



**PRELIMINARY PLAT REVIEW PUBLIC HEARING (CONT. FROM
SEPTEMBER 12, 2023)**

FOR: Cougar Rim Subdivision
WHERE: SW of the City of Tetonia (Packsaddle Rd)
PLANNING & ZONING COMMISSION
PREPARED FOR: Public Hearing of October 10, 2023

APPLICANT & OWNER: Thomas Black
ENGINEER: Drew Meppen, Benchmark Land Surveying

REQUEST: Thomas Black, represented by Drew Meppen of Benchmark Land Surveying, has applied for a 2 lot subdivision on two existing 20-acre parcels. These parcels were created through an agricultural land division which exempts them from building rights. The subdivision process is now being utilized to create building rights. These two parcels (total of 40 acres) are currently undeveloped.

This application was continued because the September 12, 2023 meeting was adjourned early. It did not have a public hearing

APPLICABLE COUNTY CODE: Subdivision Preliminary Plat Review Title 9, Chapter 3-2-C, Teton County Zoning Ordinance, (revised 05/16/2013); Teton County Comprehensive Plan (A Vision & Framework 2012-2030).

LEGAL DESCRIPTION: RP05N44E054050 & RP05N44E054500
LOCATION: SW of the City of Tetonia, near Packsaddle Road
ZONING DISTRICT: A-20
PROPERTY SIZE: 40 acres

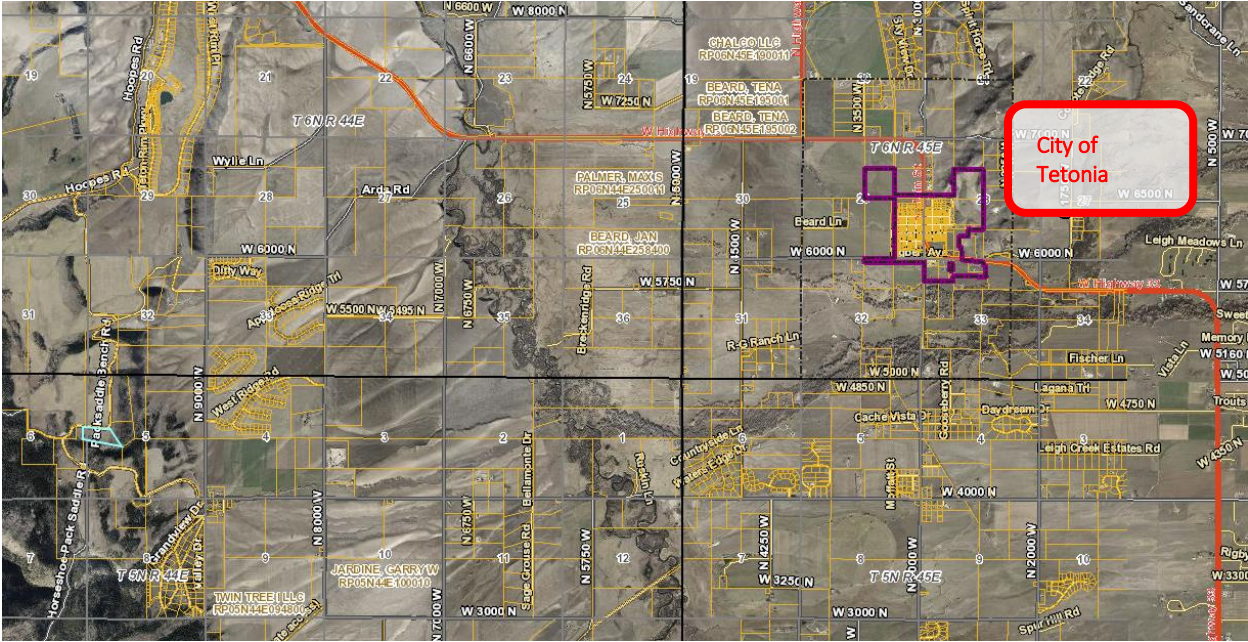


Figure 1. Vicinity Map

PROJECT DESCRIPTION:

The proposed 2-lot subdivision is to correct a previous agricultural land division that did not allocate building rights to these two parcels.

The proposed two lots have proposed individual well and septic. The access is proposed from Packsaddle Road. No fire suppression is required from a two lot subdivision. The applicant is within the Hillside Overlay (figure 3) as well as the Wildfire Urban Interface (figure 7). The property is also within the Big Game Migration Corridor & Seasonal Range per the January 2023 NRO update.

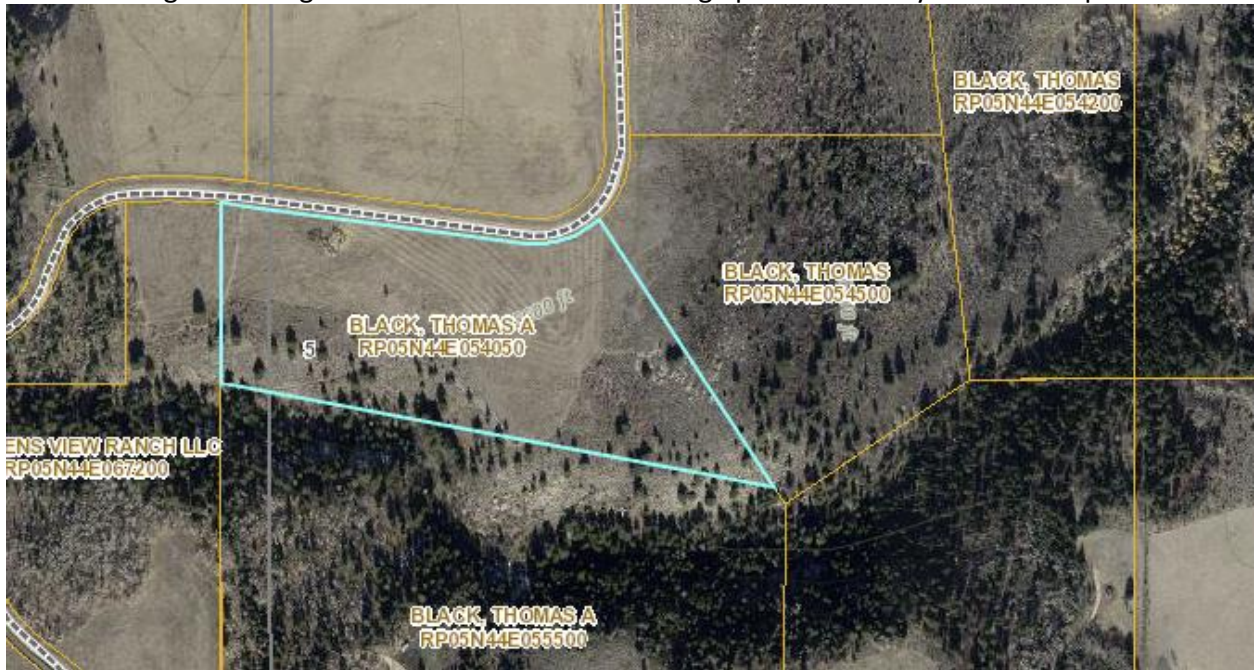


Figure 2. Aerial Image



Figure 3. Green hatch pattern represents the Hillside Overlay



Figure 4. Big Game Migration Corridor & Seasonal Range Overlay

PRELIMINARY PLAT LAYOUT:

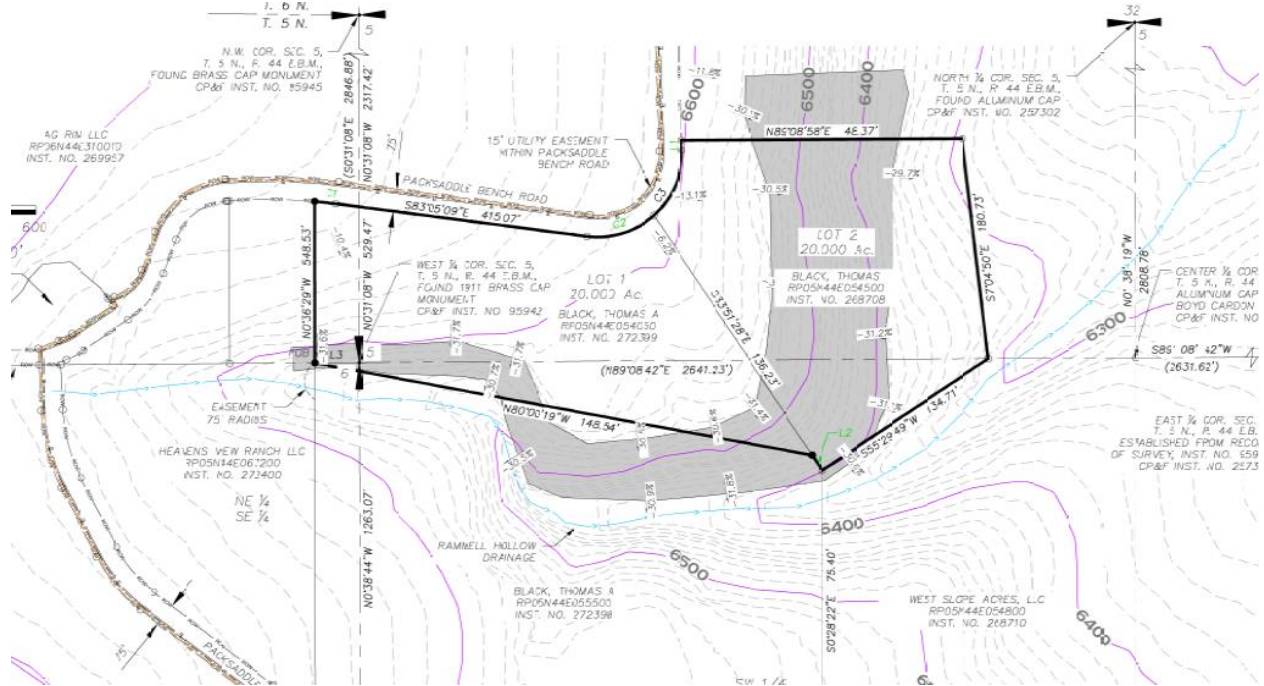


Figure 5. Preliminary Plat

PROJECT BACKGROUND:

Pre-application: A review was completed May 18, 2022.

Concept Review: A concept application was submitted October 25, 2022. The Planning and Zoning Commission approved the application on December 13, 2022 with the following motion:

MOTION: Having concluded that the Criteria for Approval of a Subdivision Concept Plan found in Title 9-3-2(B-4) can be satisfied I move to APPROVE the Concept Plan for Cougar Rim Subdivision Concept Plan as described in the application materials submitted October 25, 2022 and as updated with additional applicant information attached to this staff report.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Timothy Watters, Commissioner
SECONDER:	Wyatt Penfold, Commissioner
AYES:	Lindsey Love, Commissioner, J.A. Michelbacher, Chairman, Timothy Watters, Commissioner, Wyatt Penfold, Commissioner, Rebeca Nolan, Commissioner
ABSENT:	Wade Kaufman, Commissioner

The Concept Staff report included the following conditions of approval:

1. Maximum vertical slopes for roads and driveways is 8%. Applicant needs to verify all proposed roads and driveways meet these criteria. This needs to be noted on the Preliminary Plat.
2. An access permit will be required for Packsaddle Bench Road prior to construction of driveways

LIST OF ITEMS NECESSARY BEFORE PRELIMINARY PLAT (in addition to items listed in the preliminary plat application):

1. Complete documentation for Preliminary Plat that will need to be completed:
 - All items for the Hillside Overlay 9-3-2 (C-2-c-HS) including the building envelopes.
 - Work with Teton County Fire Marshal on building envelope placements within the WUI.
2. Work with EIPH to complete and submit a subdivision application. The EIPH review will be required to submit the Preliminary Plat application. A Nutrient Pathogen Level 1 may also be required.
3. Address all comments from the Public Works Director.

Staff comment: the conditions of approval were not met, nor were all of the items requested for preliminary plat submitted.

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 Final Plat review.

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 PZC was duly noticed in the Teton Valley News published August 23 and August 30, 2023. Notice to adjacent property owners within 300 feet of the property boundary were sent August 21, 2023. Notice was posted on the site August 28, 2023.

PUBLIC COMMENT:

Staff has not received any public comment as of 9/1/2023.

INTERAGENCY AND DEPARTMENT REVIEW:

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

- **ROADS & UTILITIES:** Teton County Public Works Director made the following comments on August 21, 2023:
 - Access locations will need to be approved through an access permit submitted to County Road & Bridge and should be shown on the plat.
 - Access to Lot 2 may prove to be challenging given slopes
 - Utilities must be run to the subdivision. An Improvement Plan is recommended showing existing utility locations and new utility work required to access subdivision. The Improvement Plan should be referenced in the Development Agreement.
- **FIRE PROTECTION:** Teton County Fire Marshal has not reviewed the application for the wildfire urban interface at this time because no information was provided related to access construction, driveways or building envelopes.
- **WASTEWATER TREATMENT:** Applicant has received preliminary approval from EIPH as of 5/28/23.

- **PLANS & STUDIES:** A Natural Resource Analysis was triggered first by the Hillside Overlay on the property. Applicant did not supply an NRA. The parcel is also within the Big Game Migration Corridor & Seasonal Range per the January 2023 update. Applicant has not supplied any documentation.

CONSIDERATION OF APPROVAL:

The Planning and Zoning Commissioners and 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 area falls under the Foothills future character area. This application could comply and the lots are existing parcels without building rights.

Foothills: The Foothills are located on the eastern and northern slopes of the Big Hole Mountains, the western slope of the Teton Range and the northern slope of the Snake River Range. These areas have rolling or steep topography and harsh wind and weather or are in the wildland/urban interface area. The boundaries of the Foothills areas were generally defined by the toe of the mountain slopes and the edge of heavy forest or vegetation. Due to their proximity to the forested public lands, these areas have high wildfire hazard and wildlife value. Some access to adjacent public land exists and the area is highly visible from the valley floor. Due to their remote location, public water and sewer service is not available in the Foothills. Desired future character and land uses include:

- Low residential densities with provision for clustering/conservation development
- Residential development clustered to respect topography
- Access points to public lands
- Conservation and wildlife habitat enhancement
- Wildland-Urban interface
- Development regulated by overlays and development guidelines to protect natural resources and improve public safety

Chapter 5. The Framework Plan 5-5

b) The application complies with all applicable County regulations.

As proposed, the application does not comply with Teton County’s development standards. The applicant has no included access construction or utilities within the improvement plans. TCC 9-4-2 (B) outlines required improvements for a subdivision.

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 trails or pathways proposed with this property nor any on any Teton County pathway plan.

- 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 Study was not required for this proposal. The application is not within Wetlands & Waterways Overlay. No bedrock or groundwater was encountered in EIPH's review of the proposal.

- 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 did receive approvals from EIPH in a letter dated 5/8/23.

- 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 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.**

A Traffic Impact Study was not required for this application. A Traffic Impact Study is typically required for applications with 10 or more lots, or if the PZC, BoCC or Administrator finds the application may have additional impacts on road conditions.

- 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.**

Subdivision is proposed from Packsaddle Bench Road. Applicant has not supplied access construction documents nor provided the access on the plat.

- 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.**

Both parcels are fully within Hill Side Overlay (see TCC 9-3-2 (C-2-c-HS)). The parcel is also within the Big Game Migration Corridor & Seasonal Range. Applicant has not supplied an NRA or WHA per the overlay requirements. Building envelopes should be established to avoid steep slopes and the Big Game Migration Corridor. Road grade and proposed driveway grades will be under 10%.

Applicant mapped a hillside overlay on the plat, but it doesn't accurately reflect the official Hillside Overlay mapped by Teton County.

- 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 for this proposal was not required because it is for 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 adopted CIP indicated that this area was appropriate for 20 units per 100 acres or .2 du/acre. The proposal of 2 lots per 40 acres could meet this proposal.

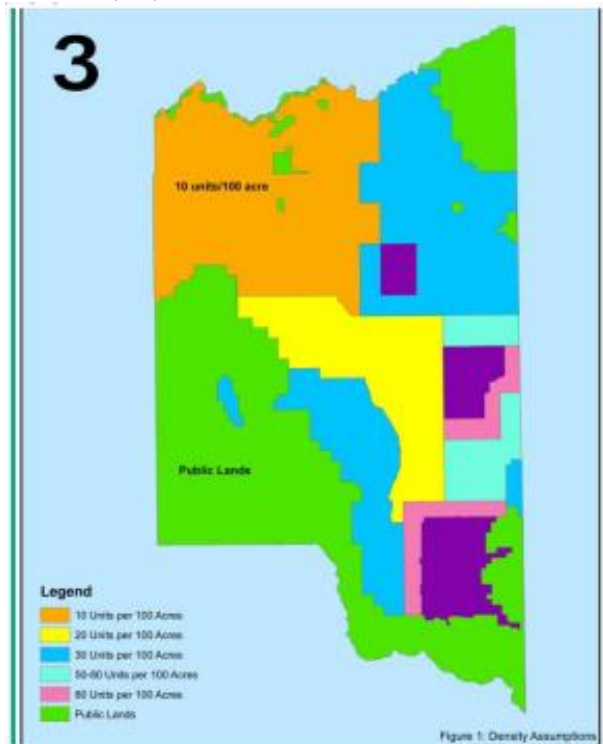


Figure 6. Adopted CIP 2008

- l) **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, and they address maintenance, and dark sky lighting. The CCRs need a notary block and to note that any commercial endeavors are subject to Teton County regulations.

- 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 overlay present. Applicant has not complied with the Hillside Overlay requirements nor have they addressed steep slopes on the property.

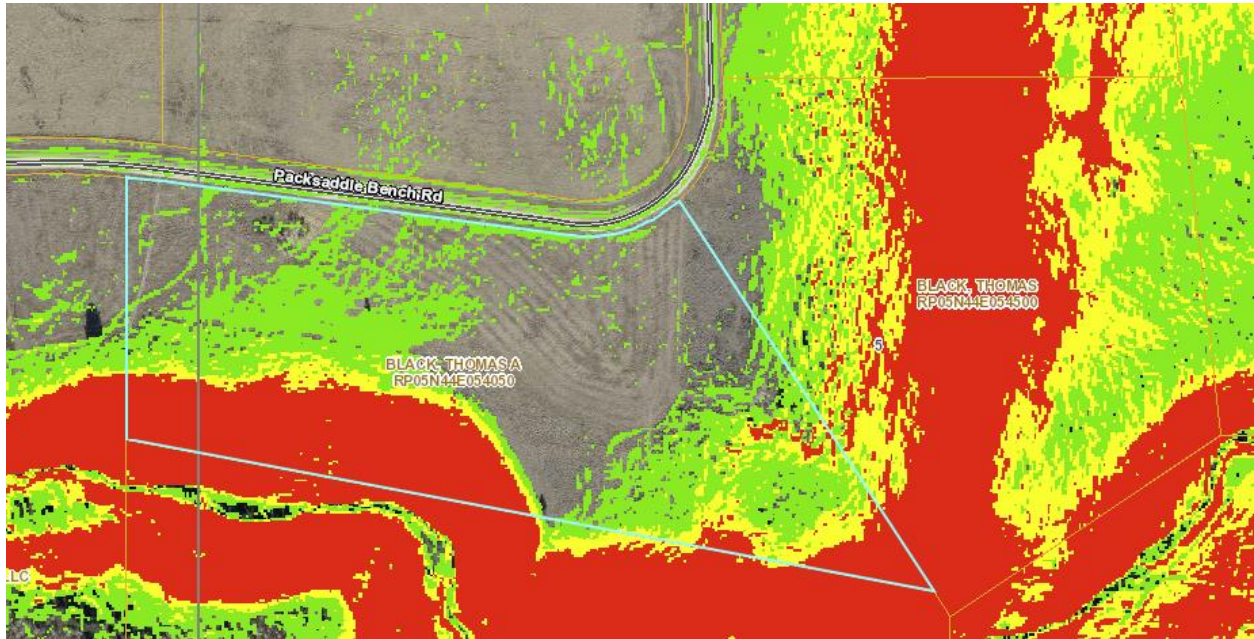


Figure 7. Slopes

- 0 - 10% (no color)
- 10 - 20%
- 20 - 30%
- over 30 %

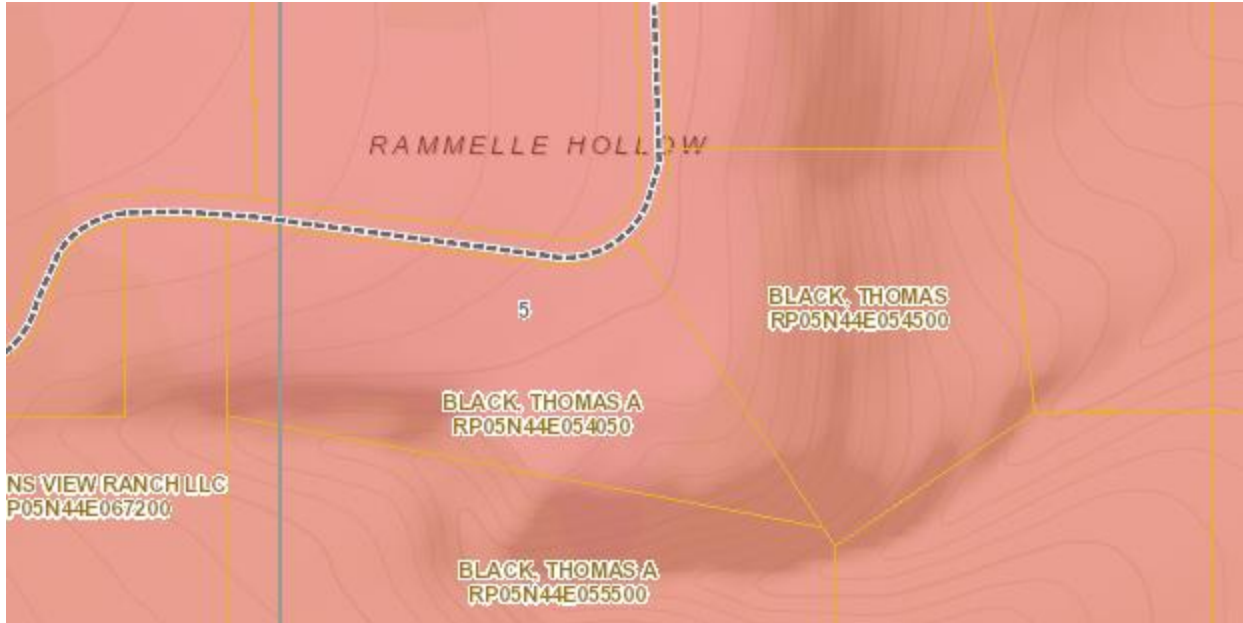


Figure 8. Wildfire Hazard Overlay (WUI)

- n) **In addition to the above, for a 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 identified in that study. If the applicant is obligated to pay an impact fee for schools, then mitigation measures identified in the report will not be required.**

This application is not for a planned community PUD.

CONSIDERATIONS:

This application does not meet the development standards set in Title 9. The application should not be approved until those standards are met.

The applicant has suggested the following (email from May 23, 2023):



Thomas Black <thomas@bellblack.com>

to me, Drew, sfox@co.teton.id.us

Hi Jade and Sharon,

May 23, 2023, 1:06 PM ☆ ↩ ⋮

I want to connect with you directly to see exactly what is lacking in order to get this application brought before the board for approval. Is there anything required that is lacking other than "documented utilities"? The only utilities in question here would be electricity, is that correct? As this is a rural parcel, well and septic would be provided on-site and we have received preliminary approval as requested.

If all other requirements have been met, I would like to formally request that my application be put on the schedule for review for approval based on the stated requirements in our CCR's that these two lots are to be off-grid. There are countless parcels in this county that have building rights that do not have power within miles of the property, and there are also countless homes that have been built in the county that are entirely off-grid, as is our intent here. Requiring us to spend hundreds of thousands of dollars on infrastructure in order to simply build on a parcel that we own that already exists and meets all other county requirements presents an unnecessary and undue hardship on us as the property owners when we have no desire to have power to the property.

In a county and community where clean, renewable energy is so heavily encouraged and advocated for, it seems counter intuitive to require that I tie into grid power in order to simply get permission to build on my property that meets and adheres to all parcel and building requirements in the county. I feel that the community here would be interested and concerned to hear that in order to build on my property I am obligated by the county to bypass the opportunity for clean, renewable energy simply due to an outdated "subdivision requirement" where a subdivision process is arguably unnecessary.

I understand that the county has "subdivision requirements" that should be met for a full subdivision requiring extensive infrastructure and improvements, but again- these are existing large rural parcels that border the county road where utility easements already exist and all other requirements have been met. There needs to be an avenue where one can request an exception to such a rule where it is unnecessary.

If there is any additional information beyond electricity utilities that is needed to bring this before the board for approval, please let me know and I will provide it. If the power utility is the only concern, please consider these points and let me know how I can best get on the schedule before the board to have the opportunity to have a discussion on how we can proceed as applied.

Thank you for your time and consideration. I look forward to hearing from you soon.

CONDITIONS OF APPROVAL:

1. The development agreement template should be updated to reflect the current Teton County template.
2. All improvements must be submitted in an Improvements Plan – access construction for the lots and utilities.
3. A cost estimate (stamped by the engineer) must be submitted for the improvement plan.
4. A draft of the financial surety should be provided for the improvements (125% of the cost estimate).
5. Access permits must be obtained from Road & Bridge. Driveways should be platted.
6. CCRs must be updated in the following ways:
 - a. Include a notary block for recording.
 - b. All commercial endeavors are subject to Teton County regulations

PLANNING & ZONING COMMISSIONER ACTION:

- A. Recommend approval of the Preliminary Plat, with the possible conditions of approval listed in this staff report, having provided the reasons and justifications for the approval.
- B. Recommend approval of the Preliminary Plat, with modifications to the application, or adding conditions of approval, having provided the reasons and justifications for the approval and for any modifications or conditions.
- C. Recommend denial of the Preliminary Plat application providing the reasons and justifications for the denial.
- D. Continue to a future PZC 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 approve or deny the application:

APPROVAL

Having concluded that the Criteria for Approval of a Preliminary Plat found in Title 9-3-2-C can be satisfied, I move to APPROVE the Preliminary Plat for Cougar Rim Subdivision as described in the application materials submitted May 18, 2023 and additional materials 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** Cougar Rim Subdivision Preliminary Plat in order 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-B have not been satisfied, I move to DENY the Preliminary Plat Cougar Rim Subdivision as described in the application materials submitted May 18, 2023 and additional materials attached to the staff report, based on the following findings:

1. ...

The following could be done to obtain approval:

1. ...

Prepared by Jade Krueger, Planning Administrator

Attachments:

- A. Application (7 pages)
- B. Narrative (1 page)
- C. Preliminary plat (1 page)
- D. CCRs (1 page)
- E. Development Agreement (14 pages)
- F. EIPH Approval Letter (4 pages)
- G. Public Works Review (1 page)

End of Staff Report