

RECEIVED  
10-23-23



Ryan D. Poole, Esq.  
[rpoole@smithknowles.com](mailto:rpoole@smithknowles.com)  
(Licensed in Idaho, Utah  
& Washington)

October 23, 2023

[www.smithknowles.com](http://www.smithknowles.com)

VIA HAND DELIVERY

Teton County Board of County Commissioners  
and Planning Administrator  
150 Courthouse Drive - Room 107  
Driggs, ID 83422

***RE: Northern Lights Subdivision; Alpenglow Development, LLC/Tony and Anne Campbell***

Dear Commissioners and Administrator:

This law firm has been retained by Alpenglow Development, LLC, and Tony and Anne Campbell in relation to Teton County's denial of a Preliminary Plat Application for the Northern Lights Subdivision. The subject Application was submitted by Tony and Anne Campbell named as owner and applicant, and Civilize, PLLC as the Engineering Firm. A Written Decision for the Northern Lights Subdivision was entered by the Board of County Commissioners ("BoCC") on October 10, 2023, and was provided to my client via e-mail on October 11, 2023.

Pursuant to I.C. § 67-6510, this letter is a written request for mediation relating to the referenced Application and Written Decision for the Northern Lights Subdivision dated October 10, 2023, and as executed by Commissioner Cindy Riegel, Chair (copy enclosed). This request tolls all pertinent time periods relating to the subject application and any related decision as of the date of your receipt; if you dispute this tolling or the effect of this written request, then please provide immediate notice and explanation.

Unfortunately, the denial of the subject Application is in violation of the Local Land Use Planning Act ("LLUPA"), I.C. § 67-6501 *et seq.*, and my client is interested in attempting mediation as a cooperative means to potentially resolve any dispute. Of note, the denial was not based on properly set forth express standards, thus my client's rights have been violated, to include and without limitation due process. The subject denial was also not properly based on, and failed to explain, lawful and applicable criteria and standards the BoCC considered relevant. It failed to properly explain the rationale for the decision based on relevant ordinance, statutory

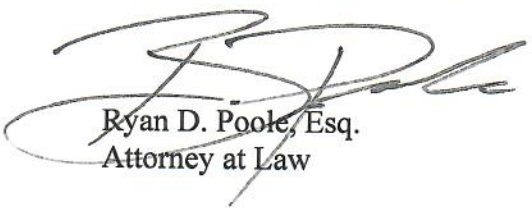
provisions, pertinent constitutional principles and competent factual information contained in the record. It also failed to state the relevant contested facts relied upon. For example, but without limitation, the *Analysis* and *Conclusions* of the BoCC's Written Decision are in violation of LLUPA.

By this letter, my client also hereby requests a regulatory taking analysis under I.C. § 67-8003. Please see the enclosed form relating to such request.

For purposes of scheduling and conducting mediation, please contact me as soon as possible so this matter can proceed in a timely manner. If you need any further information at this time, please let me know. I look forward to working with the County in a cooperative effort to move this matter along to lawful resolution in an expeditious manner.

Sincerely,

**SMITH KNOWLES, P.C.**



Ryan D. Poole, Esq.  
Attorney at Law

*Enclosures*

Cc: Client

## REQUEST FOR TAKING ANALYSIS

Name: Tony and Anne Campbell/Alpenglow Development, LLC

Address: c/o Ryan D. Poole, Esq.

Smith Knowles, PC

343 E. 4th N., Suite 105

Rexburg, ID 83440

Phone: (208) 513-1256

The subject property is in Teton County, as described below.

### 1. Background Information

This form satisfies the written request requirement for a regulatory taking analysis from a state agency or local governmental entity pursuant to Idaho Code § 67-8003(2). The owner of the property subject to the government action must file this with the clerk or secretary of the agency whose act is questioned within twenty-eight (28) days of the final decision concerning the matter at issue. A regulatory taking analysis is considered public information. Such an analysis is to be performed in accordance with the checklist established by the Attorney General of the State of Idaho pursuant to Idaho Code § 67-8003(1). See page 8 of the Idaho Regulatory Takings Act Guidelines for a description of the checklist.

### 2. Description of Property

- a. Location of Property: 2000 W 7000 N (NE of Tetonia)
- b. Legal Description of Property: RP06N45E280010; NE4NE3 SEC 28 T6N R45E, RP06N45E273000; NE4NE3 SEC 27 T6N R45E
- c. Northern Lights Subdivision; preliminary plat application (see Staff Report of Teton County Planning & Zoning Department prepared for Public Hearing on August 28, 2023)

### 3. Description of Act in Question

- a. Date Property was Affected: October 10, 2023; August 28, 2023
- b. Description of How Property was Affected: Denial of subdivision application per written decision executed October 10, 2023, by Teton County Board of County Commissioners; Motion, and as amended, approved/passed by Teton County Board of County Commissioners
- c. Regulation or Act in Question: Denial of subdivision application per written decision executed October 10, 2023, by Teton County Board of County Commissioners; Motion, and as amended, approved/passed by Teton County Board of County Commissioners
- d. Are You (Tony and Anne Campbell/ Alpenglow Development, LLC) the Only Affected Property Owner?  Yes (Tony and Anne Campbell/ Alpenglow Development, LLC);  No
- e. State Agency or Local Governmental Entity Affecting Property: Teton County, Teton County Board of County Commissioners
- f. Address of Agency or Local Governmental Entity: Teton County Board of County Commissioners, Teton County Courthouse, 150 Courthouse Drive - Room 107, Driggs, ID 83422

## TETON COUNTY, IDAHO | Board of County Commissioners

### Written Decision for the Northern Lights Subdivision – Preliminary Plat

---

This is a written decision on the findings for the denial of the Northern Lights Subdivision Preliminary Plat under Teton County Code ("TCC") Title 9, Chapter 3 Teton County Subdivision Ordinance (revised 5/16/2013):

APPLICATION DATE: March 10, 2023

APPLICANT: Tony & Anne Campbell

PROPERTY OWNER: Alpenglow Development LLC

PROJECT NAME: Northern Lights Subdivision

PURPOSE OF APPLICATION: Subdivision preliminary plat application for 17 lots on 80 acres

EXISTING ZONING: A/RR-2.5

SURROUNDING ZONING: A/20 & A/RR-2.5

SURROUNDING USE: Rural residential single family and agricultural land

PARCEL SIZE: 80 acres (RP06N45E280010 & RP06N45E273000)

#### Applicable Standards and Criteria for Application Evaluation:

- Title 8 Teton County Idaho Zoning Ordinance (revised 9/9/2013)
- Title 9 Teton County Subdivision Ordinance (revised 5/16/2013)
- Teton County Comprehensive Plan (A Vision & Framework 2012-2030)

#### Procedural Background

**SUBMISSION AND SCHEDULING:** The Preliminary Plat application received review and public hearing before the Planning & Zoning Commission ("PZC") on June 13, 2023 and was recommended for approval with conditions. The second hearing for the Preliminary Plat stage was scheduled with the Board of County Commissioners ("BoCC") for August 28, 2023.

**NOTICE:** The second Preliminary Plat hearing for this application was scheduled to occur on August 28, 2023 as required by Idaho Code, Title 67; Section 67-6509, 67-6511, 67-6512, and Title 9 of the Teton County Code. In anticipation of this hearing, public notice of this hearing timely was published for two weeks before each hearing in the Teton Valley News on August 9 and August 16, 2023. Furthermore, individual notices were mailed to those affected landowners within 300 feet of the boundary of the proposed project on August 3, 2023. A sign was posted on site before the hearing on August 18, 2023.

**HEARING DATE:** August 28, 2023

The following commissioners were present: Bob Heneage, Michael Whitfield, and Cindy Riegel

The applicants Anne & Tony Campbell were present, and their representatives Brent Crowther (Civilize PLLC) and Sundance Consulting were present via Zoom.

Signup sheets were provided to the public who attended the meeting and time for testimony of those in favor, neutral, and opposed to the proposed development was allowed. The Board also considered written statements and evidence submitted prior to the conclusion of the hearing. There were 12 written public comments received for this hearing, and approximately 10 people spoke in opposition at the hearing.

## **Factual Background**

On June 13, 2023, PZC recommended approval of the application with the following conditions:

1. Submit an improvements plan that includes W 7000N off-site improvements. All utilities need to be included in the improvements for the interior subdivision road.
2. Submit the Natural Resource Analysis and Wildlife Habitat Assessment (before a hearing with the BoCC may be scheduled). Applicant should have building envelopes based on the NRA results.
3. Cost estimate should be total of on and off-site improvements. A draft financial surety should be provided (either a Letter of Credit (LOC) or Letter of Intent).
4. Submit an updated Development Agreement, per the updated template (available on Teton County's website and has been required since November of 2022).
5. The Fire Marshal requires more details related to the fire suppression infrastructure. Please submit confirmation of this review and approval (before a hearing with the BoCC may be scheduled).
6. The Public Works Director take a second look at the Traffic Impact Study (TIS) and road conditions for additional routes and improvements to Hwy 33 prior to the BoCC hearing.

Staff Comment: All conditions have been met except for providing building envelopes based on NRA results. Applicant states NRA suggests there are no necessary mitigation measures required



At the August 28, 2023 hearing before the BoCC, County staff presented its staff report making the following preliminary determinations and recommendations for consideration by the BoCC:

Board of County Commissioners should deliberate if the Natural Resource Analysis and Wildlife Habitat Assessment be remanded back to the applicant or if it is sufficient. Planning staff recommends **continuation** of this application for the following items:

- In order to establish building envelopes and other proper mitigation measures in relation to the Natural Resource Overlays and/or ensure the NRA is sufficient;
- Receiving improvement plan review and approval from public works.

The Applicant presented their application and had their consultants available for questions.

The Board considered the written public comments before the hearing that were attached to the staff report. Several members of the public presented public comments at the hearing as well. Public comments referenced opposition to high density given the existing road conditions, lack of conformance with the Comprehensive Plan and rural character.

### Analysis

Except as may otherwise be set forth in this decision, the staff report is adopted and incorporated by reference into this decision.

The criteria for Preliminary Plat approval are set forth in TCC § 9-3-2(C-8). The Board of County Commissioners shall only approve a preliminary plat application if it finds that all of the approval criteria listed in TCC Sec. 9-3-2(C-8) have been met or that conditions on the application would ensure the proposed development meets such criteria.

The BoCC finds that the application as presented did not meet the criteria for approval for a Preliminary Plat found in § 9-3-2(c-8) and that conditions placed on the application would not satisfy the criteria:

a. *The application is consistent with the Comprehensive Plan*

This area of Teton County's future land use in the comprehensive plan was identified as Rural Agriculture. Much of this area is important wildlife habitat and productive agricultural lands due to soils present. Desired future character and land uses for the Rural Agriculture areas include: agriculture, ranching, low density residential with provisions for clustering/conservation developments to protect natural resources and rural character, conversation and wildlife habitat enhancements/protection. This proposal is inconsistent with the comprehensive plan because it does not include any mitigation measures for Natural Resource Overlays. See further discussion below.

g. *The application is consistent with any Traffic Impact Study required for the property and will not result in a decrease in the level of service on any State Highway to a maintained County Road and includes any mitigation measures recommended in the Traffic Impact Study.*

The Traffic Impact Study (TIS) presented did not meet the criteria set forth in TCC § 9-3-2(C-3-d). The TIS failed to include the analysis for the route of N 1750 W to W 6500 N to N 500 W as one of the main travel





options to the parcels. The TIS failed to provide analysis of level of service and project traffic counts as well as structure and current conditions. Further, existing conditions were not adequately addressed and applicant failed to show capacity to service 17 lots and a potential of 34 units at this location.

- i. *If a Natural Resources Analysis is required, the proposed development will avoid all mapped Overlay Areas, or will minimize any unavoidable impacts to the mapped Overlay Areas to the maximum extent feasible and mitigate any unavoidable impacts. In the case of land located in the Wildlife Habitat (WH) Overlay Area, the duty to avoid or mitigate impacts on habitat areas shall only apply if the wildlife habitat assessment reveals evidence of an indicator species or the presence of indicator habitat, and shall only apply to portions of the parcel where the evidence or habitat is found.*

The Natural Resource Analysis and Wildlife Habitat Assessment presented were found to be inadequate, incomplete and insufficient. The BOCC did not find the report credible because the credentials of the biologists who conducted the analysis were not provided in the report and the report concluded that there are no Indicator Species (as defined in Title 9 of the TCC) on the property based on a single day site visit conducted on June 28, 2023, [which does not meet industry standards]. The entirety of the two parcels falls within the Big Game Migration Corridor and Seasonal Range and a large portion of the property within the Sharp Tailed Grouse Breeding and Habitat Overlay, yet no mitigation measures were presented by the applicant. Further, no design review criteria were met for the overlays per TCC § 9-3-2-(C-2-c-WH).

- h. *If the application is for land that is not adjacent to a State Highway or to 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 maintained County Road, and adequate for anticipated traffic and will be constructed to County Local Road standards.*

Given the inadequate road conditions that would connect to maintained County roads, the project has not shown the ability to provide public services to the proposed subdivision. This is a failure to meet § 9-3-2(c-8-h/l).] At the concept stage, the application was for 24 lots, which would have triggered the need for a Fiscal Impact Analysis (FIA). However, before preliminary plat, the applicant reduced the number of lots to below the threshold number requiring this analysis (20 lots would trigger the need for a FIA). The applicant must show how public services have adequate capacity to serve it or how it will be financed or mitigated.

## Conclusions

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

*The application does not meet the criteria for approval and the applicant has not presented information that would allow this application to be conditionally approved. The criteria for approval of a Preliminary Plat found in Title § 9-3-2(C-8) specifically items A, G, I and J [mistakenly referenced instead of H], have not been satisfied, for the following reasons:*

1. *The applicant's submitted Natural Resource Analysis and Wildlife Habitat Assessment does not meet requirements under Title 9-3-2-(C-2-c-WH)*





2. The application submitted doesn't make any recommendations to minimize impacts to wildlife habitats found on the subject property.

3. The building envelopes provided do not provide for clustering of development to better avoid conflicts with wildlife values and to meet design review criteria as per 9-3-2 (c-2-c-WH)

4. The inadequacy of road 7000 N and 1750 W to safely provide for traffic from the proposed subdivision.

For those reasons set forth above, the application for Northern Lights Subdivision is denied.

*Cindy J. Riegel*

Cindy Riegel  
Teton County Board of County Commissioners, Chair

*10/10/23*

Date

**NOTICE OF APPLICABLE RIGHTS**

Applicants have a right to request a regulatory taking analysis of this decision pursuant to Idaho Code § 67 8003. Further, per Idaho Code § 67-6535, and in accordance with Idaho Rule of Civil Procedure 84, an applicant or an affected person has the right to seek review of this decision.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11 day of October 2023, I served a true and correct copy of the foregoing document upon the following:

Anne & Tony Campbell 718 Meadows Hill Dr. Richland WA, 99352	<input type="checkbox"/> Mailing <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax <input checked="" type="checkbox"/> E-Mail
Anne@campbelltrainingsolutio ns.com	<input type="checkbox"/> Overnight Mail <input type="checkbox"/> Courthouse Box

*Kirk*  
Clerk







**REQUEST FOR PRELIMINARY PLAT PUBLIC HEARING**  
**FOR:** Northern Lights Subdivision  
**WHERE:** 2000 w 7000 n (Ne of Tetonia)  
**PREPARED FOR:** Board of County Commissioners Public Hearing on August 28, 2023

**LANDOWNER AND APPLICANT:** Tony & Anne Campbell  
**ENGINEER:** Civilize, PLLC

**REQUEST:** Tony & Anne Campbell, represented by Civilize, PLLC have submitted an application for a 17 lot subdivision located on two 40 acre parcels totaling 80 acres. The approved concept plan was for 24 lots but was reduced to 17 lots before a preliminary plat application was submitted. This property is located on 2000 W 7000 N, about 1.25 miles northeast of Tetonia on the South side of W 7000 N, outside of the Area of Impact. The property is zoned A/RR-2.5. The proposal includes lots that range from 2.5 to 20 acres. Big Game Migration Corridor and Seasonal Range and Sharp Tailed Grouse Breeding Habitat overlays are present on the property per the January 2023 NRO updates.

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

**LEGAL DESCRIPTION:** RP06N45E280010; NE4NE3 SEC 28 T6N R45E, RP06N45E273000; NE4NE3 SEC 27 T6N R45E  
**LOCATION:** 2000 W 7000 N (NE of Tetonia)  
**ZONING DISTRICT:** A/RR-2.5  
**PROPERTY SIZE:** 80 acres



Figure 1. Vicinity Map

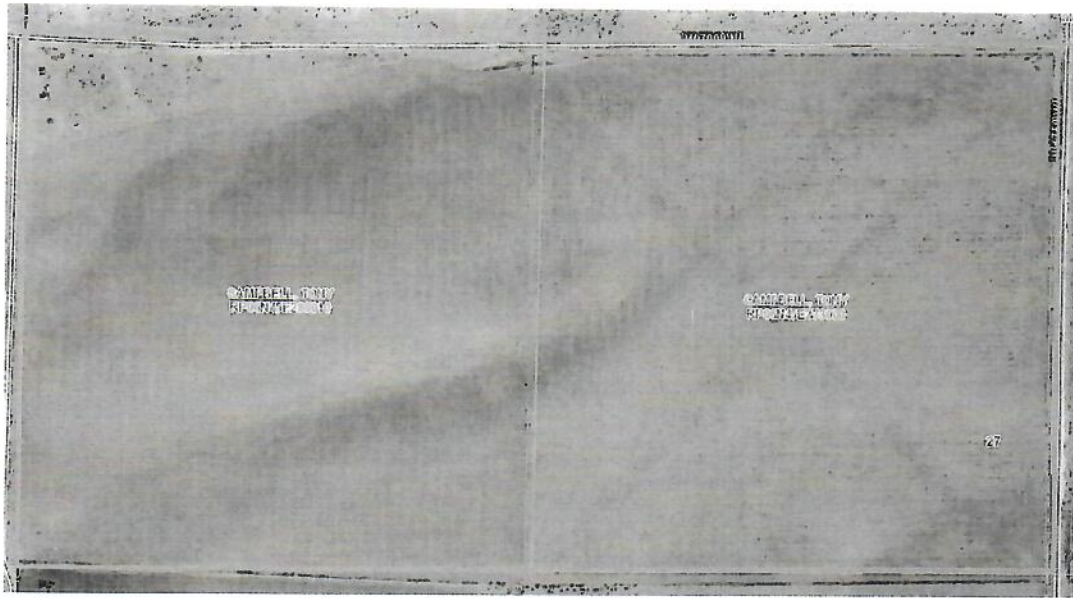


Figure 2. Aerial Image; shows the existing conditions of the property

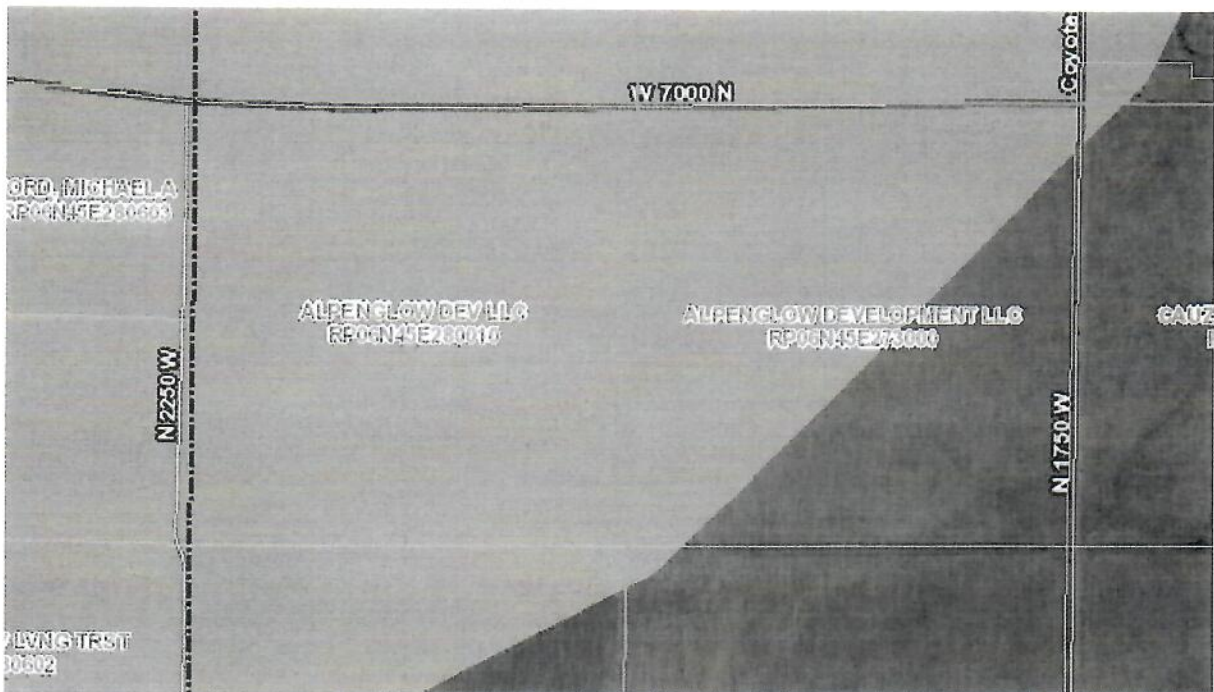


Figure 3. Indicates the Big Game Migration Corridor & Seasonal Range Overlay (brown) & Sharp-Tailed Grouse Breeding Habitat (gold)

## **PROJECT BACKGROUND & REVIEW HISTORY**

**Pre-application:** A pre-application conference was held with the applicant and planning staff on March 28, 2023.

**Concept Review:** The first step in the subdivision process is a Concept Plan Review (9-3-2B). Because the proposed subdivision is more than ten lots, a public hearing before the Teton County Planning and Zoning Commission is required.

The Planning and Zoning Commission reviewed and approved [4-1 vote] the concept application on August 9, 2022. With the following conditions and considerations:

### **CONSIDERATIONS**

1. Applicant should consider clustered development given the nature of the site and to better align with the future vision of the comprehensive plan.

### **CONDITIONS OF APPROVAL**

1. Address all public works comments pertaining to improvements and cul-de-sacs.

**OVERVIEW OF PRELIMINARY PLAT APPROVAL (9-3-2-C):** Preliminary Plat phase is a two-step process with review by both the Planning and Zoning Commission and Board of County Commissioners, where the fact-finding details and specific requirements of the ordinance and law are determined. All of the issues surrounding required infrastructure will be resolved, or have a clear solution acceptable to the County, before scheduling the Final Plat review.

***The Planning Commission approved the Preliminary Plat application at the June 13, 2023.***

### **Conditions of Approval:**

1. Submit an improvements plan that includes W 7000N off-site improvements. All utilities need to be included in the improvements for the interior subdivision road.
2. Submit the Natural Resource Analysis and Wildlife Habitat Assessment (before a hearing with the BoCC may be scheduled). Applicant should have building envelopes based on the NRA results.
3. Cost estimate should be total of on and off-site improvements. A draft financial surety should be provided (either LOC or Letter of Intent).
4. Submit an updated Development Agreement, per the updated template (available on Teton County's website and has been required since November of 2022).
5. The Fire Marshal requires more details related the fire suppression infrastructure. Please submit confirmation of this review and approval (before a hearing with the BoCC may be scheduled).
6. The Public Works Director take a second look at the TIS and road conditions for additional routes and improvements to Hwy 33 prior to the BoCC hearing.

Staff Comment: All conditions have been met except for providing building envelopes based on NRA results. Applicant states NRA suggests there are no necessary mitigation measures required.

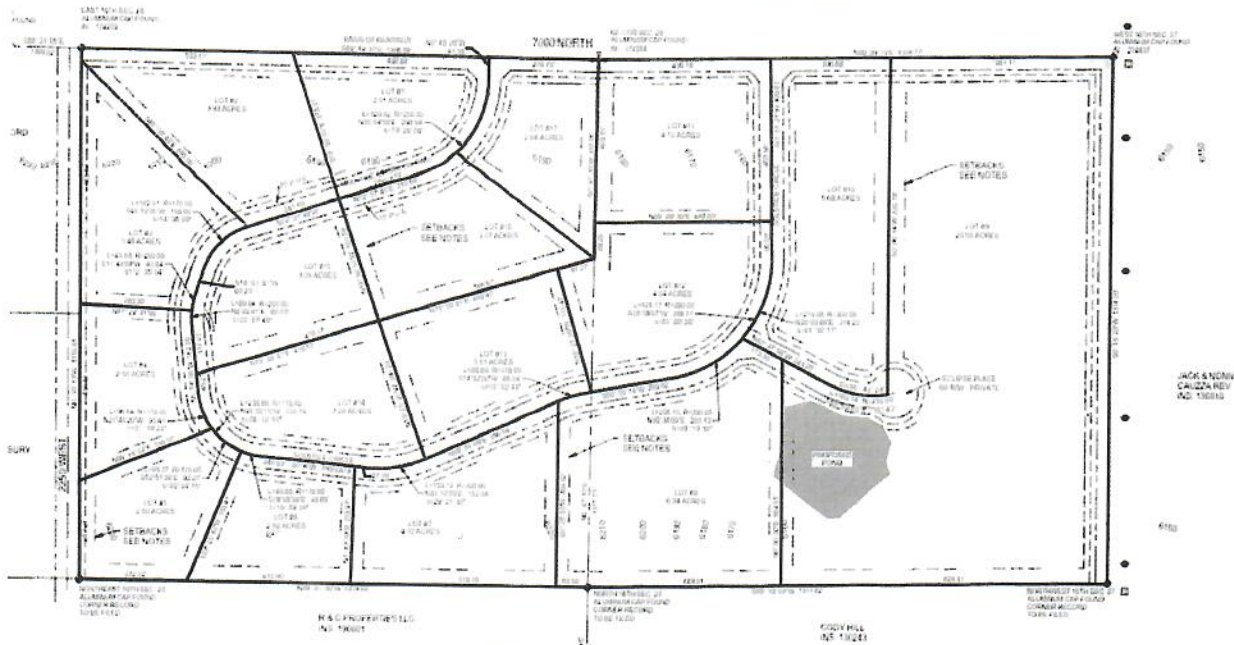


Figure 4. Preliminary Plat  
Full preliminary plat is included in the packet.

**AGENCY COMMENTS & REVIEW:**

The County has solicited comments from other agencies and entities.

**ROADS & UTILITIES:** The Public Works Director made the following comments on July 29, 2023:

- Interior roads will need to be constructed to County local road standards. *(Staff comment: applicant provided)*
- An Improvements Plan should be submitted, approved and referenced in the final Development Agreement. *(Staff comment: applicant provided)*
- A Traffic Impact Study will be required *(Staff comment: applicant provided)*
- A cul-de-sac (preferred) or other type of turn around will be required at the end of Eclipse Place
- Off site improvements along W7000N should be considered *(Staff comment: This has been provided by the applicant per the review of the TIS)*

Public Work Director also made a following comment via email on June 28, 2023:

- 1750W was widened to meet county Local Road standards when it was reconstructed. There is no need to improve.

**FIRE PROTECTION:** The proposal is more than 2 lots and therefore does trigger fire suppression. Teton County Fire Marshal, made the following comment on June 21, 2023.

- The fire pond proposed location, size and access if approved for Northern Lights Subdivision.

**WASTE WATER TREATMENT:** The applicant has coordinated directly with EIPH and received Preliminary Approval as of 10/26/23.

**PLANS & STUDIES:** The Traffic Impact Study was completed by Civilize, PLLC and is attached to report. The applicant was unaware of the NRO changes in January of 2023. These changes placed the proposed development in two natural resource overlays and does trigger a Natural Resource Analysis and Wildlife Habitat assessment. Applicant supplied the NRA before the hearing with the BoCC and it is attached to this staff report.

**CONSIDERATION OF APPROVAL:**

The Board of County Commissioners shall only approve if it finds that all of the following criteria (9- 3-2(C-8)) have been met (or if it finds that some of the criteria have not been met, may recommend approval with conditions that would ensure that the proposed development meets the criteria):

**a. The application is consistent with the Comprehensive Plan.**

Under the 2012-2030 Comprehensive Plan Framework, this proposed development is in the Agriculture and Rural Residential area. This area allows for low to medium density, where appropriate, density residential, with provisions for clustering/conservation development to preserve views. This could be accommodated by the proposed lot sizes.

Staff believes this could be better suited with clustered developed through a PUD application however the application has changed from 24 to 17 lots after the concept phase.

**b. The application complies with all applicable County regulations.**

This application appears to comply with applicable County regulations. Setbacks can be met for each proposed lot. An interior subdivision road is proposed and to County Local Road Standards and all lots will access from this road. There are no current code violations on this property.

**c. If the application is for a PUD, it complies with any regulations applicable to PUDs under Chapter 5 of Title 9, including without limitation regulations controlling the types and locations of open space to be included in the development and the required design and size of development clusters. If the application is for a Planned Community PUD, the application adequately mitigates any impacts identified in those additional studies required by Section 9-3-2(C).**

This application is not for a PUD.

**d. The application includes trails and pathways as required by Section 9-4-2(B-4) to the maximum extent feasible.**

There are no adopted trails and pathways on this property, and there are no proposed trails for the project.

**e. The application is consistent with the results of any Nutrient-Pathogen Study required for the property and includes any conditions or changes required to avoid any potential degradation of surface or groundwater identified in that study.**

A Nutrient Pathogen Evaluation has not been identified as required for the project. The property is not within the wetlands & waterways overlay nor any of the other NP Evaluation triggers identified by EIPH's review of the property.

**f. The application is consistent with the recommendations of any report on the adequacy of the proposed sewage system for the development and includes any recommended mitigation measures identified in that report.**

The applicant has received preliminary approval from EIPH for this project as of 10/16/23.

- g. The application is consistent with any Traffic Impact Study required for the property and will not result in a decrease in the level of service (for example, from the level of service B to C) on any State Highway or a maintained county road and includes any mitigation measures recommended in the Traffic Impact Study.**

The application did trigger a Traffic Impact Study which has been completed by Civilize, PLLC. The study concluded that the development is forecasted to have minimal impact to the traffic network in the area. However, the existing conditions of W 7000 N were documented to be insufficient as part of the TIS request. Public Works and Planning requested off site improvements of W 7000 N as part of the application.

- h. 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 W 7000 N on the north side of the property. Lots within subdivision will be served by a new interior subdivision road. All lots will be required to have access from this road.

W 7000 N was found to have poor conditions. The applicant, in their conditions report, has documented current conditions and has prepared a cost estimate for their share of improvements to that road. Applicant has included this in the improvement plans for this section of road.

- i. **If a Natural Resources Analysis is required, the proposed development will avoid all mapped Overlay Areas (except the AV Airport Vicinity Overlay Area), or will minimize any unavoidable impacts to the mapped Overlay Areas to the maximum extent feasible and mitigate any unavoidable impacts. In the case of land located in the WH Overlay Area, the duty to avoid or mitigate impacts on habitat areas shall only apply if the wildlife habitat assessment reveals evidence of an indicator species or the presence of indicator habitat, and shall only apply to portions of the parcel where the evidence or habitat is found.**

Teton County's NRO maps were updated January of 2023, placing these parcels within the Big Game Migration Corridor & Seasonal Range as well as the Sharp-Tailed Grouse Breeding Habitat Overlays. The applicant submitted their preliminary plat in March of 2023 and is therefore subject to the NRO maps.

Applicant has submitted a Natural Resource Analysis. The analysis concluded that no mitigation or management is recommended due to lack of potential effects. *Staff does believe the NRA provided is insufficient.* Only one site visit was conducted being a site survey completed by a biologist. Most of the research was conducted on Google Earth. Credentials of biologist were not provided and no mitigation was suggested regarding the request for established building envelopes. Design Review must be conducted as required by Title 9:

9-3-2 (C-2-c-WH):

vi. Design Review: All development shall be subject to design review to ensure that the location of buildings, structures, and land development shall avoid or mitigate impacts to mapped indicator species and habitat to the maximum extent feasible.

Design Review Criteria: A development application shall only be recommended for Board approval if the Commission finds that the Natural Resources Analysis is complete, accurate, and adequate.

- j. **The required Public Service/Fiscal Analysis shows that all public services provided to the proposed subdivision or PUD have adequate capacity to service it, or if they do not, the applicant has committed to mitigation or financing to ensure that those services and facilities will be provided within two (2) years after the first unit in the development is occupied and that any shortfall of tax revenues below the costs of providing the services or facilities will be covered without cost to the County.**

A Public Service/Fiscal Analysis is not required for this application because it is less than 20 lots.

- k. **The application is consistent with any Capital Improvements Plan (CIP) adopted by the County.**

All applicable fees based on the Impact Fee Program (2008 CIP) will be assessed at the time of building. The 2008 CIP indicated that this area was appropriate for 30 units per 100 acres. This proposal of 17 lots on approximately 80 acres can meet this dwelling unit per acre ratio.

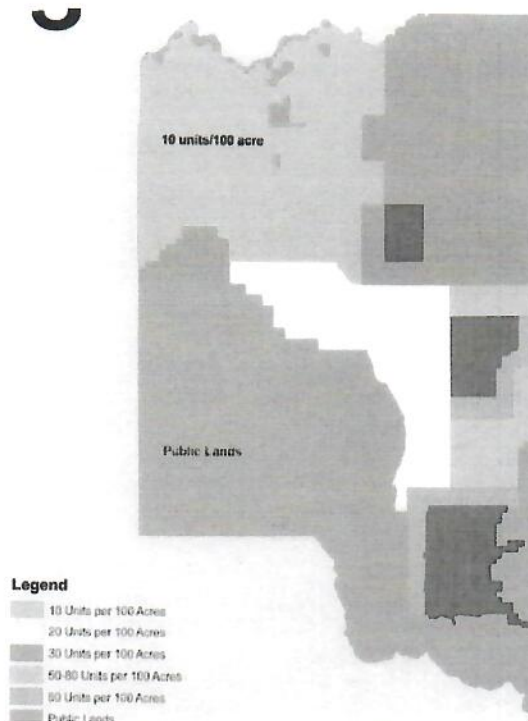


Figure 6. 2008 adopted CIP

- i. An adequate institutional structure has been created to ensure that long-term maintenance costs of roads, water, sewer, and drainage systems will be collected from within the development and used to maintain such items. If the chosen structure relies on payments of dues (for example, through a homeowners' association) rather than taxes, the county shall be granted the institutional power to enforce payments of those dues in the event the organization fails to do so.**

There are CC&Rs established for this subdivision. They include forming HOA, voting, design, fees, development and restrictions, easements, leases and rental agreements, etc.

- m. If land ownership boundaries or natural terrain features make it impossible for the application to meet all of the criteria outlined in Section 9-3-2(C-3), the application shall meet as many of the criteria as possible.**

There is no floodplain on the property. Staff has not identified any other health, safety, or general welfare concerns.

- n. In addition to the above, for Planned Community PUD, the application is consistent with the recommendations of any report on the adequacy of the school system to accommodate school-aged children anticipated by the development and includes any recommended mitigation measures identifies in that study. If the applicant is obligated to pay an impact fee for school then mitigation measures identified in the report will not be required.**

This application is not for a planned community PUD.

**SPECIFIC REQUIREMENTS FOR PUBLIC HEARING NOTICE:**

Idaho Code, Title 67; Section 67-6509, and Title 9, Section 3-2-(C) of the Teton County Zoning Ordinance. The public hearing for the Teton County Board of County Commissioners was duly noticed in the Teton

Valley News published on August 9, 2023 and August 16, 2023. Notice to adjacent property owners within 300 feet of the property boundary was sent on August 3, 2023. Notice was posted on the site on August 18, 2023.

### **PUBLIC COMMENTS**

Staff has received a number of public comments. Comments address concerns regarding maintaining rural character, impacts on wildlife, wildfires, lack of infrastructure, conditions of surrounding roads, lack of conformance with new LDC, lack of affordable housing, access from W 7000 N being not well suited, plowing, increased traffic, previous fatal car accidents, maintenance of roads, water contamination risk, financial burden, aesthetic values, sense of community.

A comment was received by Robert Stewart with concern that public comments are disregarded in public hearing and by Planning and Zoning staff.

Staff comment: Staff has read and summarized all public comments in staff reports for this subdivision process. Many comments earlier in this process were regarding conditions of W7000N. Improvements to W7000N were therefore incorporated into improvements plan. Concern was also expressed regarding 1750W which has been widened to meet Local County standards. Staff continues to work to ensure compliance and takes all public comment into account.

### **CONSIDERATIONS & RECOMMENDATION:**

Board of County Commissioners should deliberate if the Natural Resource Analysis and Wildlife Habitat Assessment be remanded back to the applicant or if it is sufficient.

Planning staff recommends **CONTINUATION** of this application for the following items:

- In order to establish building envelopes and other proper mitigation measures in relation to the Natural Resource Overlays and/or ensure the NRA is sufficient;
- Receiving improvement plan review and approval from public works.

### **CONDITIONS OF APPROVAL**

1. Building envelopes be provided on the preliminary plat in relation to Big Game Migration Corridor & Seasonal Range as well as the Sharp-Tailed Grouse Breeding Habitat overlays as reflected in NRA.
2. Subdivision sign proposal be submitted with the entrance landscaping plan. This should be incorporated into the cost estimate and improvement plans.
3. CCRs should be updated to reflect compliance with all Teton County regulations, including Short Term Rental (STR) Permits if STRs are utilized.
4. For the record, the Development Agreement the applicant included in the narrative portion of the application is incorrect and outdated. Attachment D is the correct Draft Development Agreement.
5. Public Works must review and approve the improvement plans for the off-site improvements.

### **BOARD OF COUNTY COMMISSION ACTIONS:**

A. Approve the Preliminary Plat, with the possible conditions of approval listed in this staff report, having provided the reasons and justifications for the approval.

B. Approve the Preliminary 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 Preliminary 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 recommend

approval, continuation, or denial of the application:

**APPROVAL**

Having concluded that the Criteria for Approval of a Preliminary Plat found in Title 9-3-2(c-8) can be satisfied, I move to APPROVE the Preliminary Plat for Northern Lights subdivision as described in the application materials submitted March 10, 2023, and additional information attached to the staff report (with the following conditions of approval...)

**CONTINUATION**

I move to continue the public hearing *to a specific date and time* for Northern Lights subdivision Preliminary Plat to obtain additional information from the applicant or other agencies.

**DENIAL**

Having concluded that the Criteria for Approval of a Preliminary Plat found in Title 9-3-2 (c-8) have not been satisfied, I move to DENY the Preliminary Plat for Northern Lights subdivision as described in the application materials submitted March 10, 2023, and additional information attached to the staff report, based on the following findings:

1. ...

The following could be done to obtain approval:

- 
1. ...

Prepared by Claire Lazes, Assistant Planner  
Jade Krueger, Planning Administrator

---

**ATTACHMENTS:**

- |   |  |
|---|--|
| A) Application (6 pages)                | I) EIPH Letter (7 pages)                       |
| B) Narrative (92 page)                  | J) Fall River Documentation (1 page)           |
| C) Preliminary Plat (2 pages)           | K) Improvements Plan (17 pages)                |
| D) Development Agreement (18 pages)     | L) Public Works Comments (2 pages)             |
| E) CC&Rs (2 pages)                      | M) Public Comment (23 pages)                   |
| F) Natural Resource Analysis (16 pages) | N) Landscaping Plan (1 page)                   |
| G) Surety Bond Documentation (2 pages)  | O) TIS (115 page)                              |
| H) Fire Marshal Review (1 page)         | P) Applicants response to conditions (2 pages) |

**End of Staff Report**