Final Plat | H) CCRs) |
| D) Master Plan | I) Surety |
| E) Narrative | J. Legal Access Explanation |
| | K. Public Comment |

End of Staff Report