



## REQUEST FOR A VARIANCE (WETLANDS) - RECONSIDERATION

**FOR:** Encroaching 50' wetlands setback  
**WHERE:** West end of W 5000 S  
**PREPARED FOR:** Board of County Commissioners  
Public Hearing of July 14, 2025

**LANDOWNER/APPLICANT:** Brian Fraiz

**OVERVIEW:** The applicant is requesting a reconsideration of the previous denial of a variance by the Planning and Zoning Commission (PZC) and subsequent affirmation of that decision by the Board of County Commissioners (BoCC, or Board) to develop a home, guesthouse, and driveway within the 50' setback from delineated wetlands.

The property is currently in a conservation easement with the Teton Regional Land Trust. This conservation easement has a building envelope in the NE corner that all development needs to occur within. An Aquatic Resources Inventory was completed for the property on October 6, 2022. The inventory identified areas of uplands both within and outside of the building envelope. A Nationwide Permit No. 29 was granted on December 5, 2023 with an expiration date of March 14<sup>th</sup>, 2026. The proposed driveway will encroach the 50' setback from delineated wetlands. The proposed single-family home, guesthouse, and associated improvements would be built within the delineated wetlands.

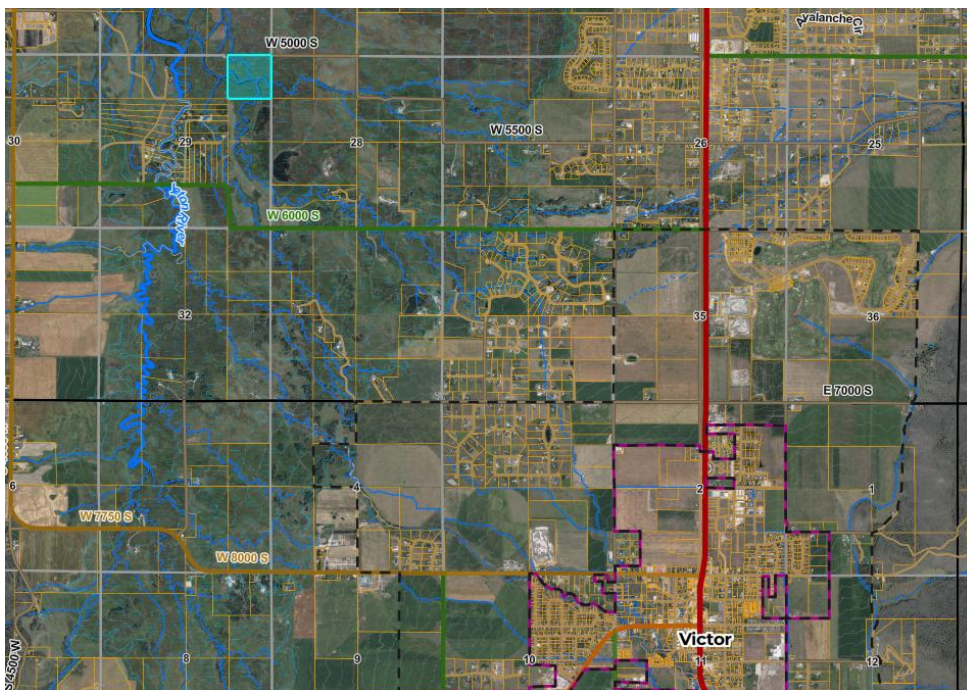
**APPLICABLE COUNTY CODE:** Land Development Code, Sections 4-9, 4-15, 5-2-3, and 5-4-2.

**PARCEL NUMBER:** RP04N45E290050

**LEGAL DESCRIPTION:** NE4NE4 SEC 29 T4N R45E CONSERVATION EASEMENT

**ZONING DISTRICT:** LA-35

**PROPERTY SIZE:** 40 acres



*Figure 1. Vicinity Map. Subject Parcel Highlighted Blue. NW of Victor.*

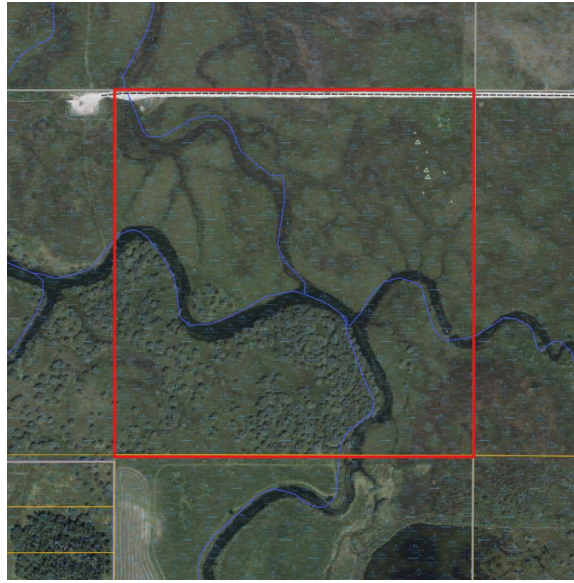


Figure 2. Aerial Image

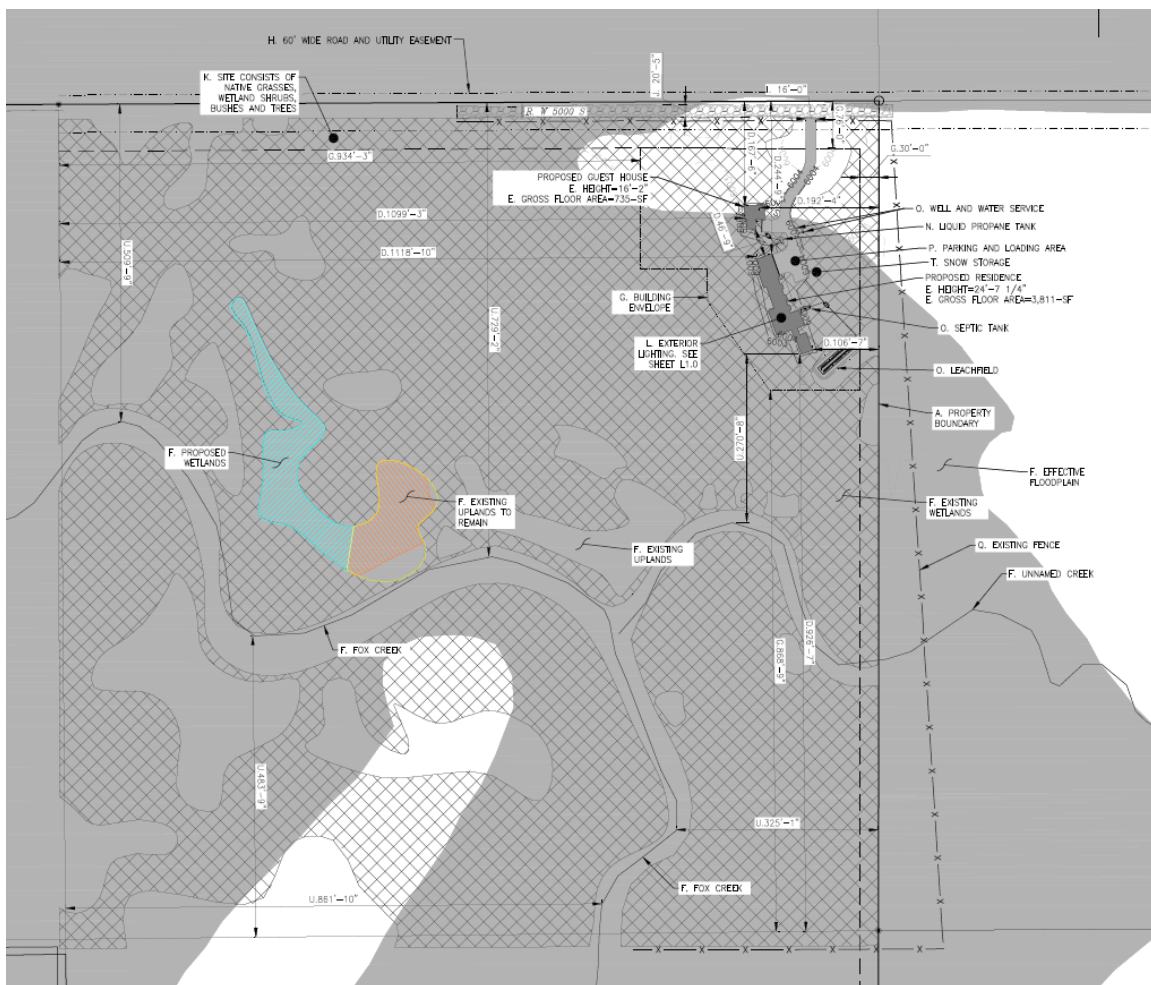


Figure 3. Site Plan

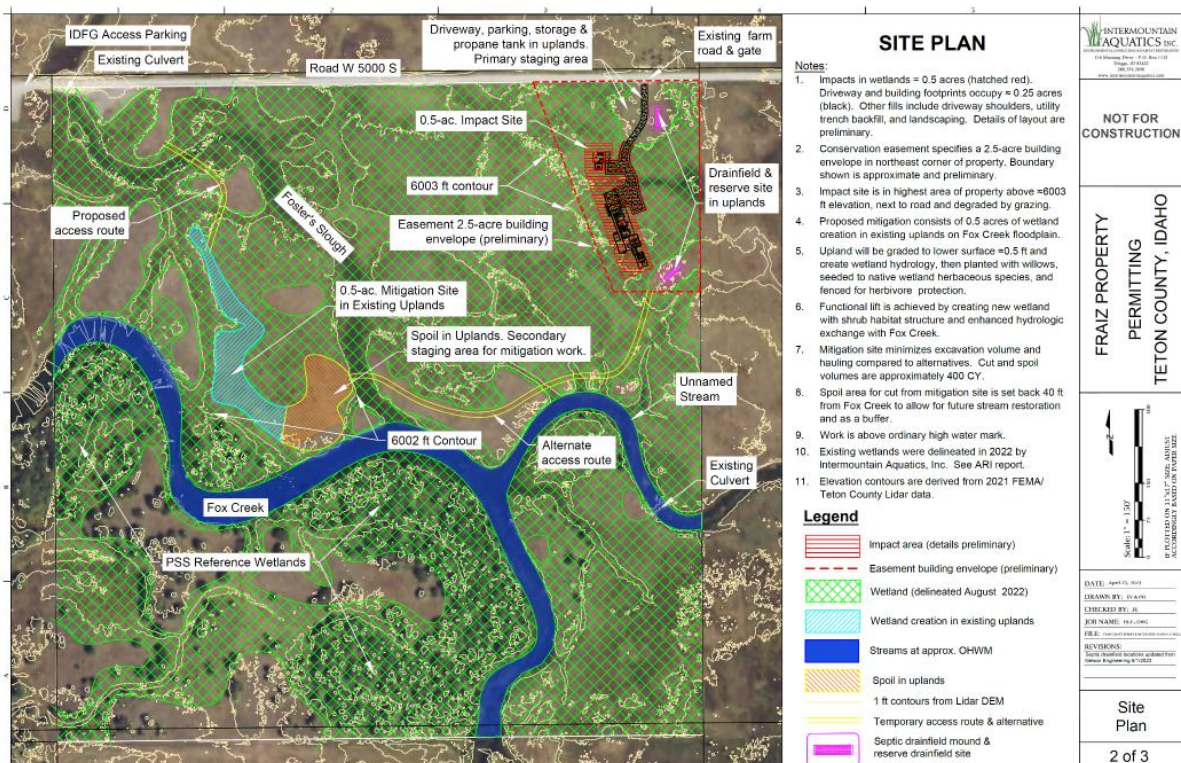




Map of Wetland Features delineated 2022

Figure 4. Wetland Delineation (green hatch pattern are wetlands)

#### A-1) Mitigation Site Plan



## 4-15 Appeals and Reconsideration

### A. Applicability

1. In addition to the remedies described in Section 1-7 of the LDC, this section provides the remedy of appeal from and requests for reconsideration of final decisions made by the Administrator, PZC, BoCC, or other County official.
2. An applicant or an affected person may avail themselves of these administrative remedies in accordance with this section.
3. An appeal of a decision will be reviewed by the PZC or BoCC, as specified in the table in Section 4-1.  
*The table indicates that the PZC can make decisions on requests for a variance and the BoCC can consider appeals to those decisions.*
4. Appeals and requests for reconsideration must be filed with the Administrator within fourteen (14) calendar days of the date of a written decision.  
*The BoCC written decision was approved on May 27, 2025. An application for Reconsideration was received on June 9, 2025.*
5. Any applicant or affected person seeking judicial review of a written decision must first request reconsideration of the final decision as provided here.

### B. Submittals

1. A notice of appeal or request for reconsideration must be filed on a completed application form provided by the Department.
2. The application must include a narrative description of the basis for the appeal or request for reconsideration, including the specific deficiencies of the decision alleged by the applicant or affected person.  
*The applicant's representative submitted an application and narrative statement dated June 9, 2025.*

### C. Notice and Requirements

1. Notice will be provided as required for the decision being Appealed from or being reconsidered.
2. If no notice was required for the original decision, published notice will be provided in a newspaper of general circulation in Teton County, posted at the courthouse, and posted on the County's website at least fifteen (15) days prior to the hearing.

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

Idaho Code, Title 67, Section 67-6509, 67-6511, 67-6512, and Title 9, Section 3-2-(B-2) of the Teton County Code. The public hearing for the Board of County Commission was duly noticed in the Teton Valley News on June 25th, 2025 and July 2nd, 2025. A notification was sent via mail to surrounding property owners within a 300-foot buffer area on June 18th, 2025. A notice was also posted on the property providing information about the public hearing on June 20th, 2025.

### D. Procedures for Appeals and Requests for Reconsideration

1. Following notice and a hearing, as required by law, the reviewing official or body may affirm, reverse or modify the original decision after verification of compliance with applicable procedural and LDC standards.
2. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the completed appeal or request for reconsideration.
3. Where no written decision on a request for reconsideration is issued to the applicant within sixty (60) days of receipt of the completed application, the request for reconsideration is deemed denied, without further action by the applicant or the County.



No other specific criteria are provided for consideration of a reconsideration. The Board should consider the information from the original application, the review criteria for the specific request for the variance, the information provided from the deliberation and written decision document of the PZC, and the information submitted in the applicant's request for appeal.

The following information was provided in the staff report prepared for the original variance request eventually denied by the PZC. Other relevant materials can be found as attachments to this report.

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

**1. TCC 5-2-3 (B):**

- B. Site grading within one hundred (100) feet of the Teton River or wetlands delineated by U.S. Fish and Wildlife National Wetland Inventory boundary, and within fifty (50) feet of all other waterways.

**2. TCC 5-4-2 (C)**

- C. Setback requirement: all physical development and use is required to be set back from specified resources as shown in Table 7. The area within the setback is defined as the Riparian Buffer.

*Table 7. Riparian Buffers*

| Resource        | Setback Distance (A) | Measured From (B)   |
|-----------------|----------------------|---|
| Teton River     | 100'                 | Ordinary high water mark  |
| Stream or Creek | 50'                  | Ordinary high water mark  |
| Wetland 1       | 100'                 | U.S. Fish and Wildlife National Wetland Inventory boundary                        |
| Wetland 2       | 50'                  | Site specific <i>wetland delineation</i> approved by U.S. Army Corps of Engineers |
| Lake or Pond    | 50'                  | Ordinary high water mark  |

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

- 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.”

The follow review of variance criteria staff analysis was presented in the original staff report prepared for the PZC.

| <b>Review Criteria</b>   | <b>Staff Analysis</b>  |
|--|--|
| 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 LDC standard would not allow development within wetland areas and riparian area setbacks. A 50' setback would be required along with a wetland delineation.  |
| 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.  | The variance, if approved, would allow the applicant to build a driveway, single family home, and guest house that would encroach the 50' setback from the delineated wetlands. As shown, developing in uplands without encroaching on the setbacks would be challenging and more than likely not possible without reducing the home size. There is a conservation easement across the property that includes a building envelope for development. |
| 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 proposal is aligned with the rest of the LDC in that this is the only variance to the regulations requested.   |
| 5. The special circumstances are not the result of the actions of the applicant.   | The request would not grant a special circumstance that is the result of the applicant. The parcel was created years ago (more than likely before the lot creation policy and subdivision ordinance) without consideration of wetlands or property and access constraints.   |
| 6. The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure.  | It may be possible to shift the building footprint partially onto the delineated uplands. This would reduce the wetland impacts and would be considered the minimum variance.  |

|  |  |
|--|--|
|  | PZC to review and consider if the requested variance is the minimum variance to make the residential use of the property possible. |
| 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. | All other applicable LDC standards are being met.  |
| 8. Granting of the variance is not in conflict with the public interest.   | The variance may be in conflict with public interest. PZC to deliberate.   |
| 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.                       | Variance request does not adjust the minimum lot size per the zoning district.   |

### **PROJECT BACKGROUND & REVIEW HISTORY**

**Planning & Zoning Commission Review:** The PZC reviewed and continued the application on November 12<sup>th</sup>, 2024 to obtain legal review. The continued hearing was held on January 14, 2025 at which time the application was denied.

After the continuation on November 12<sup>th</sup>, 2024, the applicant began the wetland mitigation work without an approved grading and erosion control permit. Staff placed a stop work order on the property.

The BoCC considered an appeal to the PZC decision and subsequently affirmed the decision in public hearings on April 14 and April 28, 2025. A written decision was provided to the applicant on May 27, 2025. The applicant submitted a request for reconsideration on June 9, 2025.

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

- **US Army Corps of Engineers: Nationwide Permit No.29 (December 5, 2023)**
  - We have determined that your proposed project Fraiz Residence Development is authorized in accordance with Department of the Army (DA) Nationwide Permit (NWP) No. 29: Residential Developments. This project is located within Section 29 of Township 4 North, Range 45 East, near Victor, Teton County, Idaho.
  - Project activities include the discharge of approximately 1770 cubic yards of dirt and gravel fill in 0.5 acres of wetlands considered to be Waters of the United States associated with the creation of a roadway and home site. Additional activities include the installation of a 6500 x 2-foot electric transmission line that will have a temporary impact to 0.3 acres of wetlands. The project also involves the creation of 0.5-acre scrub-shrub wetlands as compensatory mitigation. The mitigation site will be formed through the excavation of upland areas adjacent to wetlands allowing surrounding hydrology to enter the site and the planting and seeding of native hydrophytic vegetation.
- **Intermountain Aquatics: Aquatic Resource Inventory (October 6, 2022)**
  - Wetlands were found throughout the AOI totaling 32.9 acres. Wetlands are roughly two-thirds palustrine emergent sedge meadows north and east of Fox Creek and one-third scrub-

shrub wetland concentrated south of Fox Creek. Wetlands are supported by seasonal high groundwater and surface water in Fox Creek and Foster's Slough. Vegetation generally transitions from predominantly FAC to FACW species in the wetlands, to FACW to FACU in the uplands. Sample points that lacked hydrology had a higher prevalence of FACU species. Most of the sample points were characterized by dark loamy soils and many with a lighter-colored clay layer below at variable depths. Riverine resources on the property include a total of 1776 linear feet of Fox Creek (C1) and 602 linear feet of an unnamed tributary to Fox Creek.

▪ **Intermountain Aquatics: Compensatory Mitigation Plan (April 28, 2023)**

- The Fraiz parcel totals 40 acres and is located 4 miles northwest of Victor in Teton County, Idaho. The landowner plans to build a driveway, single-family residence, and associated improvements. Site development impacts will result in 0.5 acres of fill in wetlands in the northeast corner of the Property. The 0.5-acre impact area consists of low functioning PEM wetlands on higher ground that have been degraded by historic grazing and depend partly on irrigation return flow. The owner plans to mitigate impacts by converting 0.5 acres of uplands to PSS wetland. Impacts and mitigation do not directly involve streams. Existing wetlands are documented in a separate Aquatic Resource Inventory report completed by Intermountain Aquatics, Inc. (IMA) in 2022 and submitted with this Plan and permit application. Other supporting documents include a conservation easement and easement baseline report.

▪ **Teton Regional Land Trust: Foster Deed of Conservation Easement (August 3, 1998)**

- **Purpose:** It is the purpose of the Conservation Easement granted herein to assure that the Property will be retained forever in its natural scenic, and wetlands habitat condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Granters intend that this Conservation Easement will confine the use of the Property to such activities, including, without limitation, natural, wildlife habitat, limited recreational and agricultural, as are not inconsistent with the purpose of this Conservation Easement.
- **3.1:** To reside on the Property and to designate and to develop, in accordance with the provisions of this paragraph 3.1, one "Building Area" as described below, provided that Granters agree that the "Building Area" shall not exceed 5 acres in size and that the following permitted uses and practices and restrictions apply to the "Building Area". Notwithstanding anything in this paragraph to the contrary, all structures permitted hereby shall be located within the "Building Area" defined herein. Granters shall comply with local, state, and federal regulations that deal with building construction, and acquire all appropriate local state and federal building permits. The designated "Building Area" shall be located as described below and as indicated on the accompanying map, Exhibit D, except with the prior written permission of the Trust, which permission shall not be unreasonably withheld.

▪ **Federal Emergency Management Agency: Letter of Map Amendment (January 8, 2024)**

- This document provides the Federal Emergency Management Agency's determination regarding a request for a Letter of Map Amendment for the property described above. Using the information submitted and the effective National Flood Insurance Program map, we have determined the described portion of the property is not located in the SFHA, an area inundated by the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood). This document amends the effective NFIP map to remove the subject property from the SFHA located on the effective NFIP map; therefore, the Federal mandatory flood insurance requirement does not apply.



**PUBLIC COMMENT:**

Staff has received several additional public comments on this application as of April 9<sup>th</sup>, 2025.

**APPLICANT'S REQUEST AND STAFF ANALYSIS**

The applicant's representative submitted a 9-page narrative as a basis for the request for reconsideration. Some of the main points raised in the narrative include the following (applicant's comments are bulleted)

- The narrative asserts that the BoCC decision on the appeal was "arbitrary, capricious and an abuse of discretion" and "completely at odds with the written decision of the Planning and Zoning Commission's (PZC)."

The Board affirmed the PZC decision though they did rely on somewhat different criteria in their decision. They confirmed that criteria 6 related to whether the request represented the "minimum variance" was not met, but also found that the proposal was not consistent with the public interest and potentially injurious to the public and neighborhood (criterion 4/8), while the PZC emphasized that they believed the request would grant "special privileges" (criterion 3) if approved. The Board did not focus their discussion and ultimate decision on this criteria. The applicant's appeal request sought an outcome which would overturn the PZC decision but Board decision was not at odds, rather it affirmed the original decision.

- "The BOCC states in their decision that they are applying the Land Development Code (LDC) in the most liberal way possible."

This is not the language used in the written decision. The BoCC written decision emphasizes that the intent as well as the plain language of the regulations is designed to protect sensitive natural resource areas including streams and wetlands by establishing a buffer around those resources where development is limited or not allowed.

- The PZC determined that matters related to wetlands or wetland mitigation should not be considered.

The PZC decision recognizes that the USACoE has its own jurisdictional authority and discretion in relation to development within wetlands. It is an incomprehensible read of the County ordinances to state that wetlands should not be considered in this variance request, when the 50' setback is clearly established to buffer potential impacts to wetlands by limiting the proximity of development to them.

- "The applicant was told by the planning and zoning administrator, at the time, that their situation met the requirements for a setback variance." "Jade Krueger also told the applicant that a Wildlife Habitat Assessment was not be necessary because the building envelope delineated in the conservation easement already took into considerations the wildlife values."

The Planning Administrator is not a decision maker in regards to variances. Statements from the Administrator should be considered as advisory and not binding on the bodies that are identified as the decisionmaker for various applications outlined in the Land Development Code. In regards to the question of the requirement for a wildlife study, the County adopted a clarifying policy in December of 2025 which grants the Administrator discretion in applying exemptions from wildlife studies for individual building permits. A property which includes a conservation easement establishing a building envelope is an expressly stated exemption in that policy. The full context of the email clearly indicates that the Administrator, at that time, recognized and stated to the applicant that the request would require a variance and further that she did not "have the authority to

just waive that requirement” for wetlands setbacks. The inclusion of the email also makes assumptions as to what information the Administrator had available at the time to suggest how the variance may be viewed. In any case the assertion that the proposal on this site could represent an undue hardship as the email stated was not refuted by decision makers.

- “Lastly, the PZC and the BOCC both clearly stated that there is an undue hardship due to the nature of the property and that a wetland variance and wetland disturbance is necessary, yet the application was still denied.”

Although state statute and local ordinance establish “undue hardship” as an initial bar for granting a variance, it is not the only criteria for consideration. Neither the PZC nor the BoCC asserted in their decisions that there was no undue hardship. In their deliberations, both bodies recognized the difficulties the site presents for building as can be found in their statements. They also suggested that some variance would likely be necessary for the proposed development. They relied on other approval criteria in supporting their findings for their decisions.

- The decision handed down by the Board of County Commissioners ignores the plain language of the LDC and the evidence/facts in the record (the detailed work conducted by Nelson engineering, Intermountain Aquatics, Eastern Idaho Public Health (EIPH) and the Army Corp of Engineers completely disregarded).

The Board discussed the facts and evidence presented by the applicant at length and sought to understand the specific details presented. They ultimately looked at and cited a number of areas of the LDC in rendering their decision. They specifically noted the challenges in siting a workable septic system with the disconnected upland areas available for this development.

- The Fraiz’s meet or exceed all standards of the LDC including these standards.

LDC § 1-4(A)(1)(c) requires development to be clustered to provide meaningful open space and limit impacts on these natural resources.

The Board did not rely on finding this regulatory standard was not met in upholding the PZC denial of the variance. It is not specifically referenced in the written decision.

- The Fraiz application meets or exceeds this standard.

LDC § 5-4-1(E) The decision cites to this section, but conveniently (and it must be assumed, intentionally) leaves out the very significant language of § 5-4-1(E)(2): If impacts cannot be avoided as specified in Section 5-4-1-E, the lost habitat shall be mitigated by replacing it with similar vegetation communities at a one to one (1:1) ratio. The replacement ratio shall be higher within a half mile of riparian areas and equal a two-to-one (2:1) ratio or replacement of two vegetative components for every one that is removed. LDC § 5-4-1(E)(2).

As pointed out, The BoCC did not make specific reference to this standard or find that the proposal did not meet this requirement. It correctly indicates that the expected ratio for revegetation in riparian areas should be at a 2:1 ratio. Later the narrative asserts that ...

- LDC § 1-10(F)(3) “Wetlands setbacks are measured from the edge of the boundary line established by the National Wetland Inventory Map, or the line established by a detailed site-specific delineation approved by the U.S. Army Corps of Engineers.” The BOCC decision states that the above “language

does not support creation of a new artificial wetlands edge based on the placement of USACoE approved fill.” This completely contradicts the clear language of the LDC.

This regulation language refers to the establishment of the edge of an existing wetland through a wetland delineation, which is subsequently submitted to the USACoE for concurrence, as opposed to relying on the less accurate National Wetlands Inventory which is a broad-brush estimate of areas likely to include wetlands (and therefore has a larger setback due to the uncertainty). It does not suggest the creation of a new wetland boundary after fill is placed in order to establish new upland areas.

A large portion of the narrative focuses on comments from Commissioner Mike Whitfield. At the end of the Board’s deliberation, it appears that Commissioner Whitfield’s comments were persuasive enough to other Board members, which may have relied somewhat on his experience in relation to natural resources values and local conditions within this area and his understanding of the County’s regulations. Thus, the Board reached some consensus following their deliberation which resulted in a unanimous vote. The narrative specifically focuses on statements from Commissioner Whitfield in relation to the scale of the proposed building not being suited to the site, however the narrative does not acknowledge that following these statements Commissioner Whitfield stated that those personal opinions could not be relied on in their decision. A review of the written decision shows that the Board did not suggest that the applicant reduce the size of the proposed building in order to be granted a variance, but only suggested reconfiguration of the proposed development to reduce the impacts on the wetlands present on the site.

The narrative also discusses in detail the relative value of existing wetlands compared to the proposed enhancements and mitigation work. Although these may be highly accurate and relevant in providing a public benefit as asserted, the current county ordinances do not make specific provisions for evaluating different wetland types and prioritizing some over others, rather it treats all wetlands similarly in the expectation for setbacks.

- “The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure. Whitfield’s suggestion that the applicant move as much infrastructure as feasible to Upland 1 as well as their primary and secondary septic sites is simply not feasible, and it still would result in a 1/2 acre of wetland disturbance in order to maximize the wetland setback.”

At the end of the narrative an alternative site layout is presented. It appears to demonstrate that Commissioner Whitfield’s suggestions are not feasible, but actually demonstrates that alternative site layouts exist. The drawing leaves out any potential reduction in the area of constructed uplands that may be reduced in this layout as the uplands are not pictured in the alternate layout and may overlap with upland 1 to some extent. Several suggestions were made that are not illustrated or explored in the alternate layout including different orientation of the buildings, a reduction in driveway length or potentially an attached accessory dwelling layout. The Board did not direct exactly how the applicants should approach a redesign but rather to present an alternative which they believed was could reduce the amount of fill and wetlands disturbance, meeting the intent of the wetland setback to a greater degree.

Criteria 8 asks the BOCC to confirm that “granting of the variance is not in conflict with the public interest.” The “not in conflict” standard is a low bar that the Fraiz far exceed by actually benefitting the public.

The question related to public interest may be somewhat difficult to definitively assess. It should consider the evidence which is presented in this narrative and weigh it against other comments received from the public. Concerns related to the “public interest” included statements related to water quality impacts which are also



difficult to fully determine. Wetlands are recognized for their importance in protecting water quality by slowing flows and filtering sediment and nutrients in runoff water before entering water bodies and emphasizes the need to protect and maintain through setbacks or limiting the loss of wetlands area. Wetlands enhancement and mitigation efforts that are proposed could be considered in this context but placement of fill and development activity within wetlands are also important factors to weigh.

- “The Board’s decision relied on language from the LDC which presents a broad perspective of wetlands protection in its intent rather than a narrow perspective focusing only on the letter of the setback requirement.” Idaho courts have long held that there is no reason to look to intent when the language of a statute is clear. The letter of the setback requirement is the only thing the Board is at liberty to rely upon.

Criterion 4 reads “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.” This criterion clearly directs the PZC and Board to consider the intent *and* specific language of the whole of the Land Development Code. The Board referenced a number of sections of Code they believed were relevant in considering this variance request. The written decision did not rely on Comprehensive Plan sections in its findings as the narrative asserts in footnote 4.

#### **FINDINGS OF FACT:**

Brian Fraiz submitted an application on October 4, 2024, for a wetland setback variance for a 40-acre parcel. The PZC reviewed and continued the application on November 12, 2024 to obtain legal review. Once legal review was received, the continuation was scheduled to be heard on January 14, 2025. The PZC then entered deliberation. The commission found that Section 4-9-E review criteria numbers 3 and 6 were not satisfied with the proposal as presented. The Planning & Zoning Commission moved to DENY this variance request based on the review criteria in LDC § 4-9, 5-2-3, and 5-4-2. The PZC written decision was approved on February 11, 2025 and signed on February 13, 2025. On February 24, 2025, the Planning Department received an Appeals and Reconsideration Application. As documented above, the Board affirmed the original decision on an appeal. The BoCC has received a further request for reconsideration. This request is reviewed under Chapter 4-15 of the Land Development Code as outlined above.

#### **STAFF RECOMMENDATION:**

The Board should consider whether information presented in the application and narrative are compelling enough to modify or overturn the Board’s previous action, otherwise the Board should affirm its decision. Staff would recommend specifically to consider whether the information presented is sufficient to reach a different conclusion on the facts and criteria relied upon in the original decision. Specifically, did the applicant demonstrate that the proposal clearly shows a public benefit or addresses concerns raised in public comments that the proposal is not in the public interest. Further does the proposal meet the “minimum variance” necessary to develop the proposed buildings based on the alternate site plan presented. Planning staff has presented a perspective within the analysis section and would suggest that this has not been adequately demonstrated.

#### **BOARD OF COUNTY COMMISSIONERS ACTION:**

- A. AFFIRM the Previous Board Decision of the appeal of the Planning and Zoning Commission decision to deny the Variance request, having provided the reasons and justifications for the affirmation.
- B. OVERTURN the BoCC appeal decision to deny a Variance request, having provided the reasons and justifications for overturning the decision, thus granting the variance request.

C. MODIFY the original BoCC and Planning and Zoning Commissions denial of the Variance request, specifying how the request is modified and providing the reasons and justifications for the modifications to the application request, or adding conditions.

D. Continue to a future BoCC Public Hearing with reasons given as to the continuation or need for additional information.

### **MOTIONS:**

#### **AFFIRMATION**

Having concluded that the Review Criteria of a Variance and other code found in the Teton County Land Development Code, Sections 4-9, 4-15, 5-2-3, and 5-4-2, have not been satisfied, I move to AFFIRM the Planning and Zoning Commissions Action to DENY the Variance and for Brian Fraiz as requested in the application materials submitted October 4<sup>th</sup>, 2024, for the following reasons:

#### **OVERTURNING**

Having concluded that the Review Criteria of a Variance and other code found in the Teton County Land Development Code, Sections 4-9, 4-15, 5-2-3, and 5-4-2, can be satisfied (with the inclusion of the following conditions of approval, (if any), I move to OVERTURN the Planning and Zoning Commission decision and APPROVE the Variance for Brian Fraiz as requested in the application materials submitted October 4<sup>th</sup>, 2024 and subsequent request for reconsideration with the following findings:

#### **MODIFICATION**

Having Reviewed the Criteria of a Variance and other code found in the Teton County Land Development Code, Sections 4-9, 4-15, 5-2-3, and 5-4-2, I move to MODIFY the Planning and Zoning Commission decision to DENY the variance in the following way and with the following findings:

#### **CONTINUE**

I move to CONTINUE the Board of County Commissioner's Public Hearing for the following ...(with reasons given as to the continuation or need for additional information) to a specific future date & time.

Prepared by: Joshua Chase, Planning Administrator,

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#### **Attachments:**

- |  |   |
|--|---|
| A. Staff Report (13 pages)               | I. Nationwide Permit (87 pages)                       |
| B. Reconsideration Application (2 pages) | J. Stop Work Order (1 page)                           |
| C. Reconsideration Attachment (1 page)   | K. Written Decision Variance Request (3 pages)        |
| D. Spitzer Law Narrative (9 pages)       | L. Written Decision Variance Denial Appeal (12 pages) |
| E. Jade Krueger email w/PA (1 page)      | M. Trentadue/Hunstman Public Comment (3 pages)        |
| F. Aquatic Resource Inventory (39 pages) |   |
| G. Conservation Easement (26 pages)      |   |
| H. Mitigation Plan (32 pages)            |   |

**End of Staff Report**