



A REQUEST FOR A VARIANCE

FOR: Encroaching 50' wetlands setback
WHERE: 1979 Bates Road
PREPARED FOR: Planning & Zoning Commission
 Public Hearing of October 10, 2023

APPLICANT & LANDOWNER: Millie Bates Ranch LLC
ENGINEER: Nelson Engineering

REQUEST: Millie Bates Ranch LLC has submitted an application for a variance to build a proposed addition 15' northwest into the 50' wetland setback. The proposed addition is located adjacent to the existing home where wetland has been previously disturbed.

This parcel encompasses floodplains, priority wetland habitat, and songbird/raptor breeding and wintering habitat. A permit was issued for the main house on Jan 1, 2017. Ownership changed in 2021 to Millie Bates Ranch LLC. A LOMA (Letter of Map Amendment) was provided addressing the floodplain, however the presence of wetlands was not addressed according to building permit files.

APPLICABLE COUNTY CODE: Land Development Code 4-9.
LEGAL DESCRIPTION: RP04N45E033002
ZONING DISTRICT: LA-35 acre
PROPERTY SIZE: 20.15 acres

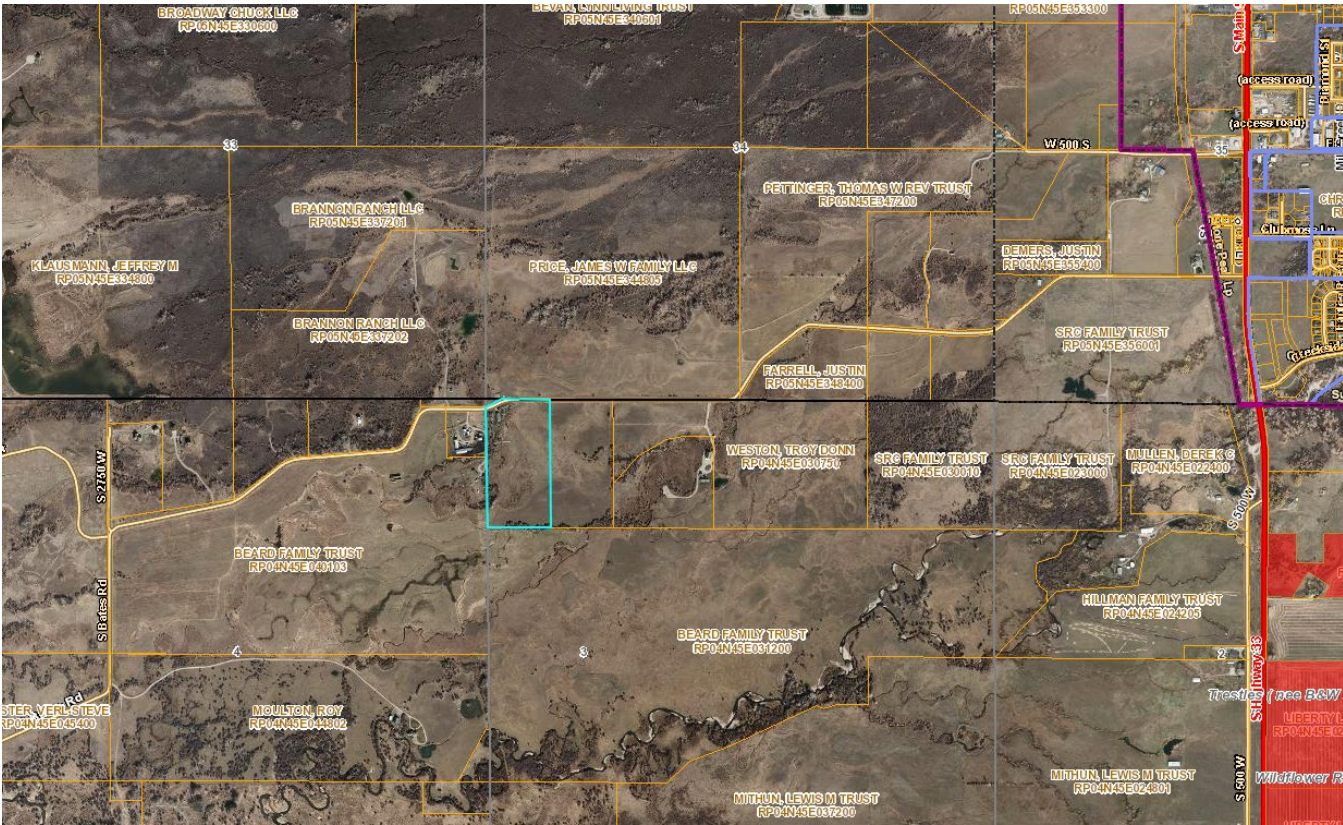


Figure 1. Vicinity Map



Figure 2. Aerial Image

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

1. TCC 5-2-3 (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.

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	Staff Analysis
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. A 50' setback would be required along with a wetland delineation. The existing-family home placed within the wetlands does not allow additional development within the setbacks. The delineation of the property indicates there are other suitable addition areas for building.
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; Chapter 4 – Application Procedures 4-714.	Applicant states that structurally the location of the addition makes the most sense in relation to the existing house. Applicant has received approval from EIPH to replace and out of compliance septic system influencing the location of the addition.
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;	Planning and Zoning Commission should deliberate if existing house located within wetlands, approved location of septic, and structural aspect warrants undue hardship in reference to constructing the addition.
5. The special circumstances are not the result of the actions of the applicant;	The previous owner was not aware of the wetlands regulations when the building permit was issued. Since the septic system was not in compliance with EIPH standards a new system was proposed by the new owner. This has influenced the location of the addition.
6. The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure;	Given there are large amounts of uplands on this property, it would be possible to develop outside of the wetlands and also place a septic system in the uplands locations.
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; and	The variance is not in conflict with public interest and septic approval was given by EIPH for the current placement position.

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.
--	--

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 Planning & Zoning Commission was duly noticed in the Teton Valley News on September 20, 2023 and September 27, 2023. A notification was sent via mail to surrounding property owners within a 300-foot buffer area on September 6, 2023. A notice was also posted on the property providing information about the public hearing on September 25, 2023.

KEY ISSUES:

Comments on the request for the Variance were solicited from other departments and agencies. The following responses have been received:

- **East Idaho Public Health (letter attached and dated):**
 - EIPH has granted approval for a new septic system to replace non-conforming system.
- **US Army Corps of Engineers (letter attached and dated):**
 - A preliminary jurisdictional determination was completed and indicated that the proposed project is located within Water of the United States, including wetlands. A wetlands map was provided by Alder Environmental.

PUBLIC COMMENT:

Staff has not received any public comment on this application as of 10/2/2023.

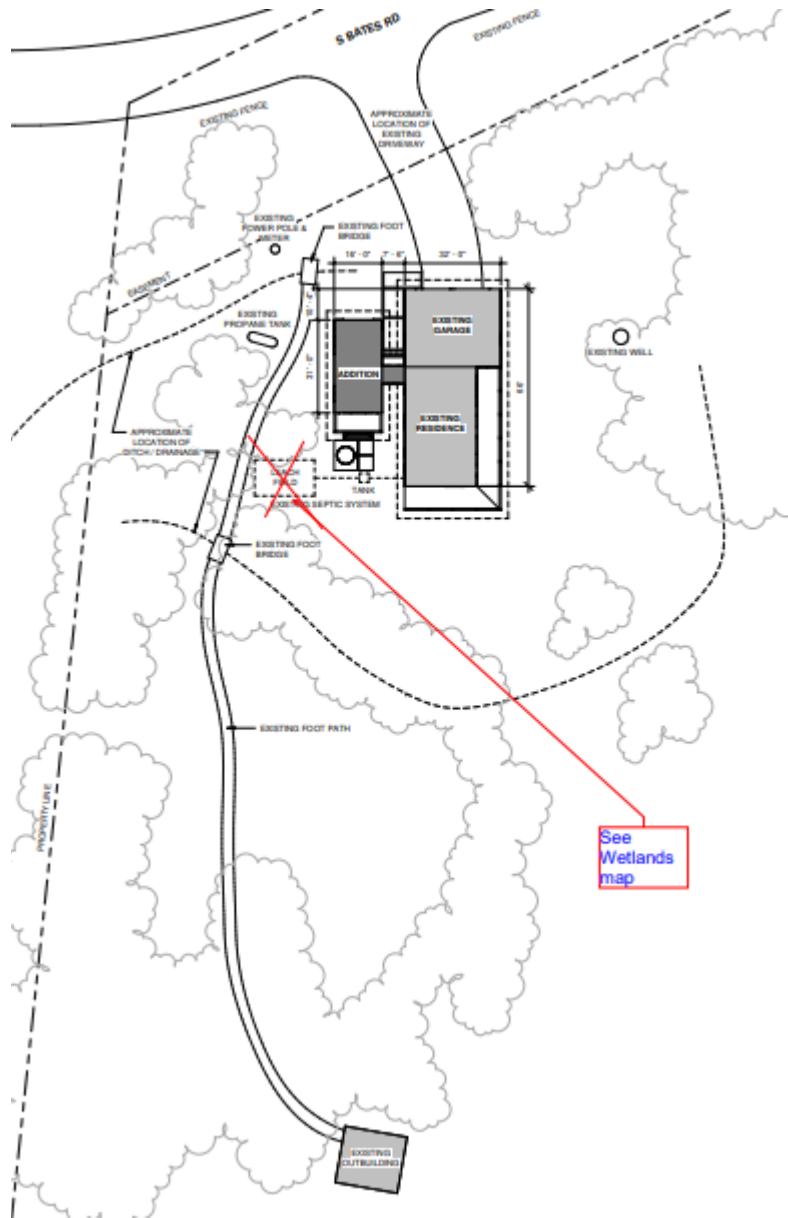


Figure 4. Site Plan for the property and existing driveway

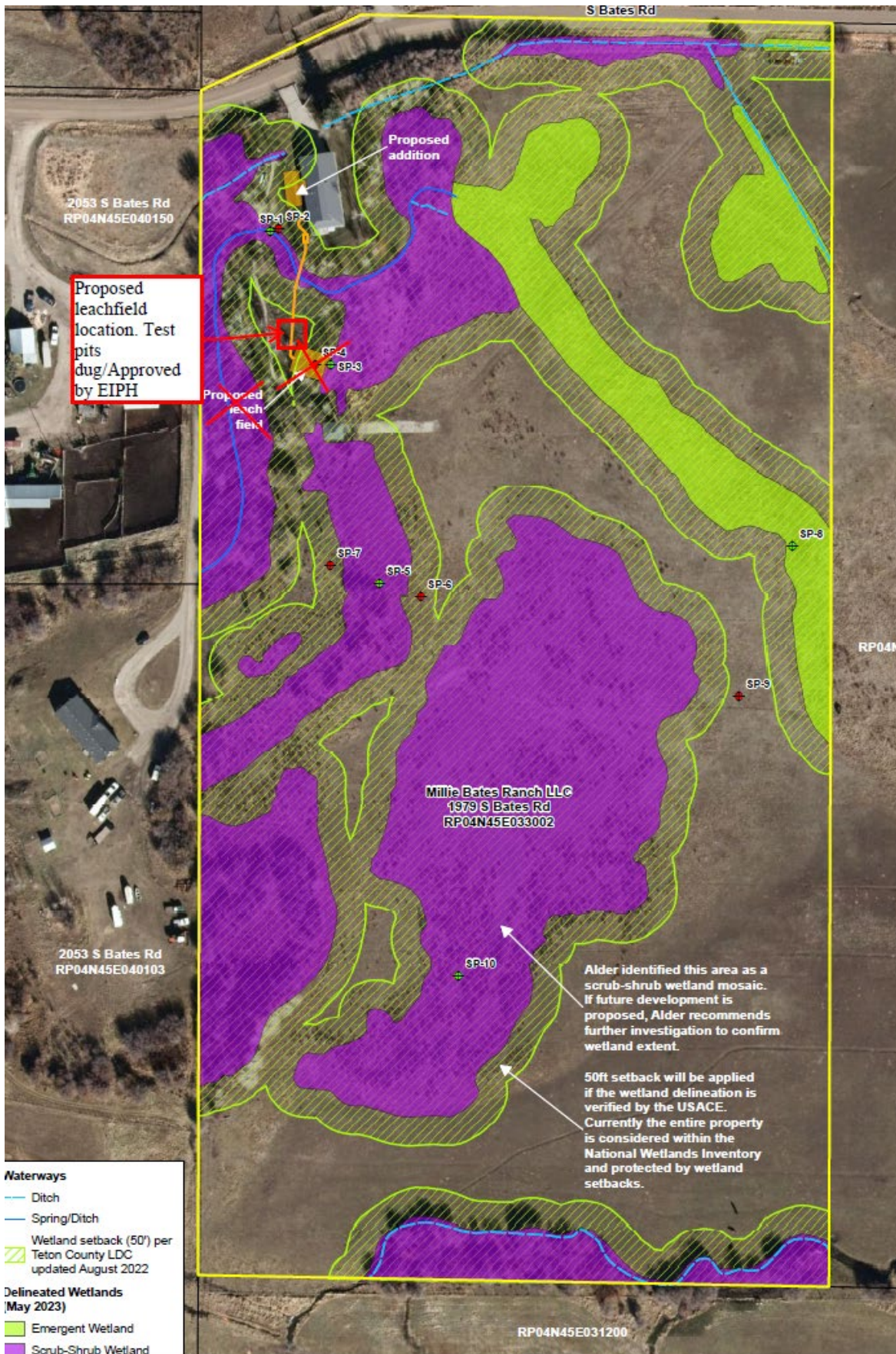


Figure 5. Wetland Delineation

Staff Recommendation: Planning and Zoning Commission should deliberate if the existing house located within wetlands, approved location of septic, and structural aspect warrants undue hardship in reference to constructing the addition. Documents presented may not show undue hardship.

CONDITIONS OF APPROVAL

1. The granting of a variance for TCC 5-2-5 (c) and TCC 5-4-3 (c) does not equate to an approved site plan for a building permit. Applicant will still need to receive a 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.

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, application 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 found in Chapter 4-9 of the Land Development Code can be satisfied (with the inclusion of the following conditions of approval, (if any...))

I move to APPROVE the Variance for **TCC 5-2-5 (c) and TCC 5-4-3 (c)** as requested in the application materials submitted December 12, 2022.

DENIAL

Having concluded that the Review Criteria of a Variance found in Chapter 4-9 of the Land Development Code have not been satisfied, as requested in the application materials submitted December 12, 2022

I move to DENY the Variance for **TCC 5-2-5 (c) and TCC 5-4-3 (c)** as requested, for the following reasons:

1. ...

Claire Lazes, Planning Associate
Jade Krueger, Planning Administrator

Attachments:

- | | |
|--------------------------------|---------------------------|
| A. Application (2 pages) | G. Vicinity Map (1 page) |
| B. Narrative (2 pages) | H. Wetlands Map (1 page) |
| C. Army Corps Form (3 pages) | I. Warranty Deed (1 page) |
| D. Army Corps Letter (3 pages) | |
| E. EIPH Permit (6 pages) | |
| F. Site Plan (1 page) | |

End of Staff Report