



## REQUEST FOR A VARIANCE (WETLANDS)

**FOR:** Encroaching 50' wetlands setback  
**WHERE:** RP04N45E106000 & RP04N45E152400  
**PREPARED FOR:** Planning & Zoning Commission  
Public Hearing of May 13, 2025

**LANDOWNER:** John Martin

**APPLICANT:** Katie Salsbury Intermountain Aquatics

**REQUEST:** The landowner would like to cross the northern parcel (RP04N45E10600) with a driveway and develop a residence on the southern parcel (RP04N45E152400)

The Darby Meadows Ranch consists of two parcels (RP04N45E10600 and RP04N45E152400) and is located west of HWY 33 along W 3000 S and Darby Creek (Figure 1 and 2). Jurisdictional wetlands were delineated on the parcels in the fall of 2024 and much of the property was found to meet U.S. Army Corps of Engineers wetland criteria (Figure 3).

**APPLICABLE COUNTY CODE:** Land Development Code, Section 5-4-2, (E), 1.

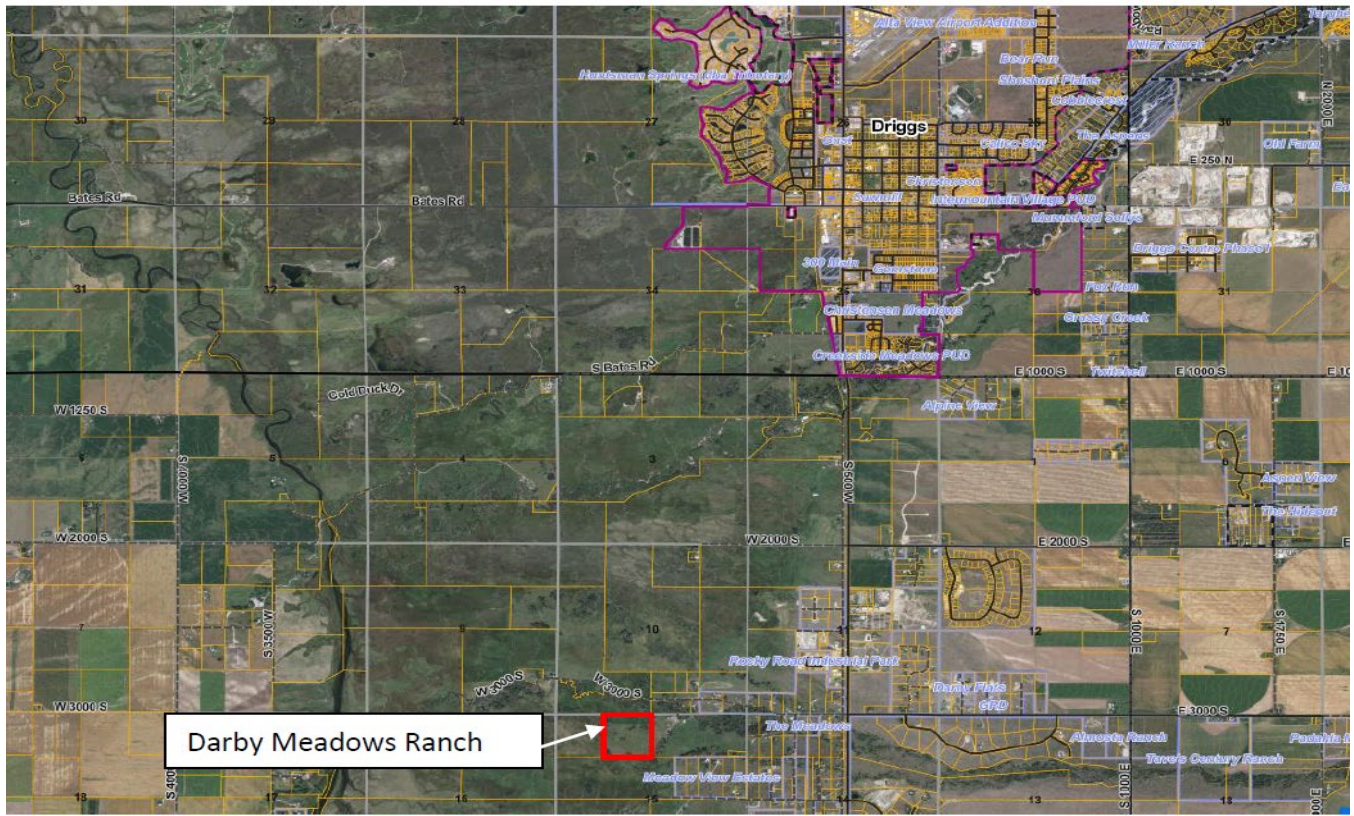
**PARCEL NUMBER:** RP04N45E106000 & RP04N45E152400

**LEGAL DESCRIPTION:** TAX #7803 SEC 10 T4N R45E & NE4NW4 SEC 15 T4N R45E

**ZONING DISTRICT:** LA-35, Lowland Agriculture 35-acre avg. density

**PROPERTY SIZE:** 39.95 acres & 40 acres

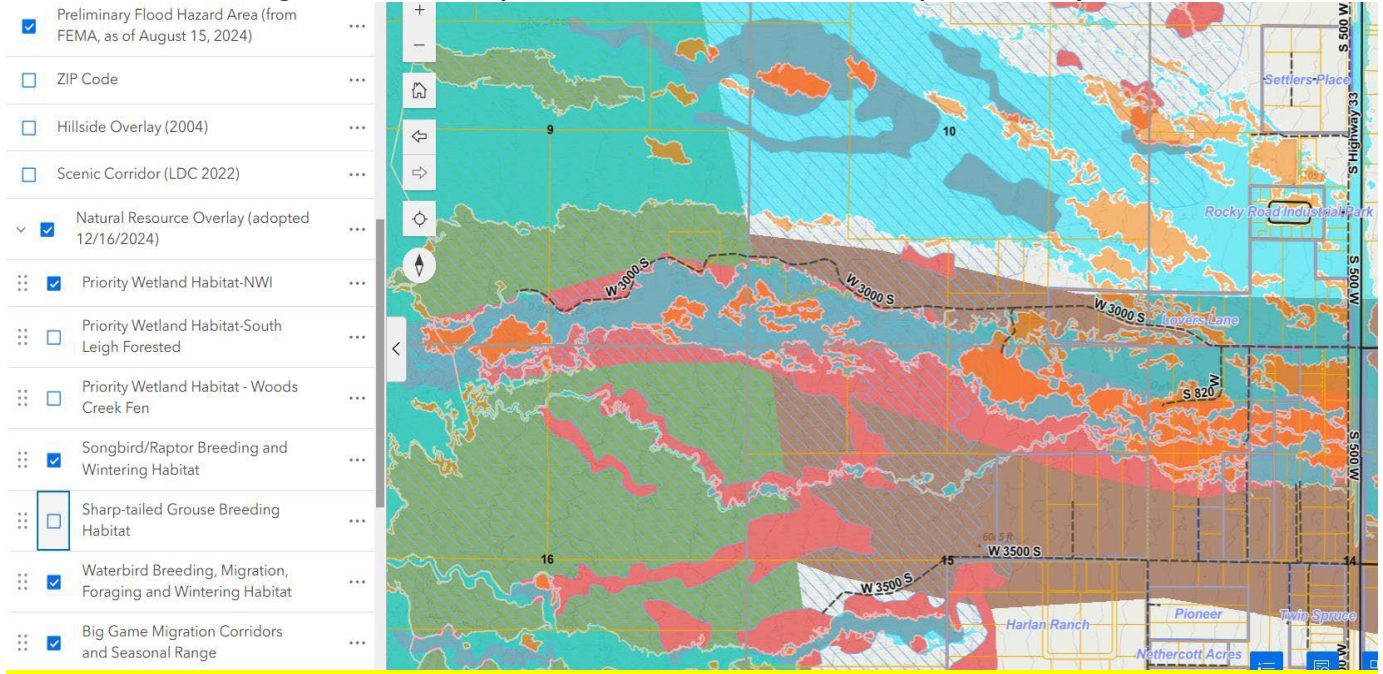
**Figure 1. Vicinity Map**



III



**Figure 2. Parcel Map w/ Natural Resource and Floodplain Overlays**



**Figure 3. Wetland Delineation Map**

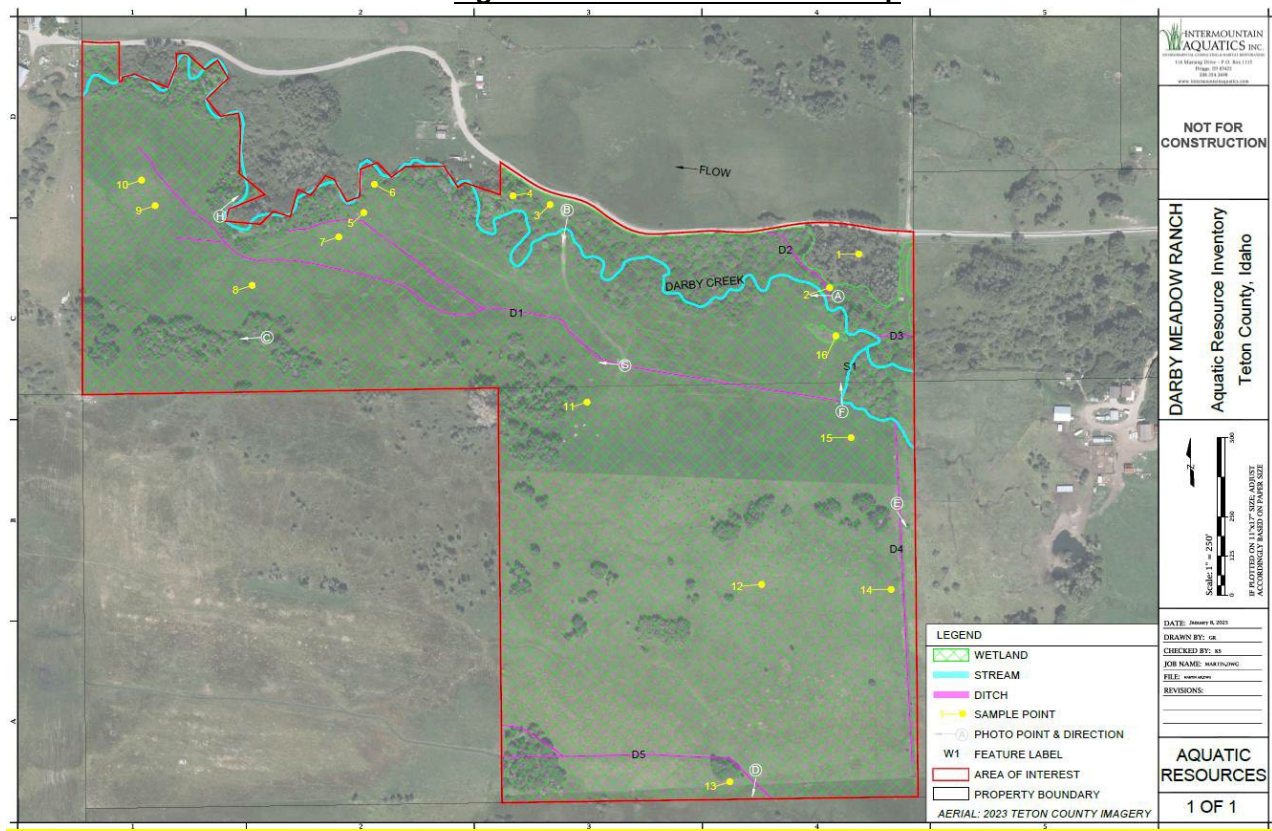
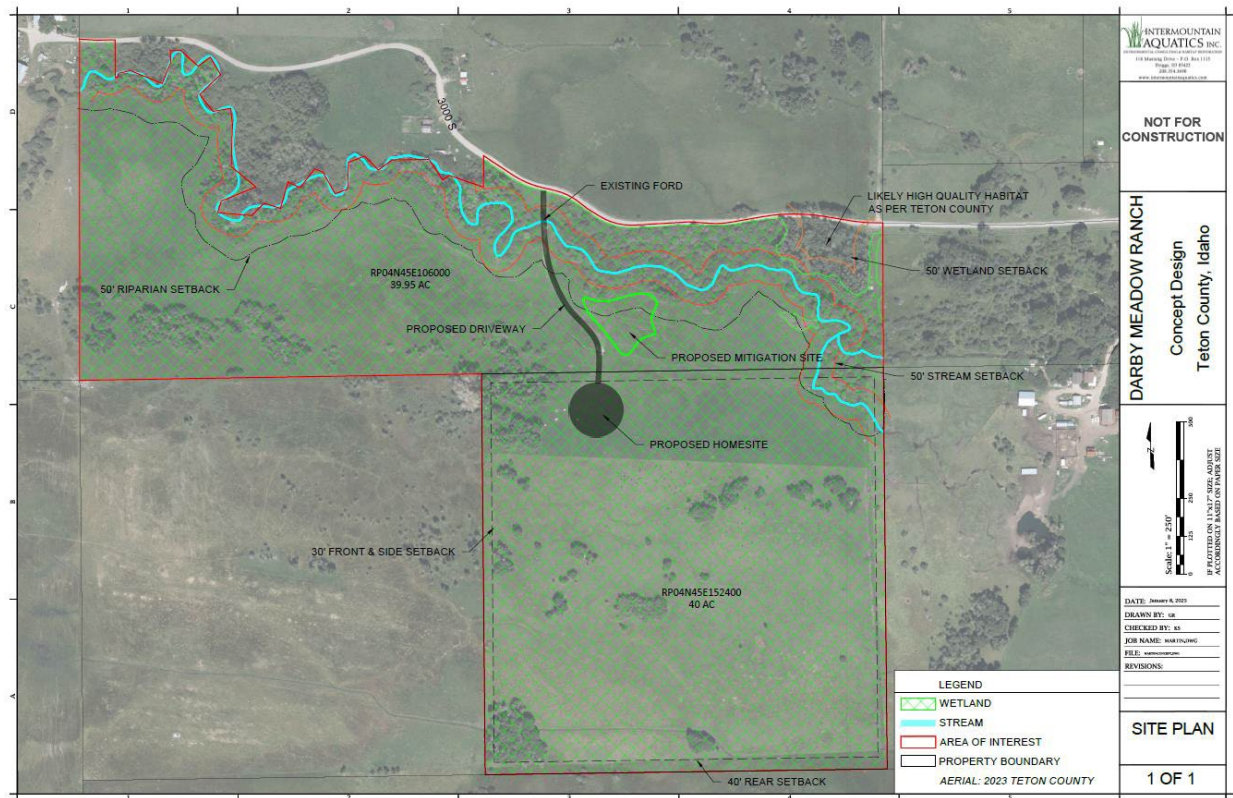




Figure 4. Concept development plan



#### Applicant's summary

The property owner is proposing to construct a driveway across RP04N45E10600 to access a homesite on RP04N45E152400 (Figure 4). The proposed driveway and homesite are entirely within wetlands and the 50' wetland setback. There are few options to develop RP04N45E152400, this concept attempts to reduce impacts to wetlands, floodplains and priority wildlife habitat. The owner would like to request a variance to develop in wetlands and the riparian buffer.

In this instance, the prohibition of development in riparian buffers causes undue hardship due to the extent of wetlands and lack of uplands on the parcels. The subject parcel is entirely wetlands, and the parcel that will be crossed for access is almost entirely wetlands. The only non-wetlands on the properties are in the northeast corner of parcel RP04N45E106000, and we anticipate that Teton County would not look favorably upon developing this area because it is meeting the criteria for protected big game migration and songbird/raptor breeding and winter habitat.

A conceptual alternative analysis was completed to compare these two options (Figure 5). Alternative 1 utilizes an existing ag access route and would replace an old ford crossing Darby Creek with a box culvert. Alternative 2 would impact an aspen forest and riparian area that provide songbird/raptor winter and breeding habitat and cover for migrating big game along the Darby Creek corridor.

**INTERMOUNTAIN AQUATICS**  
2000 West Valley Blvd., Suite 100, Boise, ID 83726  
(208) 333-1000

**NOT FOR CONSTRUCTION**

**DARBY MEADOW RANCH**  
Concept Design  
Teton County, Idaho

**LEGEND**

- WETLAND
- STREAM
- EXISTING ACCESS ROUTE
- APPROX. PRELIM FLOOD HAZARD AREA (FEMA 815/24)
- AREA OF INTEREST
- PROPERTY BOUNDARY

**Scale:** 1" = 250'

**DATE:** February 21, 2023  
**DRAWN BY:** JR  
**CHECKED BY:** RL  
**JOB NAME:** MATH2023  
**FILE:** MATH2023  
**REVISIONS:**

**SITE PLAN**

**1 OF 1**

**Conceptual Alternatives Analysis**

Impact Type	Alternative 1 (linear feet)	Alternative 2 (linear feet)
Riparian	0	195
Wetland	648	450
Upland	0	26
<b>Total</b>	<b>648</b>	<b>671</b>

Utilize existing agricultural access

648 0

RP04N4SE106000  
39.95 AC

RP04N4SE152400  
40 AC

EXISTING FORD

50' RIPARIAN SETBACK

PROPOSED MITIGATION SITE

ALT 1 - PROPOSED DRIVEWAY

ALT 2 - PROPOSED DRIVEWAY

50' WETLAND SETBACK

50' STREAM SETBACK

ALT 1 - PROPOSED HOMESITE

ALT 2 - PROPOSED HOMESITE

30' FRONT & SIDE SETBACK

40' REAR SETBACK

AERIAL: 2023 TETON COUNTY

Existing two-track

W3000 S

Levens Lane

The Meadows

S 820 W

S 750 W

S 500 W



The Variance request specifically pertains to the following development standards in the Land Development Code:

**1. TCC 5-4-2 (E) 1**

E. The following development and activities are prohibited in a Riparian buffer:

1. Construction of *physical development* in a riparian *buffer* except as allowed in Section 5-4-2-D above.
2. Fertilizer, herbicide, and pesticide *application*, except as needed for approved restoration or re-vegetation.
3. Grading that interrupts diffuse flow within the riparian *buffer*.
4. Septic tank drain fields.
5. Driveways and *road crossings* are prohibited unless there is no other alternative in which case driveways shall be not *disturb* more than twenty (20) feet in width and *road crossings* shall bridge the primary *riparian area*.
6. Accessory *structures* are prohibited unless for agricultural purposes if no other alternative exists.

**OVERVIEW OF VARIANCE APPROVAL:**

**9-4:** Variances can only be approved for the modification of the bulk and placement requirements of the LDC as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other LDC provisions affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots, as outlined in Idaho State Code 67-6516. Variances are considered through a quasi-judicial process.

Idaho State Code 67-6516 – “A variance shall not be considered a special privilege, but may be granted to an applicant only upon showing of undue hardship because of characteristics of the site and that the variance is not in conflict with public interest.”

Review Criteria	Applicant Narrative
1. If the variance application relates to a public-school facility, that the subject property is appropriate for development allowed in the proposed Zoning District, including the impacts authorized for review under Idaho Code section 67-6519(3).	Application does not pertain to a public school facility.
2. A literal interpretation of the provisions of the LDC would effectively deprive the applicant of rights commonly enjoyed by other properties of the Zoning District in which the property is located.	A literal interpretation of the provisions of the LDC would effectively deprive the applicant of rights commonly enjoyed by other properties of the Zoning District in which the property is located. Countless properties in the valley ‘wetland bottoms’ have development within and/or crossing wetlands, developed in accordance with permits and guidelines administered by the U.S. Army Corps of Engineers regarding the protection of wetlands.
3. Granting the requested variance will not confer upon the property of the applicant any special privileges that are denied to other properties of the Zoning District in which the property is located.	Granting this variance is necessary to allow access and development of the property, and will not confer any special privileges beyond what would reasonably be expected, that are denied to other properties located within the Zoning District.

4. The requested variance will be in harmony with the purpose and intent of the LDC and will not be injurious to the neighborhood or to the general welfare.	The proposed driveway and development on private land will not impede public health, safety, and general welfare, and is in harmony with the purpose and intent of the LDC. The requested variance is consistent with neighboring driveways and development, and will not be injurious to the neighborhood or to the general welfare of the public. It also utilizes an existing two track on the property previously used for agricultural activities.
5. The special circumstances are not the result of the actions of the applicant.	The applicant has made no changes to the parcel extent or location/extent of wetlands or uplands. The special circumstances are not the result of the actions of the applicant; they are the result of a change in the LDC to add setbacks/buffers to sensitive lands.
6. The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure.	A driveway must be constructed to access the site and a ~1/2-acre homesite (U.S. Army Corps of Engineers – Nationwide Permit 29 threshold) is proposed just past the 30 ft lot-line setback. The proposed driveway utilizes an existing ford and access route, minimizes impacts to wetlands, Darby Creek and riparian areas, and will mitigate for those impacts through the U.S. Army Corps of Engineers.
7. The variance does not permit a use of land, buildings or structures, which are not permitted by right in the Zoning District or the LDC, including Chapter 5.	The requested variance is for a driveway and residence. It will not result in a use which is not permitted by right in the Zoning District or the LDC, including Chapter 5. The underlying zoning is LA-35 – Lowland Agriculture.
8. Granting of the variance is not in conflict with the public interest.	Wetlands will continue to be protected by utilizing existing access routes and low-quality wetlands to the greatest extent possible, and mitigating for impacts as required by a US ACOE permit.
9. The variance does not reduce the lot size below the minimum lot size allowed in the Zoning District, except as provided in section 1-8.	The variance request does not propose changing the lot size, and will not reduce the lot size below the minimum lot size already allowed in the Zoning District.

#### **SPECIFIC REQUIREMENTS FOR PUBLIC HEARING NOTICE:**

Idaho Code, Title 67, Section 67-6509, 67-6511, 67-6512, and LDC 4-9-C., and 4-2-D. of the Teton County Code. The public hearing for the Planning & Zoning Commission was duly noticed in the Teton Valley News on April 23<sup>rd</sup> and April 30<sup>th</sup>, 2025. A notification was sent via mail to surrounding property owners within a 300-foot buffer area on April 18<sup>th</sup>, 2025. A notice was also posted on the property providing information about the public hearing on April 28<sup>th</sup>, 2025.

#### **REVIEW & INTER-AGENCY COMMENTS:**

All related documents are attached.

- **US Army Corps of Engineers: Preliminary Jurisdictional Determination (November 8<sup>th</sup>, 2024)**

- Our preliminary jurisdictional determination (PJD) indicates your area of review may include Waters of the United States, including wetlands. Your review area is located about 3 miles southwest of Driggs in Teton County, Idaho, within Sections 10 and 13, Township 4N, Range 45E, Latitude 43.6792760, Longitude -111.1341270. Your request has been assigned file number NWW-2025-41, which should be referred to in future correspondence with our office regarding this site.
  - This PJD shall remain in effect unless an approved jurisdictional determination is requested or new information supporting a revision is provided to this office.
- **Intermountain Aquatics: Darby Meadow Ranch - Aquatic Resource Inventory (November 25, 2024)**
    - Aquatic resources identified included 77.3 acres of wetland, 0.72 acres of stream, and 0.27 acres of ditch within the 80-acre area of interest (AOI). Hydrologic influences within the AOI include high groundwater and surface water in streams and ditches.
    - Wetlands were found totaling 77.3 acres. These wetlands are palustrine emergent in the meadow, scrub-shrub dominated by willows, and forested dominated by aspen. 0.72 acres of stream are present, including Darby Creek and a spring creek tributary (S1). The downstream portion of Darby Creek roughly follows the property line, and any portion of the creek off the property is included in this acreage. Five ditches are present, totaling 0.27 acres. The dominant hydrologic influence within the AOI is high groundwater and surface water in streams and ditches.

**PUBLIC COMMENT:**

Staff has received no public comments on this application as of May 8, 2025.

**RECOMMENDATION:**

Planning and Zoning Commission should deliberate if the proposed development, associated improvements, and the mitigation work encroaching the 50' setback from delineated wetlands meets the requirements to grant a variance.

**CONDITIONS OF APPROVAL**

1. An approval of the variance does not equate to an approved site plan for a building permit. Applicant will still need to receive a Grading and Erosion Control Permit, Building Permit, and all necessary approvals from Teton County.
2. An approved variance expires 1 year after the approval date unless the applicant has filed a complete application for a building permit or made substantial progress towards development that does not require a building permit.
3. Future development not incorporated in this application will not encroach the 50' setback from the delineated wetlands or will be required to go through the variance process again.

**PLANNING & ZONING COMMISSION ACTION:**

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

## **MOTIONS**

### **APPROVAL**

Having concluded that the Review Criteria of a Variance and other code found in the Teton County Land Development Code, Section 5-4-2, (E), 1, can be satisfied (with the inclusion of the following conditions of approval, (if any), I move to APPROVE the Variance for John Martin as requested in the application materials submitted March 3, 2025.

### **DENIAL**

Having concluded that the Review Criteria of a Variance and other code found in the Teton County Land Development Code, Section 5-4-2, (E), 1, have not be satisfied, I move to DENY the Variance for John Martin as requested in the application materials submitted March 3, 2025, for the following reasons...

### **CONTINUATION**

I move to continue the public hearing for the John Martin variance request *to a specific date and time* in order to obtain additional information from the applicant or other agencies.

Prepared by:

Mitzi Van Arsdell, Associate Planner

Reviewed by, Dan Leemon, Senior Planner

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### **Attachments:**

- |  |                        |
|--|------------------------|
| A. Application (2 pages)                 | E. USACE PJD (3 pages) |
| B. Narrative (6 Pages)                   |                        |
| C. USACE Permit #NWW-2025-41 (3 pages)   |                        |
| D. Aquatic Resource Inventory (82 pages) |                        |

**End of Staff Report**