Addressing Excess Development Entitlements:
Lessons Learned in Teton County, Idaho

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Abstract

While many large and small communities experienced the rollercoaster real estate bubble of the past decade, the explosive boom and then precipitous bust in Teton County, Idaho was unprecedented. With a population of approximately 10,000 residents, today there are almost as many vacant platted lots as there are people. This oversupply did not develop overnight, but evolved over time as a result of years of policies and decisions by multiple political administrations of County Commissioners. These policies and decisions included allowing landowners to choose their own zoning, the adoption of a weak comprehensive plan, and the passage of a Planned Unit Development ordinance which granted up to 1,900 percent housing density bonuses. Just as this supply of real estate inventory built up over time, it took years for land speculators and the general public to realize that the market had become flooded and respond accordingly.

In recent years, newer political administrations in Teton County have implemented policy changes, code amendments, and direct actions in an attempt to buffer the impacts of this crash as well as plan for a more stable future. Some of the policy changes, code amendments and actions include:

- Adoption of a formalized Teton County development agreement template and passage of a policy for careful oversight of county contracts.
- Adoption of development agreement extension request criteria.
- Amendment of county development codes to prohibit pre-selling of lots and require sureties prior to plat recordation.
- Development of a Geographic Information Systems (GIS) department and a system for better record keeping.
- Adoption of the Teton County Fiscal Impacts Planning System.
- Adoption of the Teton County incentivized replatting ordinance.
- Development of a strategy, policies, and procedures for vacating plats.
- Launching the Teton Valley 2020 comprehensive planning process.
- Revision of Teton County's zoning and development codes.

Some of these polices have been effective, others have not, while some outcomes remain to be seen. Teton County has already vacated four "paper plats" totaling 79 lots on 313 acres and more may soon be coming. A handful of developers have attempted to use the county's incentivized replatting ordinance to scale back their derailed projects, lower infrastructure costs, and reduce the environmental impacts of their developments, but none have yet been approved by Teton County. This is due to the fact that these replat proposals have largely been attempts at "back-door" extension requests whereby the developer tries to obtain the largest extension of time possible for completion of development infrastructure in exchange for minor reductions in the scale of the project.

Teton County has taken more initiative to deal head-on with its glut of real estate inventory than possibly any other rural community in the West. One of the toughest lessons learned through this effort has been that it is much harder to undo bad decisions than to make good decisions to begin with. In the case of land use, once development entitlements are approved and a plat is recorded, it is difficult and in some cases impossible to successfully untie the entitlement knot. One clear conclusion of this real estate melt down is that if a speculative development proposal does not have immediate commercial viability, it is best to avoid approving it in the first place.

It remains to be seen whether Teton Valley will forge a new future or continue the boom and bust cycles of the past. This is an election year, and two of the three county commissioner seats are hotly contested by candidates with divergent beliefs and approaches towards planning for growth. If the political will remains to adopt and enforce new zoning and development approaches, Teton County can take a hard-fought and significant first step toward building a new future.

About the Author

Anna Trentadue is the staff attorney and program director for Valley Advocates for Responsible Development (VARD) in Teton County, Idaho. Anna earned a B.A. in Biology, with a minor in French, from Colorado College in 2000 and her Juris Doctor from the University of San Francisco in 2006. During law school, she specialized in land use and water law, interned with the California Attorney General's Energy Task Force, and clerked at a private water law practice. Upon graduation, she returned to Idaho to work for another private water law practice in Boise before joining the VARD staff in 2007.

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Western Lands and Communities current initiatives include: state trust land management, advancing open source planning and visioning tools, addressing the impacts of excessive development entitlements, and land use planning for climate change mitigation and adaptation. For further information see http://www.westernlandsandcommunities.org.

About Valley Advocates for Responsible Development

Now in its eleventh year, Valley Advocates for Responsible Development (VARD) is a small nonprofit organization that works with citizens, other nonprofit organizations, developers, and local governments to promote responsible development and sustainable use of the natural resources of Teton Valley, Idaho. VARD's mission is to advocate for private, public, and civil actions that will result in responsible development and sustainable use of the natural resources (water, land, wildlife, and air) in Teton Valley. For further information see http://www.tetonvalleyadvocates.org.

About The Reshaping Development Patterns Project

The goal of the Reshaping Development Patterns initiative is to assist communities of the Intermountain West addressing previous entitlements as well as communities who may face future growth challenges. This multi-year project started with background research on issues and challenges around development entitlements in the West, including the legal, economic, planning, and design issues associated with the entitlements. Ultimately, this effort will produce a series of working papers, a major policy report, a series of best practices and case study results, and eventually perhaps a book compiling all the information and lessons learned. This project includes applied case studies in several types of intermountain west communities; including rural amenity communities like Teton County, Idaho and rapidly growing mega-regions such as, Arizona's Sun Corridor which will ultimately inform a west-wide policy report. For further information see http://www.sonoraninstitute.org/where-we-work/westwide-lincoln-institute-joint-venture/reshaping-development-patterns.html.

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Addressing Excess Development Entitlements:
Lessons Learned in Teton County, Idaho

Introduction

This working paper provides a broad overview of what happened over the past decade to cause an explosive boom and then precipitous bust in real estate development in Teton County, Idaho. The steps taken to address the fallout from this crash are significant, and this paper's focus is on the ongoing effort to address the residual impacts, and lessons learned in Teton County including both best and worst practices that may be transferrable to other communities throughout the West. The author's perspective in this paper is first hand. By virtue of her position as program director and staff attorney in a local smart-growth advocacy organization known as Valley Advocates for Responsible Development (VARD), many of the events and issues explained in this paper were the first person observations of the author as the result of years of attending public hearings on land use issues and numerous discussions with Teton County's planning staff and county attorney.

The Nature of the Entitlement Problem in Teton County

Teton County, Idaho is a small rural county (450 square miles) in southeastern Idaho. Bordered by three mountain ranges and national forests to the east, west, and south, the majority of the private lands are found along the valley floor. Unlike neighboring Teton County, Wyoming (home of Jackson Hole) where less than 3 percent of the land is privately owned, 67 percent of all the land in Teton County is privately owned. Approximately 31 percent of this private land has been subdivided, predominately in the last decade.[1] In the unincorporated county, 77 percent (7,030) of all platted lots are vacant; meaning a home or other structure has yet to be built on the lot. There are also an additional 1,674 vacant lots in Teton County's three small cities (Victor, pop. 1,900, Driggs pop. 1640; Tetonia, pop. 240),[2] bringing the countywide total up to 8,702 vacant lots. At the census average for Teton County of 2.4 residents per household, these vacant lots can accommodate housing for an additional 20,884 people. The current population of Teton County is 10,170, which is a 70 percent increase since 2000.[3]

As for land that has not been subdivided, with the current base zoning in the unincorporated county, there are 144,000 undeveloped acres that could be further divided, creating 26,000 more lots that are under 20 acres in size, with 87 percent of these lots being under 2.5 acres in size.[4] There are an additional 1,871 acres of undeveloped land within the city limits of the three towns.[5]

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[1] Teton County Building Department Report, September, 2009.

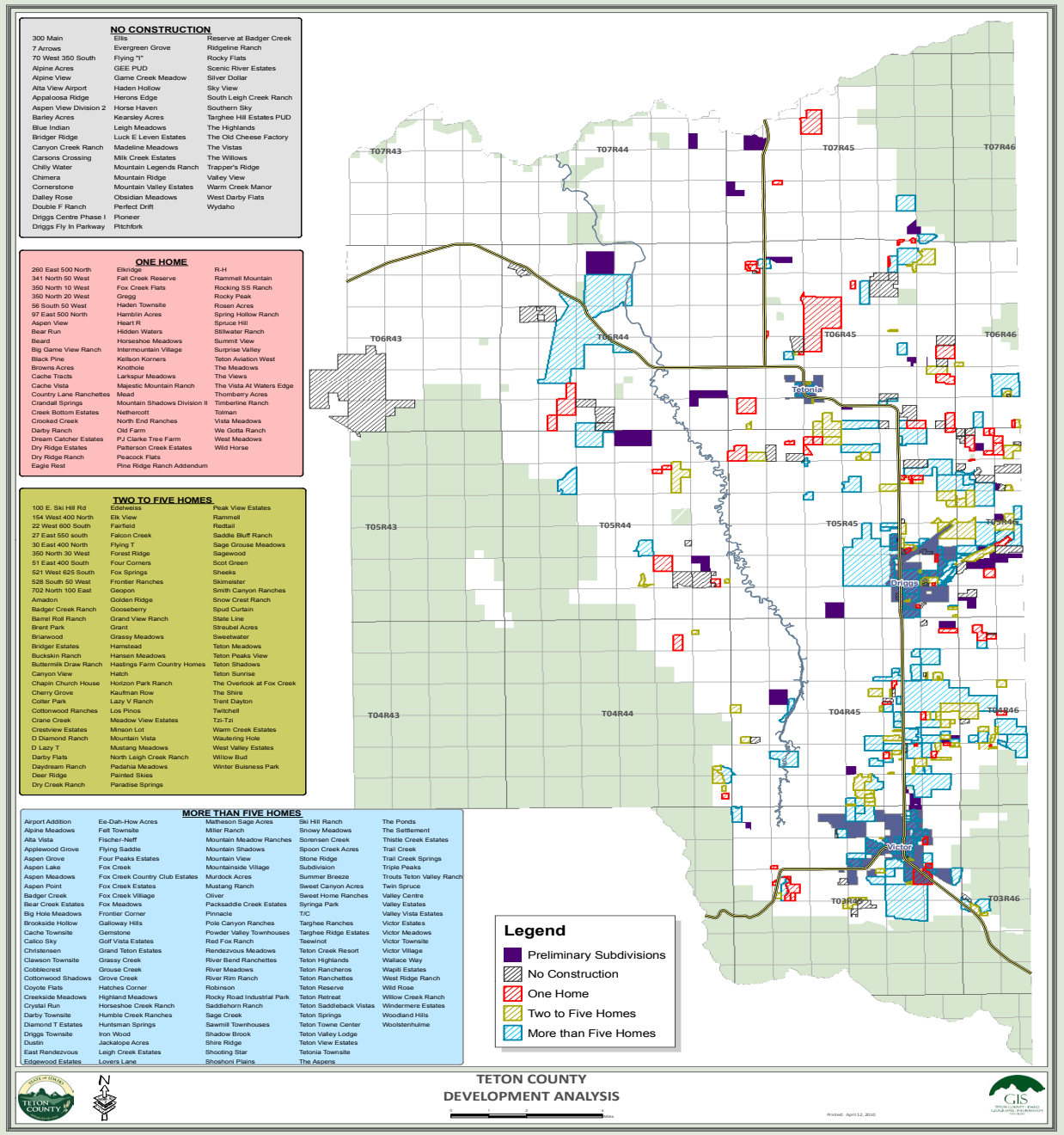
[2] U.S. Census 2010 Quickfacts.

[3] U.S. Census 2010 Quickfacts. The 2000 population of Teton County was 5,999 residents.

[4] Data taken from the Teton County GIS department assessment of future potential subdivision inventory (April 20, 2012).

[5] Data taken from the Teton County GIS program (2012).

Figure 1: Teton County Development Analysis



Source: Teton County Planning and GIS Departments

The map pictured in Figure 1 is a development analysis of the platted subdivisions in Teton County that is based on the number of homes constructed in each subdivision. Grey subdivisions have no homes constructed. Red subdivisions have one home constructed. Green subdivisions have two to five homes constructed. Blue subdivisions have more than five homes constructed.

This map shows that almost half of the platted subdivisions in Teton County have fewer than five homes constructed within their boundaries.[6]

Absorption of these 8,702 vacant lots is not rapid. In this small, rural county, the demand for new homes peaked in 2006, with 338 building permits issued. Since that peak, building permits have declined by 98 percent. Seven building permits for new homes were issued in 2011. The cities show even less building activity. Since 2009, a total of three building permits were issued for new homes in Victor and Driggs.[7] Today, two out of every three homes are located in the unincorporated county, outside of the cities. Building permit trends over the past four years clearly show that although home construction in the rural county has declined by 98 percent, it is still rapidly outpacing the cities, which creates public concern for how this trend could be reversed.[8]

Because the volume of building permits has varied considerably over the past eight years, it is difficult to predict the future rate of home absorption. If homes are constructed at the 2004-2011 average rate of 134 building permits per year, a 57 year building supply of platted lots exists. It is critical to note that Teton County's statistics for home construction do not imply that once a home is built, it is occupied. The 2010 U.S. Census counted 37 percent of the housing units in the rural county as vacant. By contrast, the 2000 vacancy rate in the unincorporated county was 12.1 percent. In the three cities, 26 percent of the housing units were counted as vacant in 2010. The 2010 average vacancy rate for Idaho was 12.6 percent.[9]

As for future growth, if Teton County's population increases at the average, but still very aggressive projected growth rate for Idaho (21.1 percent population increase from 2000 to 2010)[10] the population in 2030 will be 14,915 residents. The housing demand for this increase in population, at the census average of 2.4 persons per household is estimated at 1,977 units. Because there are currently 1,827 vacant housing units in the county, the estimated remaining 20-year demand for future housing is 150 additional housing units. Therefore, the existing inventory of 8,702 vacant lots is 5,800 percent more than the projected future demand. This oversupply is not only staggering; it continues to hamstring Teton County's real estate recovery.

How Teton County's Oversupply Evolved Over Time

To say Teton County has an oversupply of real estate inventory is an understatement, but this glut of lots did not happen overnight. It was not the product of any singular decision, but rather,

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[6] Map produced by the Teton County GIS Department, April 2011.

[7] County data taken from Teton County Planning Administrator report to the Teton County Board of County Commissioners (May 14, 2012). City data taken from discussions with the planning administrators for the cities of Driggs and Victor.

[8] Through the recent Teton Valley 2020 comprehensive planning process, the public expressed a clear directive that future growth must be focused within the cities. This strong desire to curb sprawl and promote urban infill, was translated into the core goals and policies of the new Comprehensive Plan. To view a draft of this new Plan, see http://www.tetonvalley2020.org.

[9] U.S. Census Fact-finder, 2010 and 2000.

[10] U.S. Census 2010.

years of decisions by two political administrations which established the foundation upon which an explosive boom and then precipitous bust took place. Of all the legislative and quasi-juridical decisions that were made by elected officials, there were three decisions made by the 2003 and 2005 administrations of the Board of County Commissioners which had the largest impact, and essentially set the stage for the 2001–2009 boom and subsequent bust.

Rapid Up-zoning in the Rural County

From 2003 to 2005 Teton County offered a quick and easy process for landowners to request their properties be up-zoned from 20-acre zoning to 2.5-acre zoning. With the exception of a few small spot zones of commercial zoning along the state highways, these two zoning districts (20-acre and 2.5-acre) were the only possible zoning designations available for all of the land within the unincorporated areas of the county. This tool was popular and used often. It was not uncommon for hundreds of acres to be up-zoned in a single night of public hearings. As an example of how quickly these zone changes were implemented, at the March 24, 2004 County Commissioner public hearings, three up-zoning requests were heard that evening. All three applications were granted in less than one hour. As a result, 839 acres were up-zoned from 20-acre zoning to 2.5-acre zoning, adding an additional 295 potential units to the county's future residential inventory. None of these zone changes were granted concurrently with a development proposal, but were granted for future speculative development. That same night, two additional Planned Unit Developments (PUD) were on the hearing agenda as well as a commercial zone change.[11] It was not uncommon to have up to ten applications for different subdivision developments on single evening's hearing agenda, and deliberations would often last until well past midnight. While this volume and workload may seem typical of a larger city, these were the monthly approvals for a rural county of less than 10,000 residents.

Adoption of "A Guide for Development 2004–2010"

In 2004, Teton County adopted a revamped Comprehensive Plan, entitled, "A Guide for Development 2004–2010." A common criticism of this plan was its vagueness and lack of clear directives for how Teton County should manage future growth. Digging a little deeper, the title of this Plan rings true to its substance. Indeed, it was a guide for explosive development. Once adopted in 2004, the unchecked rural sprawl that proliferated across Teton Valley was all found to be in accordance with this Plan by the 2005 administration of County Commissioners. Although this plan did not singlehandedly create the 8,702 vacant lots that exist today in this small rural county, it was the foundation upon which sprawl was born. The Plan was so vague in its directives that it was essentially a "non-plan," at one instance mandating that commercial development should be focused in the cities, and then immediately directing that industrial development be permitted in the rural county.[12]

Soon after adoption, this Plan was set aside and essentially never consulted on any development applications as it was found to be too vague to be useful. In other jurisdictions, conformance with

[11] Teton County Board of County Commissioner Minutes, March 24, 2004; http://www.tetoncountyidaho.gov/publicrecords.

[12] "A Guide For Development 2004–2010" page 30. A full copy of the 2004-201 Comprehensive Plan can be found online at http://www.tetoncountyidaho.gov/additionalInfo.php?deptID=6&pkTopics=31.

the comprehensive plan is a common analytical step when evaluating development proposals, but in Teton County, the 2004–2010 plan was discredited, placed on a shelf to collect dust, and ultimately left out of the approvals process all together. Thus, six years of land use decisions were made without the benefit and guidance of a cohesive plan.

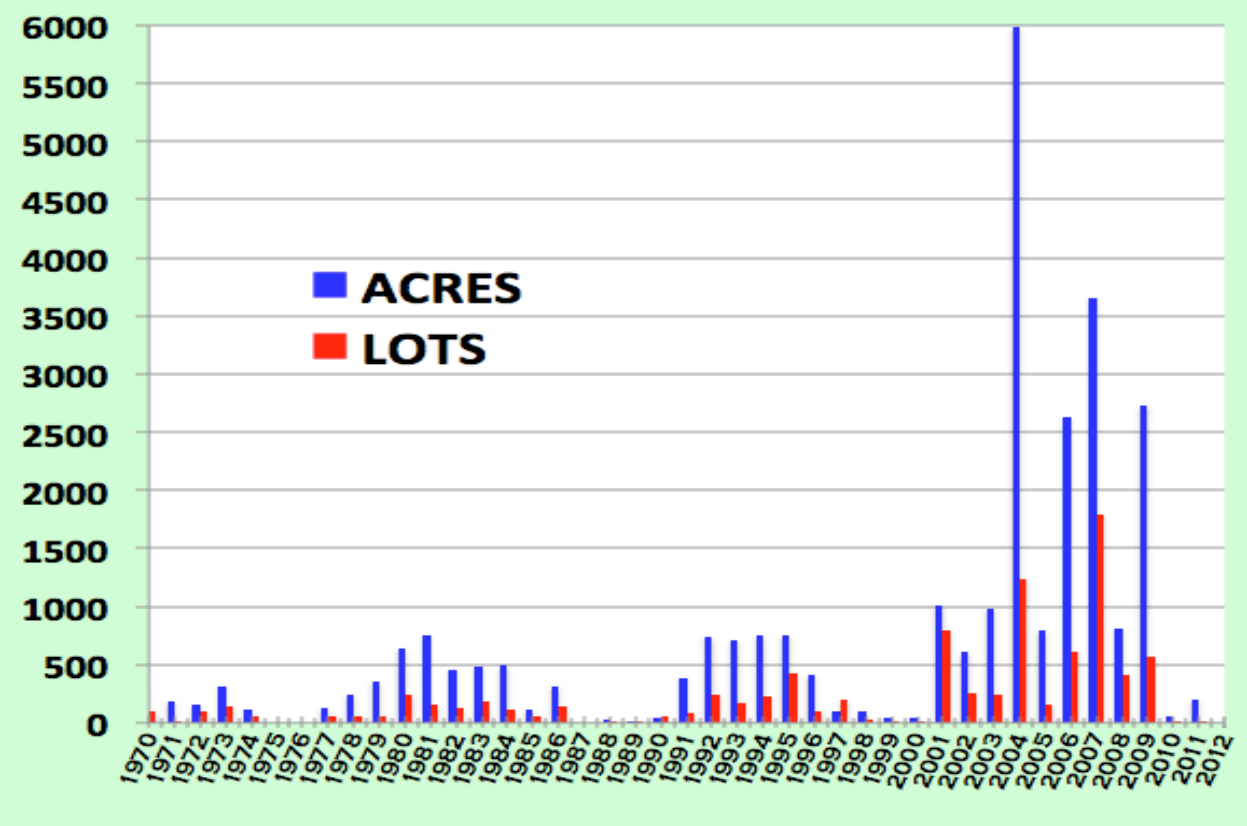
Adoption of the 2005 Planned Unit Development Ordinance

The 2004–2010 Plan placed a core emphasis on promoting extensive growth, but offered few specifics as to how growth should be managed. The Board of County Commissioners took these goals and policies calling for aggressive growth and created a procedural road map for how they could be implemented by adopting the Planned United Development (PUD) ordinance on June 13, 2005. The density bonuses offered in this cluster development ordinance exceeded the underlying zoning entitlements by as much as 1,900 percent.

For example, under this 2005 ordinance (which was not repealed until 2008), PUDs within 0.5 miles of the city impact areas[13] could receive 1,900 percent density increases. Thus, areas that were zoned for 20-acre zoning (5 units per 100 acres) could now be entitled up to 100 units per 100 acres with a central water system. In addition, both Teton County's PUD and subdivision regulations allowed for the pre-selling of lots, which provided a huge incentive for speculative development. By allowing lots to be pre-sold, developers could get an entitlement approved with large density bonuses, record the plat, and immediately begin selling lots without completing any of the basic infrastructure. For some, the pre-selling of lots was a means to fund the improvements. While the 2004 Plan created the foundation for explosive growth, it was the 2005 PUD ordinance that enabled this growth to happen.

[13] In Idaho, cities and counties are required to negotiate an "impact area" surrounding the cities which includes lands within the unincorporated county. Impact areas function as regions of joint planning between the cities and counties and future growth, however, at times, impact areas are likewise used to create "buffers" and "natural boundaries" prohibiting growth outside of cities and towns. I.C. § 67-6526.

Figure 2: Teton County Subdivision Trends: 1970–2012



Source: Teton County Planning & GIS Departments

Figure 2 represents 40 years of subdivision and PUD lots recorded on properties in the rural county. Boom/ bust cycles have clearly been the norm for the past four decades, however, the last decade far outpaced the prior ones. Note the proliferation of growth with the 2004 adoption of the 2004–2010 Comp Plan: "A Guide For Development" as well as the 2005 PUD ordinance.[14] This chart does not include lots recorded within the city limits of Victor, Driggs, or Tetonia because such data is not readily available, however the current oversupply of lots in the three cities suggests that they encountered a similar boom over the past ten years.[15]

The Evolution of Development Entitlements Since the Real Estate Crash

From 2009 to 2012, the number of lots pending approval in the unincorporated county dwindled down to zero, but this decline did not happen immediately. Five months after the October 5, 2008 market crash, there were still 5,500 subdivision lots pending approval on 15,000 acres in Teton County. In fact, many new developments were still coming in the door at this time. In

[14] The PUD ordinance was adopted June 13, 2005. Development applications would still take several months to a year for the county to process. Hence, the surge in lot approvals in 2006 and 2007.

[15] Data take from Teton County subdivision report that is maintained by the Teton County Planning Department. Chart is current through April 25, 2012.

2007, Teton County collected fees for 77 new subdivision applications, and although the market had crashed by the fall of 2008, the planning department still collected fees for an additional 73 subdivision applications that same year.[16]

By February 2010, the number of pending subdivisions applications had dwindled to 1,840 lots on 2,600 acres, with the remainder either expired or withdrawn by the applicant. By February 2011, that number was down to 62 lots on 260 acres, and all of the remaining applications were expired or withdrawn by February of 2012.[17]

Although most pending developments either expired or were withdrawn after the bust, there were still several developments that persevered through the development entitlement process even though the market had crashed. From 2009 to 2010, 13 of these lingering developments were approved by the County, adding an additional 593 subdivision lots on 2,987 acres to the existing supply.[18] Thus, by 2009, the public's perception of the market was rapidly changing from optimistic to fearfully pessimistic, but the public was still largely unaware that additional developments were still coming through the pipeline and obtaining final approvals.

In the wake of the crash, as many developers either lost their projects to foreclosure or simply ran out of funds to finish their developments, planned high amenity developments soon became no amenity "communities" with few or no homes in them. Because Teton County's development ordinances that were in place at the time allowed lots to be pre-sold prior to infrastructure being completed, many property owners now found themselves owning a parcel or lot in what was supposed to be a high-end development that simply did not exist as anything more than drawing on a piece of paper.

With two incomplete golf course communities, an incomplete equestrian development, and several high-end gated communities that exist only on paper, only two of the county's major developments (Teton Springs and Huntsman Springs) have proven to be financially capable of providing the originally promised amenities despite the market crash. Approved in 2000, Teton Springs beat the rush and was the first large-scale development in the door. Because of its early timing, Teton Springs has survived better than the latecomers. Virtually all of the lots have sold multiple times over, it is 27 percent built out, and almost all of the community amenities (pool, clubhouse, golf course, etc.) have been completed by the developer.[19] Huntsman Springs was approved in 2007, and although the late timing hindered its ability to capitalize on the real estate boom, the deep pockets of the owners and their commitment to seeing their development through to fruition have allowed this development to endure.[20] To date, both developments have fully functioning golf facilities and other amenities such as pathways and parks.

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[16] Report by Angie Rutherford, Teton County Planning Administrator, May 14, 2012. Attachment to May 14, 2012 Board of County Commissioner minutes. See http://www.tetoncountyidaho.gov/publicrecords.

[17] Teton County Planning Department subdivision annual reports, February 2009, February 2010, February 2011, and February 2012.

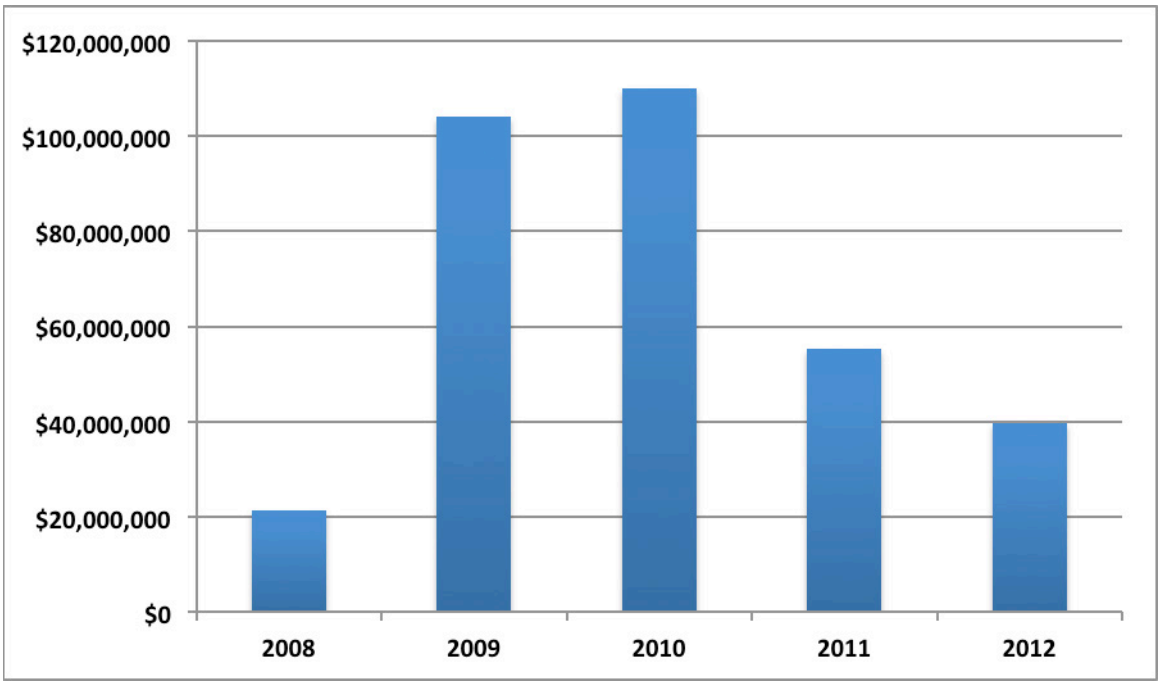
[18] Data taken from Teton County GIS Department annual recording statistics that are maintained by GIS staff.

[19] Data take from the Teton County subdivision report maintained by the Teton County Planning Department. (April 24, 2012). See also http://www.tetonsprings.com.

[20] See http://www.huntsmansprings.com.

As for foreclosures, from 2008 to the present date, there was a marked peak and then decline in foreclosures, but the overall volume is astonishing. From 2008 to 2012, the total volume of foreclosures in Teton County, Idaho exceeded $330,000,000 from 591 properties.[21]

Figure 3: Teton County Foreclosures by $ Volume: 2008–2012

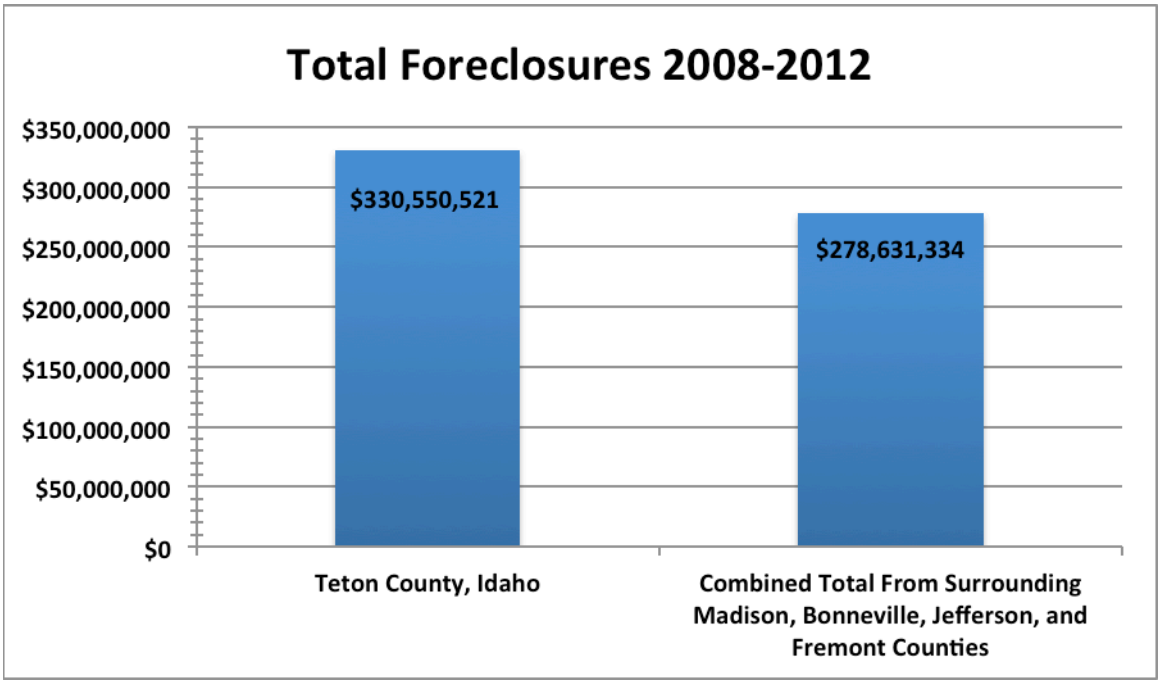


Source: Alliance Title and Escrow Corporation foreclosure statistics. Current through May 17, 2012.

The average value of each foreclosed property exceeded $558,000, which lends support to the theory that many of these properties were speculative ventures with inflated values. There is some anecdotal speculation that 2012 may be another large year for foreclosures as many banks have held back on foreclosures to keep the inventory off of their books.

[21] Foreclosure data taken from Alliance Title and Escrow Corporation foreclosure statistics by County. Data current through May 17, 2012.

Figure 4: Teton County Total Foreclosures: 2008–2011



Source: Alliance Title and Escrow Corporation foreclosure statistics. Current through May 17, 2012.

The chart in Figure 4 gives some perspective on how the volume Teton County's foreclosures outpaced its neighbors in volume and inflated property values. From 2008 to 2012, the volume of Teton County's foreclosures exceeded the combined total of neighboring Bonneville, Fremont, Jefferson, and Madison counties by 18 percent. Much of this was due to the inflated valued of Teton County's land. In the four neighboring counties, 1,506 properties were foreclosed between 2008 and 2012. The average value was $185,000, or 33 percent of the average value of foreclosed properties in Teton County ($558,000). As a smallest of these five counties with 8 percent of the land area and 5.6 percent of the population, Teton County's volume of foreclosures and average value of foreclosed property suggests the speculative development bubble in this tiny county dwarfed that of its neighboring counties.[22]

Historical, Present Day, and Future Market Perspectives

In the past decade, many housing market analysts, including the National Association of Realtors, the National Association of Home Builders, the Urban Land Institute, and academic researchers, have completed studies that point to a shift in national housing market trends. These studies conclude that, due to demographic changes, increasing energy costs, and shifting consumer preferences, a rising demand for "smart growth" housing exists. Smart growth housing, in contrast to conventional types, is characterized by higher density neighborhoods located within urban areas; a mixture of commercial, residential, and office land uses; and amenities such as parks and trails.

[22] Foreclosure data taken from Alliance Title and Escrow Corporation foreclosure statistics by County. Data current through May 17, 2012.

The Sonoran Institute recently commissioned a study by Economic and Planning Systems (EPS) to explore whether these findings apply to six communities in the Northern Rockies and western Colorado, including Teton Valley. The study evaluated the housing market of these communities for the past 10 years to compare smart and conventional housing in terms of market share and average price.

Using Teton County data from 1,500 sales from 2001 to 2011, the study found that smart growth housing constituted a notable share of total demand, as well as a significant price premium, from 2001 to 2009. At its peak, smart growth homes made up 27 percent of building permits in the county. Additionally, despite the fact that homes and home lots in smart growth neighborhoods are typically smaller than in conventional subdivisions, the study found that buyers are willing to pay a premium to live in smart growth neighborhoods: the average price per square foot of smart growth housing was about 20 percent higher than the Teton County-wide average price. These figures for this period are comparable to the other communities in the study; the average market share of all communities was 20 percent, and the average price premium was 18.5 percent.

The collapse of the real estate market had a deleterious impact on the market for smart growth in all the communities studied. In Teton County, consumer demand since 2008 has shifted to housing that offers exceptional value through short sales, foreclosures, and a general glut of conventional homes. According to Teton County real estate developers and brokers interviewed for the study, home buyers' priorities began to focus exclusively on price after 2008. Since then, smart growth market share dropped from about 27 percent to 12 percent, and is price premium was essentially neutral after 2009. These shifts were typical for the other communities in the study.

According to EPS, developers and brokers in Teton County expect the market share and price premium of smart growth housing to rebound as the economy improves and the inventory of foreclosed properties and short sales drops. They expect that as consumers feel more secure about the national and regional economy they will gravitate toward homes they prefer and regain their willingness to pay more for smart growth homes. The perceptions of the development community comport to both the data and the opinions of experts in the other study communities.

The Politics of Land Use in Teton County

Historical Politics vs. Present Day

Teton Valley was first formally settled by Mormon pioneers, and for several generations, the valley was largely isolated and homogenous. It was, and continues to be an agricultural community. In recent decades, like many rural communities with tremendous recreation assets, the valley has become increasingly populated by people who moved to Teton Valley specifically for the outdoor lifestyle. From 2000 to 2010, Teton County's population grew from 5,999 to 10,170, an increase of 69.5 percent.[23] Anecdotal evidence suggests much of this growth was due to the influx of recreationalists and retirees.

[23] U.S. Census, 2010.

As with many small communities experiencing growth pressures for the first time, there was an eagerness of local leaders to capitalize on this expansion of the tax base and of landowners to take advantage of the increased value of their land through development. However, the policies put in place by prior administrations took years to manifest themselves. By 2006, these policies finally began to bear fruit as land use changes became visually evident, and residents began to notice with increasing alarm, the landscape-scale changes happening in their own backyards.[24]

Although Teton County already had a 40-year history of relatively small boom and bust cycles in residential development (see Figure 2), the influx of new residents in the last decade was large enough to create significant changes in community culture. The first tangible signs of political change came with the election of two new Democratic county commissioners in November 2006. Both were perceived as newcomers who were outside of the historic power structure. They joined a 12-year Republican incumbent with two years left in his term.[25] Running on smart growth platforms, these two newly elected county commissioners quickly enacted a 180-day subdivision moratorium in early 2007, over the opposition vote of the Republican commissioner. At the time of this moratorium, Teton County had 75 subdivisions pending in the pipeline, with 4,224 lots pending review before the county's planning department. When the existing planning administrator resigned, that was perceived as the "last straw" and real impetus for the newly elected commissioners to pursue the moratorium. Immediately after the moratorium was passed, a lobby of developers and large landowners petitioned for judicial review to challenge the moratorium. The District Court for the 6th Judicial District in southeastern Idaho overturned the moratorium, after finding that "no imminent peril" existed to justify the basis for its enactment.[26] The Board of County Commissioners declined to appeal this decision, partly because of the divisiveness it created within the community, but also because the county has exhausted its reserve legal funds defending the District Court action.[27]

With the moratorium overturned, a group of citizens identifying themselves as the Teton Valley Alliance initiated a recall petition on the two newly elected commissioners. This recall attempt in the November 2007 election was by all accounts a huge failure. With no other issue on the ballot, the voter turnout was over 71 percent, which was over 7 percent higher than the original 2006 election. Each commissioner had garnered 55 percent of the votes cast in the 2006 election, and they received 57 percent and 58 percent of the votes cast in the 2007 election.[28] Despite the failure of the moratorium, the recall effort galvanized the more progressive base, and in the next

[24] Change of this magnitude is hard to describe in brief. For an excellent, in depth synopsis of the mechanics behind the political change in Teton County, Idaho, see Long, Jerrold A., *Private Lands, Conflict, and Institutional Evolution in the Post-Public-Lands West.* Pace Environmental Law Review. Vol. 28. Issue 3. Spring 2011.

[25] In November 2006, Democratic commissioner candidates Alice Stevenson and Larry Young were elected into office to join Republican incumbent Mark Trupp.

[26] *Robinson v. Bd. of Teton County, Board of County Commissioners* No. CV-07-102 (Idaho 7th Dist., Apr. 30, 2007). See also Idaho Code § 67-6523.

[27] Horne, Rachael, *Pledges,* Teton Valley News, April 26, 2007; Nyren, Lisa, *BOCC Adopts Post-Ruling Action Items,* Teton Valley News, May 17, 2007.

[28] Teton County official 2006 and 2007 election results. http://www.tetoncountyidaho.gov/publicrecords.

election cycle in 2008, Teton County ousted the 12-year Republican incumbent and for the first time, elected an entirely democratic administration.[29]

Not only was Teton County experiencing a rapid rate of physical growth and dramatic political change, but compounding the chaos and lack of oversight in land use decisions during the boom time was the high rate of turnover in county staff. From 2006 to 2010, some of the busiest years of the boom, Teton County Idaho went through five different planning administrators. With each new administrator came a new learning curve, as well as differing sets of philosophical beliefs, management styles, and policies for evaluating development applications.

Another challenge the county faced during these years was the lack of funding for long term visioning and planning. The Teton County planning department was historically funded on permit fees for subdivisions and new homes. In 2008, when the number of annual building permits declined from 216 permits down to 85, the squeeze on the planning office was palpable. By the spring of 2009, with tax collections down to approximately 78 percent, the newly elected Democratic County Commissioners who had just begun their terms in January were forced to reduce the county budget by $2.4 million or 17.5 percent.[30] County fees (such as planning and building fees) which typically made up 35 percent of the budget were down $500,000 to $600,000 from projections. Subdivision and building permit income peaked in 2007, with $927,866 in permit revenue. By 2012, this number had dwindled down to 2 percent of this peak amount ($19,278).[31]

Although the planning department received a mid-year budget cut in 2009, then a 29 percent budget cut in 2010, and the office staff was reduced from 4 to 3, the planning department's workload did not necessarily let up.[32] Instead of processing new development applications, staff found themselves now dealing with expired developments in various stages of completion. Historically, there was an air of urgency about the subdivision approvals process as developers were eager to break ground for their projects as quickly as possible to capitalize on the hot market. With the 2008 market decline however, extension requests, which were once unheard of, became increasingly common as many developers requested extensions for almost every conceivable phase of the development process: preliminary plat extensions, final plat extensions, recording extensions, development agreement extensions. During the first 6 months of this new administration, the Board of County Commissioners reviewed 9 extension requests for incomplete subdivisions.[33]

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[29] In the November 2008 election, Democrat Larry Young was re-elected. Democratic incumbent Alice Stevenson did not seek another term, but her Democratic successor Bob Benedict was elected to her seat. Republic incumbent Mark Trupp was defeated by Democratic first-time challenger Kathy Rinaldi. When Young, Benedict, and Rinaldi began their terms in January 2009, it was the first time Teton County had elected an entirely Democratic administration.

[30] Teton County Budgets for FY 2009, 2010, and the official minutes from the March 2, 2009 County Commissioner budget session for the FY 2010 budget. http://www.tetoncountyidaho.gov/publicrecords.

[31] Report by Angie Rutherford, Teton County Planning Administrator, May 14, 2012. See attachment to May 14, 2012 Board of County Commissioner minutes. http://www.tetoncountyidaho.gov/publicrecords.

[32] Teton County Budgets for FY 2009, 2010, and the official minutes from the March 2, 2009 County Commissioner budget session for the FY 2010 budget. http://www.tetoncountyidaho.gov/publicrecords.

[33] Teton County Board of County Commissioner minutes, January 26, 2009, February 9, 2009, March 9, 2009, April 27, 2009, June 8, 2009, and June 22, 2009. http://www.tetoncountyidaho.gov/publicrecords.

The History of the Reshaping Development Patterns Effort in Teton County

During the summer of 2009, it was apparent to the VARD staff that the market had dropped out of Teton Valley. At that point in time, Teton County's planning office had become organized enough with a new GIS department to finally be able to visually show the serious repercussions in store for Teton County. VARD staff began to discuss the need for a cohesive plan for dealing with these obsolete entitlements and approached the Sonoran Institute for support and expertise. From these initial discussions emerged the Reshaping Development Patterns (RDP) project, a collaborative effort between VARD and Western Lands and Communities (WLC), a joint effort of the Sonoran Institute and the Lincoln Institute of Land Policy. The goal of RDP is to explore best management practices for reshaping unsustainable development patterns in the intermountain West.

To kick off the project, in November 2009, VARD and WLC hosted a workshop in Salt Lake City in conjunction with the University of Utah's Metropolitan Research Center. Planners, economists, developers, attorneys, and bankers from around the country came together to discuss the challenges and opportunities created by the extensive entitlement of land for development that occurred throughout the West and the problem of distressed subdivisions in the wake of the real estate market crash. One key aspect of this is the challenges created by unsustainable growth in rural western communities like Teton County. Participants discussed Teton County's patterns of growth and considered the full range of problems and solutions related to premature and obsolete subdivisions. From this workshop, research and case studies have continued to identify potential tools and best practices to address these boom-bust growth patterns.

The second phase of this project took place on April 29–30, 2010 when VARD brought this information back to Teton Valley and hosted a community-wide workshop at Teton Springs Resort to discuss the reality of premature and obsolete subdivisions. Presenters included market analysts, developers, bankers, planners, and attorneys who provided their perspective on the past, present, and future valley development trends. One month, after this workshop, Teton County launched a rewrite of their comprehensive plan, and the data and methodologies developed through the RDP process have been an integral part of crafting the new plan.

How Teton County has Grappled with its Many Challenges

Teton County's Pursuit of Significant Policy Changes

Historically, Teton County has always been considered very rural. All growth was viewed as good growth and an opportunity for strengthening the local economy. This perception did not change overnight. Just as policy changes implemented over several years created and magnified the boom and bust of the 2000's, in the past three years, several corrective policy changes have been implemented over time in response to the many lessons learned from the past decade.

Development Agreement Templates and Contract Oversight

Until very recently, Teton County had no system for negotiating development agreements, nor did they have a development agreement template to help protect both the developer and the county in the event of future troubles. Not only was there no standardized structure to these contracts, historically, there was little county scrutiny over these documents, and the agreement itself was almost always written by the developer or his attorney. Naturally, this process resulted in development agreements that were one-sided in favor of the developer and some did not even have a final deadline for when the project was to be completed. Others stipulated that the county would finish off the project if the developer became insolvent. Some development agreements had significant errors in them such as a reference to a different state, the wrong name of the subdivision, or even include an expiration date that predated the recording the plat.

There was little scrutiny over these agreements because while the market was hot, it was hard to imagine that a project could possibly become insolvent and necessitate invocation of these contract provisions. There were also limited staff resources to devote to contract review. Because the market was perceived as infallible, previous administrations simply failed to perform any due diligence to ensure that the county's interests were protected in the event of a breach.[34]

Immediately beginning their terms in January 2009, the new administration of County Commissioners adopted a development agreement template to provide a higher level of clarity and protection for the county in the event of an incomplete project. This template set clear guidelines for when projects must be completed, how they must be financed, and the county's rights and remedies should the developer default on the project.

This draft development agreement template was adopted on July 13, 2009.[35] While the template itself has not proven to be a one-size-fits-all solution, it has been a significant step in the right direction. Because the vast majority of the zombie subdivisions[36] are controlled by previously written development agreements, these one-sided contracts have tended to live on, creating obstacles for current and future county administrations. The County has pursued a goal of extinguishing these unfavorable contracts by implementing a new policy that whenever any kind of development agreement extension or modification is granted by the Board of County

[34] See Appendix A to review the Darby Flats development agreement, which is a good example of the vague, contradictory, and error prone development agreements that were often signed by the Teton County Board of County Commissioners during the boom times. This contract illustrates the lack of due diligence and contract review by the county. Note that this agreement was signed March 26, 2004, which is prior to the stated date when the subdivision was given final approvals (April 26, 2004). Construction was to have begun on the project a year earlier on June 1, 2003, which contradicts Teton County's ordinances expressly forbidding commencement of construction until final approvals are granted and a plat has been recorded. The entire development was to be completed by June 1, 2004, just over one month from the date of final approval. The engineering cost estimate attached to the contract was over 15 months old, dated January 24, 2003. The contract authorized the Planning & Zoning Commission (a volunteer board with no authority to bind Teton County in contract) to grant extensions of this public/private agreement. Other than this brief provision regarding the granting of extensions of time, this two-page contract is largely silent on what should happen in the event of a breach, primarily because the second home market was perceived as infallible.

[35] See Appendix A for a copy of Teton County's draft development agreement template.

[36] "Zombie" is a term that has been applied to subdivisions where some level of infrastructure has been put in the ground, but typically all developer amenities are not completed and a few homes have been built, and perhaps occupied, but the majority of the subdivision is vacant and continued development has been halted.

Commissioners the developer is required to willingly void the old agreement and instead enter into a new development agreement using the county's new template, which clearly outlines the county's rights and remedies in the event of a future breach.

Development Agreement Extension Criteria

As the demand for subdivision lots and bank financing opportunities began to dry up, development agreement extension requests from developers were becoming increasingly common and were consuming considerable time and planning staff resources to evaluate. Many developers requested development agreement extensions from the county in order to defer the timeline dictating when they must begin to install infrastructure or defer the deadline for completing their projects. The facts in each situation were always different. For some projects seeking an extension, the infrastructure was nearly completed with a few lots sold, but the developer simply did not want to finish off the project in the depressed market. In other cases, the projects were purely paper plats[37] with no improvements in place, and the developer simply wanted to ride out the depressed market for as long as possible in hopes that their project would be viable in the future.

The facts and circumstances behind some of these requests were quite complex, such as the case of the 2010 development agreement extension request by the developer of West Ridge Ranch PUD. Originally approved in 2007 as a 120-lot PUD on 332 remote acres located over 13 miles from city services, the developer of this project had originally received a housing density bonus under the 2005 PUD ordinance in exchange for promising to install a community water system throughout the project. Although the basic infrastructure for West Ridge Ranch was almost entirely complete, and 73 lots were sold, the developer struggled to finish the community water system that was required as part of the original approval of the project. The West Ridge Ranch water system was supposed to also provide water to neighboring Appaloosa Ridge (67 lots) and Trappers Ridge (25 lots), but the current well installed by the developer only had capacity to service a total of 25 homes. Six homes had already been built in West Ridge Ranch.[38] The original development agreement with the county, which made no mention of this central water system that was a part of the original project approval, had expired eight months earlier. There was no longer a financial surety in place to secure the developer's performance, and the developer was also delinquent in back taxes.

It could be argued that granting any extension for distressed subdivisions is a bad idea. Most of these developments were approved during the boom when there was a flood of projects entitled with little or no real scrutiny because prior administrations envisioned that all residential growth was good for the local economy. While this may have been the sentiment of the elected officials and some community members at the time, this growth pattern in no way reflected the broader community's stated vision for planned growth; efficient distribution of public services, and the protection of rural landscapes. Given current and even future market conditions, many of these developments may become more obsolete over time. However, in a number of cases, such as West Ridge Ranch, the county had concerns that the developer had obtained a "vested right" to

[37] "Paper Plats" refer to subdivisions that have been created and the separate lots have been recorded, but nothing has been built yet and they exist only on paper.

[38] Board of County Commissioner minutes January 11, 2010. http://www.tetoncountyidaho.gov/publicrecords.

his project by virtue of the money and labor invested in the infrastructure. With the roads complete, 73 lots sold, and six homes built, it was not feasible to vacate the West Ridge Ranch plat. In many of these situations, the county also had a share of the responsibility because prior administrations authorized the issuance of building permits for homes in these incomplete developments like West Ridge Ranch where there was not enough water to service all the future planned houses.

Thus, Teton County sought to at least create a set of consistent criteria to navigate these complex problems. In the summer of 2009, the Board of County Commissioners adopted an application process and criteria for granting extensions of time for the recording of approved subdivisions and the fulfillment of development agreements.[39] In the case of West Ridge Ranch, there were some advantages to granting an extension—the county could require concessions from the developer. Under the county's new criteria the developer was required to enter into a revised development agreement with Teton County using the new template, post a new surety for 125 percent of the cost of the entire project which matched the extension period, all lot sales were prohibited until 100 percent of the improvements are completed and approved by the county, and property taxes must be paid in full prior to the signing of this new agreement. The new development agreements also clearly state that in the event of a future breach, the county can choose to vacate the plat.

It remains to be seen how these extensions will play out. In many cases, the developers of expired projects cannot post a new surety and have not approached the county for extensions. (see Adoption of Policies and Procedures for Expired, Partially-Built Subdivisions). For those who can provide a financial guarantee, it remains to be seen whether the developer will ultimately fulfill the obligations in the new contact, even if the project may not be marketable, or instead permit the county to move forward with vacating their partially built project.

Amending Development Ordinances to Prohibit the Pre-selling of Lots and Requiring Financial Sureties at Plat Recordation.

One critical detail that makes Idaho unique from most other intermountain west states is that Idaho's jurisprudence has firmly established that a development application is vested under the ordinances in place at the time of the application.[40] This legal precedent has caused much vexation in Teton County as the old development ordinances under which the vast majority of these zombie subdivisions are grandfathered allowed the pre-selling of lots prior to infrastructure being installed so long as the plat had been recorded.[41] Thus, while many of these incomplete and paper plat developments may have expired development agreements, the plat still exists, and therefore the developer may continue to sell lots. In some instances, Teton County has been able

[39] See Appendix C for the full text of the Teton County development agreement extension request criteria.

[40] See *South Fork Coalition v. Board of County Commissioners of Bonneville County*, 117 Idaho 857, 865-86, 792 P.2d 882, 885-86 (1990); *Chisholm v. Twin Falls County*, 139 Idaho 131, 134-35, 75 P.3d 185, 1988-89 (2003); *Urrutia v. Blaine County*, 134 Idaho 353, 359, 2 P.3d 738, 744 (2000) (citing *Payette River Property Owners Association v. Board of County Commissioners of Valley Co*., 132 Idaho 551, 555, 976 P.2d 477, 481 (1999)); *Taylor v. Canyon County Board of County Commissioners,* 147 Idaho 424, 436, 210 P.3d 532, 544 (2009).

[41] While Idaho cities and counties are free to adopt ordinances that require infrastructure to be installed prior to plat recordation, or conversely, allow plat recordation prior to infrastructure, Idaho does have a statutory requirement is that no lots may be sold until the plat has been duly recorded. I.C. § 50-1316.

to vacate the plat (see County Efforts to Vacate Zombie Subdivision Plats), but otherwise, not much can be done to change the past except to entice the developer into waiving their grandfathered status. As previously stated, Teton County's new development agreement template, which all developers must sign in order to obtain an extension for completion of their project, requires the developer to expressly waive his right to be grandfathered under the old ordinances which allowed pre-selling of lots. Thus, by signing the new agreement, the developer has consented to comply with the current county development regulations instead remaining grandfathered as dictated by Idaho jurisprudence. So far, this provision has yet to be challenged in court or tested by a developer seeking to void the contract and pre-sell lots regardless of the development agreement's restrictions. It remains to be seen whether this "un-grandfathering via contract" can survive judicial review. It is remotely conceivable that in some of these situations, a developer could argue that he only agreed to waive his grandfathered rights under duress.

While grappling with grandfathered developments from the past, Teton County is also concurrently looking toward preventing this issue from recurring in future developments. In 2011, the Board of County Commissioners amended the development code to now prohibit the pre-selling of lots prior to infrastructure being completed and approved by Teton County.[42]

GIS Programming and Better Record Keeping

At the peak of the boom, there was so much turnover in the planning office and so many pending development applications, Teton County did not have even basic statistics on the number of subdivision lots in the county. Planning was not fact-based, but was performed as more of a reaction to the rapid changes occurring the community.

That methodology has changed dramatically over the past three years as Teton County has developed a more sophisticated GIS programming department. Creation of this new department was prioritized despite the 2009–2010 budget cuts, and was also achieved by virtue of the county finally retaining more permanent planning staff that devoted their time and resources to record keeping. Today, Teton County has retained the same planning staff since 2010, which is a dramatic change from the prior years. With consistent staff and a GIS department, Teton County now has the ability to keep track of all the developments that have been approved, calculate developed acreages, building permit statics, etc.

In addition, the public now has free online access to the county's GIS programs with maps, assessor's records, and other data, which increases the county's transparency—something which did not exist in prior administrations.[43] The Planning Department also regularly maintains a database of all recorded and pending subdivisions, including the payment of development fees, the percentage of lots sold, and lots built out. The Teton County Clerk's Office has added a public records search engine to the county's website which allows anyone to peruse plats, recorded instruments, meeting minutes, and other public documents from any computer.[44] This type of free public records search engine is the first of its kind in Idaho. Accurate and up-to-date

[42] Teton County Board of County Commissioner minutes, March 17, 2011; http://www.tetoncountyidaho.gov/publicrecords.

[43] See http://gis.co.teton.id.us:81/PUBLICMAP/default.aspx.

[44] See http://www.tetoncountyidaho.gov/publicRecords.php.

information can now be obtained without putting an additional burden on county staff resources. Planning for the future starts with understanding what is already on the ground. The County's foresight in establishing these new policies and investing in these programs has finally enabled fact-based planning.

Adoption of the Fiscal Impact Planning System

The Idaho Local Land Use Planning Act (LLUPA, I.C. §§ 67-6501–67-6538) has a clear mandate that political subdivisions must consider impacts to public services as an integral part of almost all of their planning duties.[45] Because of these requirements, Teton County's development ordinances historically required the calculation of tax revenue and of cost of services to be included in all development applications. The problem however, was the lack of one consistent system for *how* these calculations should be performed. Thus, with each development application that was submitted to the county during the boom years there was a different approach to the assessment of fiscal impacts, and each assessment always predicted, without fail, that the development would generate revenues in excess of costs for the county.

For example, when Ridgeline Ranch PUD (56 lots on 160 acres located over 17 miles from city services) compiled their fiscal impact analysis for their development application, they calculated that *each house* would generate $2,743 of net annual surplus to Teton County's general fund.[46] Such exorbitant estimations were common because most of these studies only looked at property tax revenue while failing to take into account the cost of providing public services or maintain levels of service through investment in capital improvements. The projected assessed value of these future homes also tended to be very high. In the case of Ridgeline Ranch, future homes on the 0.77-acre lots planned for this subdivision were estimated to be assessed at 1.4M each, thus providing a very high basis for property taxes. Another common feature in these various methodologies was the estimation that most homeowners in a particular development would be second homeowners, and therefore rarely visit, so they would have minimal impacts on public services.[47]

This lack of consistency facilitated the approval of many costly development entitlements. VARD recognized the need for a fair, objective, and consistent system to quantify the service costs associated with different patterns of growth, as well as the immediate and long term service costs associated with each pattern. In 2009, VARD approached the Western Lands and Communities joint venture of the Sonoran Institute and the Lincoln Institute of Land Policy and

[45] In Idaho, fiscal impacts to public services must be considered as a part of general planning duties, development of zoning regulations, creation of future acquisitions maps, in consideration of development permits, in consideration of special use permits, in consideration of subdivisions and planned unit developments, when facilitating the transfer of development rights, and the negotiation of impact areas. See I.C.§§ 67-6501 to 67-6538.

[46] *Ridgeline Ranch PUD Fiscal Impact Analysis,* by Nelson Engineering, Driggs, Idaho. Submitted to Teton County on April 21, 2009. This study may be found on file at the Teton County Planning Department.

[47] As an example of the typical short-sighted analysis submitted to Teton County, the fiscal impacts analysis of Mountain Legends Ranch PUD consisted entirely of the following two sentences: "The existing tax base, as established by the state legislature is beyond the purview of this applicant and cannot be addressed in this application. As a second home development, we anticipate little to no impact on the school district's enrollment." Mountain Legends Ranch final plat application, page 4, August 13, 2007. This application may be found on file at the Teton County Planning Department.

requested assistance in designing a tool that would help Teton County and other communities plan for affordable growth. From this effort, the Fiscal Impact Planning System (FIPS) was created with the additional assistance of the Rural Planning Institute. In its most basic form, the FIPS is a excel program that enables the user to input the data, size, and property tax assessment for any property in Teton County, and with this information, it will produce a spreadsheet estimating the impact of that development on the Teton County's general fund annual operations and maintenance costs for roads and law enforcement. The spreadsheet also contains a calculation that factors in Teton County's current impact fees and then determines the development's impact on the county's level of service for capital improvements.[48] When estimating costs and revenues for future housing developments, it is difficult to predict assessed property values, and many earlier studies simply estimated peak of the market property values as their tax basis. Taking a second look at Ridgeline Ranch using the FIPS program and a more grounded future tax assessment of $375,000 per home, the projected operations and maintenance cost benefit to Teton County is -$1,267 per house. The one-time capital improvements cost benefit is calculated at -$9,293, even with the payment of county impact fees. These are significantly different outcomes than the developer's original estimate of a $2,743 annual surplus to Teton County.

On June 28, 2010, the Teton County Board of County Commissioners unanimously passed Resolution 062810, formally adopting the FIPS as a county-owned planning tool to be used to facilitate fiscally responsible patterns of growth.

Adoption of the Teton County Replatting Ordinance

The first incomplete development to approach Teton County with a proposal to be replatted was Targhee Hill Estates (see Case Study #4: Targhee Hill Estates—*How to Get the Banks to Cooperate?*), however, at the time, there was no local ordinance, state statute, or legal process that would allow for the replatting of an expired development. VARD quantified the volume of expired and soon-to-be expired developments, recognized the potential benefits of establishing some kind of incentivized process to promote the redesign of these distressed developments, and thus petitioned Teton County to develop a process to facilitate replatting. Plat redesign can reduce intrusion into sensitive natural areas of the county, reduce governmental costs associated with scattered development, and potentially even reduce the number of vacant lots by working with landowners and developers to expediting changes to recorded plats.

On November 22, 2010, the Board of County Commissioners unanimously adopted a replatting ordinance that would function as a solution-oriented tool to allow the inexpensive and quick replatting of subdivisions, PUDs, and or recorded development agreements.[49] The ordinance waived the unnecessary duplication of studies and analyses that may have been required as part of the initial plat application and approval. As an incentive, Teton County agreed to waive its fees for processing replat applications.

[48] To learn more about the FIPS, see http://www.tetonvalleyadvocates.org/projects_current_detail.php?pkCurrentProjects=25.

[49] See Appendix B to review the text of Teton County's replatting ordinance.

Teton Valley 2020 Comprehensive Planning Process

Launched in May of 2010, Teton Valley 2020 has been a two-year comprehensive planning effort to envision a new future for Teton County. Both county leaders and residents are looking to break free from the boom and bust cycles of the past and to develop a more diversified economy that is not so dependent on second home construction. Through this community visioning process, the public has been largely unified in a rejection of the growth patterns of the past. They have witnessed the impacts of the prior growth regime, and they do not want to repeat the last 10 years.[50] However, forging a new future that is free from the feast and famine growth cycles of the past will take deliberate and tough decisions by elected and appointed officials. One of the biggest challenges to implementing this kind of significant change is that the local economy has experienced such a prolonged recession from the real estate industry's implosion. There is a perception that growth—any growth, no matter how detrimental it may be in the long run—would be beneficial right now. It has been particularly challenging for Teton County to break free from these boom and bust cycles because while in the midst of a painful bust, the potential for a new boom, even if it may just be a brief one, is hard to resist.

So far, it has been easy for the community to agree on values such as access to outdoor recreation, quality schools, and preservation of rural heritage, but it has been much more difficult to agree on the action steps needed to preserve and promote those values. The implementation chapter of the new comprehensive plan includes bold measures to achieve the plan's goals and policies, such as the vacation of nonviable subdivisions, revision of the county's zoning and development codes, and strengthening of the county's habitat regulations. However, for the county government to carry out these implementation steps tough and even politically unpopular decisions such as discontinuing maintenance of remote county roads may be required. Even if these changes are deemed necessary and are ultimately implemented by elected officials, the current glut of real estate inventory will likely hinder tangible results quite some time. For example, if Teton County were to implement a downzone of rural areas it would not begin to address the existing 8,702 vacant lots.[51] Those lots may take years, if not decades to absorb. Downzoning will likewise not stave off the ongoing necessity of supplemental levies to maintain current levels of public services. Thus, these tough decisions and grass roots community planning efforts will not dull the present pain of the current reality, but they can establish a planning foundation for future decisions.

Additional Policy Changes that May Soon Come.

From all the goals and action steps enumerated in the new comprehensive plan, and the many policy changes that have already taken place, Teton County's planning staff and County Commissioners have informally identified additional action steps for immediate implementation. These action steps reflect a two-pronged approach where the county is attempting to addresses the impact of the current crash while simultaneously preparing for a future rebound.

[50] To review the public comments and "Community Values" survey results from the Teton Valley 2020 planning process, see http://www.tetonvalley2020.org.

[51] "Downzone" or downzoning refers to the practice of changing the zoning of an area to reduce the number of homes that can be created, typically by increasing the minimum lot size.

Adoption of Policies and Procedures for Expired, Partially-Built Subdivisions

Now that Teton County is en route to vacating almost all of the existing paper plats, the county's planning staff has identified the need to now develop a system for navigating the legal quagmire of the incomplete zombie developments that are expiring with partial infrastructure as well as, in some cases, a limited number of lots sold. There are approximately 15 partially built developments (totaling roughly 2,600 units platted on 8,600 acres) with expired or soon-to-be expired development agreements and sureties. All are in varying stages of completion with a few developments that barely got off the ground, and many others that have not completed the few finishing touches on what is nearly completed infrastructure.

Unlike paper plats, it may not be feasible to simply vacate all of these plats because of the issue of vested rights. (See The Future of Plat Vacations is Likely to Get Messy.) At least 11 of these partially built developments may be vested by virtue of the infrastructure that has been completed; however, the developer may be financially unable to finish the few remaining improvements. On the other end of the spectrum, two of these incomplete developments have multiple lots sold with less than half the required infrastructure installed. A hybrid approach may be necessary where the county works with developers to cluster the purchased lots into an area of the property where infrastructure can be completed, and then vacate the rest. The most complicated situations of all (and thus, where the most critical and creative thinking is needed), will be those where the landowner developer has essentially abandoned the project and will not actively participate in this process of replatting and partially vacating their project. To date, no comprehensive strategy or policy has been developed for how this category of zombie subdivisions will be processed.[52]

Revised Zoning

Teton County's new comprehensive plan expressly recognizes the need to significantly reduce the future potential supply of residential lots to a more sustainable amount that is based on reasonable growth projections. Under the current county zoning, 26,200 potential future lots can be platted in addition to the 8,702 existing vacant lots.[53] At the 2010 census rate of 2.4 persons per household, this can theoretically create housing for an additional 83,000 residents.

Not only does the current zoning enable the proliferation of excess development entitlements to continue, it has also proven difficult to administer. Only two residential zones (2.5-acre and 20-acre) currently exist in Teton County. In many locations, the zoning is grossly at odds with the features on the landscape (i.e., wetlands zoned for 2.5-acre development). This is the result of the county's prior history of adopting the "choose-your-own-zoning" scenario which allowed landowners to obtain higher density zoning in remote and/or sensitive areas. In a mountainous landscape as diverse as Teton County, usage of only two zones has proved inadequate and confounding to good planning.

[52] Phone interviews with Angie Rutherford, Teton County Planning Administrator (August 9, 2012), and Kathy Spitzer, Teton County Attorney (August 10, 2012).

[53] Teton County GIS Department, potential future zoning analysis, May 2012.

Through the Teton Valley 2020 process, county planning staff has recognized that the current zoning districts must be expanded to create a more diverse range of zoning categories. Likewise, the two existing zoning districts must be revised to reduce the overall potential supply of additional residential lots.[54]

Teton County's Overall Approach to Dealing with Incomplete Developments

By early 2011, Teton County was faced with a growing number of both expired paper plats as well as expired partially built developments. In May of 2011, Teton County was forced to finally take action through plat vacation. The county acknowledged the risks and uncertainties with taking the initiative to vacate another individual's plat, but felt that a defensible strategy could be developed. While this area of the law is well developed in some states like New Mexico,[55] it is not well developed in Idaho. The county anticipated there may ultimately be a legal challenge to the involuntary vacation of a plat. Thus, part of the county's strategy was to acknowledge this potential, and to face it head on by building the most defensible case as possible.

The big question then became, *what exactly would be the most defensible strategy and best outcome?* Initially, elected officials struggled to devise even the most basic approach. There inherently seemed to be a choice that needed to be made between the protection of the investor property owners who had purchased lots in these now derailed developments, or protection of the investment and quality of life of the existing residents and the general community. At first, Teton County considered granting blanket extensions of 1 to 2 years in order to spare the county staff the time and expense of dealing with the wave of expiring entitlements. In the end, staff ultimately concluded that expired entitlements were a problem that would have to be dealt with, and soon. The question then became whether all expired developments should be vacated, or should they somehow be categorized, which would then determine which developments were vacated.

One approach that was briefly considered was to use distance from service centers as a means to categorize how expired subdivisions would be handled. Expired developments located the farthest from city services would be vacated first. Another approach that the county considered was to utilize the conservation priorities as outlined in the county's Wildlife Overlay maps[56] as a

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[54] See the economic development implementation plan within the new Teton Valley 2020 Comprehensive Plan. http://www.tetonvalley2020.org.

[55] New Mexico is clearly the innovative leader in developing case law on government action to revoke subdivision plats, but this is due to the fact that New Mexico Statutes §§ 47-6-24 and 47-6-25 specifically authorize the vacation of plats by local governments. See also *Parker v. BOCC*, 93 N.M. 641, 603 P.2d 1098 (N.M. 1979); and *Miller v. SF County BOCC*, 144 N.M. 841, 192 P.3d 1218 (N.M. App., 2008). For a more detailed description of the statutes and case law that has developed around the question of vested rights in incomplete developments, see Trentadue, Anna and Lundberg, Chris, *Subdivision in the Intermountain West, A Review and Analysis of State Enabling Authority, Case Law, and Potential Tools for Dealing with Zombie Subdivisions and Obsolete Development Entitlements in Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, Utah, and Wyoming,* Lincoln Institute of Land Policy Working Paper (2011).

[56] To view Teton County's wildlife overlay and accompanying regulations, see http://www.tetoncountyidaho.gov/additionalInfo.php?deptID=6andpkTopics=39.

means for driving the replat process. Expired developments located in high priority wildlife areas would be vacated first.

In the end, Teton County opted to take a breach of contract approach and treat all expired developments equally, regardless of location, and instead focus on the development of a consistent process that gave all developers sufficient opportunity to "cure" their expired development agreements. The premise behind this strategy is that it would not be a "gotcha" situation. Ample written notice would be provided to property owners as well as the opportunity to mitigate their losses by either choosing to (1) replat their projects, (2) post a surety and sign a new development agreement to complete them, or (3) they could opt to vacate the plat at no cost. Every property owner with an expired plat would be given the same opportunities, regardless of whether they had an expired paper plat or partially built development.[57] Teton County adopted a resolution that developers, who had entered into development agreements with Teton County where there was no expiration or only a vague expiration date, would be given written notice that they had 12 months from the date of the notice to finish their project or they would be considered expired. Written notice would also be provided prior to the development agreement expiration, and upon expiation, as well as prior to the plat being vacated.[58] Under this system, by the time Teton County took action to vacate a plat, there would be a paper trail of written notice to the property owner, which could include up to four written notices from the county prior to the plat being vacated. The planning staff and County Attorney felt this paper trail would leave Teton County with a conclusory affirmative defense that the county had tried many other remedies first and was left with no other option but to vacate the plat.

One resource which proved valuable in helping Teton County choose the breach of contract approach was the Lincoln Working Paper entitled, *Subdivision in the Intermountain West:* A Review and Analysis of State Enabling Authority, Case Law, and Potential Tools for Dealing with Zombie Subdivisions and Obsolete Development Entitlements in Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, Utah and Wyoming.[59] This working paper researched the existing case law in the intermountain West regarding vested rights in incomplete subdivisions.

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[57] To some, it may seem senseless to allow paper plats the opportunity to be replatted. The logic behind this strategy was the county's desire to keep property from being disturbed for infrastructure. If Teton County was to only allow partially built developments to be replatted, the concern of the county planning staff was that a developer may go to such lengths as bulldozing the beginnings of a subdivision road onto the property simply to secure the right to replat. As farfetched as this action may seem, the county sought an over abundance of caution in this process. That said, the formal notice letters that were sent to expired paper plats (see Appendix D for an example) did not make specific mention of the replat option so as not to overtly encourage it. Contrast this with the language used in the formal notices sent to expired partially built developments where the emphasis is clearly on replatting. (See Appendix E for an example.)

[58] See Teton County Resolution No. 20110509, Plat Revocation, May 9, 2011; http://www.tetoncountyidaho.gov/publicrecords.

[59] Trentadue, Anna, and Lundberg, Chris, *Subdivision in the Intermountain West: A Review and Analysis of State Enabling Authority, Case Law, and Potential Tools for Dealing with Zombie Subdivisions and Obsolete Development Entitlements in Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, Utah and Wyoming*. Lincoln Institute of Land Policy Working Paper, 2011.

County Efforts to Vacate Zombie Subdivision Plats

To date, Teton County has now vacated four paper plat subdivisions (79 lots on 313 acres), all of which had an expired development agreement and no lots sold. Teton County's initial approach has been to focus on the "low hanging fruit" (which are the paper plats with no lots sold) and use the experience to develop a quiver of tools for dealing next with the more complex expired developments (partially built and/or lots sold).

Warm Creek Manor—The First Plat to be Vacated By Teton County

The first plat to be vacated by Teton County was Warm Creek Manor, a traditional subdivision with 19 lots platted on 60 acres. Warm Creek Manor was located over one mile southwest from the city limits of Victor, Idaho, in an area with 2.5-acre zoning. With the development agreement expired, and the property in foreclosure, the developer ultimately wrote a letter in support of the county's effort to vacate the plat stating that the plat was acting as an encumbrance on the property and made resale of the property difficult.[60] With no objections, the Board of County Commissioners vacated the plat on August 11, 2011. Within a few months, two other smaller subdivisions were also vacated with no objections from the landowners.

Scenic River Estates—The First Plat to be Vacated Over the Landowners' Objections

The first paper plat to be vacated over the landowner's objections was Scenic River Estates, a 51-unit PUD on 160 acres. Using the county's prior "choose your own" zoning program, the developer had this area spot-zoned in 2003, changing the agricultural zoning from one home per 20 acres (Ag20) to a residential/ light agriculture zoning category allowing one home per 2.5 acres (Ag2.5). Located along a remote gravel road over six miles from the city of Driggs, the surrounding area was entirely in agricultural production, and consisted of mainly Ag20 zoning with the exception of a few additional Ag2.5 spot zones. The development agreement expired in December of 2010, and for 18 months, the developer had submitted several very tentative replat designs that were rejected by the planning staff and County Commissioners. (See Case Study #1: Scenic River Estates PUD—*Why Replat an Expired Paper Plat?*) Because the county's replatting ordinance specifically waived all fees associated with administrative review of replats, one of the incentives for ultimately vacating this plat was the uncompensated staff time that had been devoted to reviewing the failed sketch plans and other tentative replat designs.[61] By not charging fees as a means to incentivize replats, the County Commissioners concluded they had lost money on the processing of this time consuming application. The Scenic River Estates plat was ultimately vacated on May 17, 2012 over the objections of the landowner/developer. At this time, it is unknown whether the landowner/developer will file a judicial appeal via a declaratory judgment action.[62]

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[60] Teton County Board of County Commissioner minutes, August 11, 2011.

[61] Teton County Board of County Commissioner minutes, May 17, 2012; http://www.tetoncountyidaho.gove/publicrecords.

[62] Idaho's statutory procedures for vacating plats do not expressly include a right of judicial review. Thus, aggrieved landowners may only seek relief via the Idaho Declaratory Judgment Act (I.C. §§ 10-1201 – 10-1202). It must be noted however, that the Idaho Regulatory Takings Act (I.C. §§ 67-8001 – 67-8004) provides a process by which aggrieved property owners can petition local governments to evaluate proposed regulatory or administrative actions

The Future of Plat Vacations in Teton County is Likely to Get Messy

Four paper plats have now been vacated by the Board of County Commissioners, totaling 79 lots on 313 acres. Mountain Legends PUD (114 lots on 197 acres) is scheduled for plat vacation on September 13, 2012. If vacated, this will be the biggest, and most high-density development vacated to date. There are five other remaining paper plats in the unincorporated county that will expire in 2012 and appear to have no chance of being built. If they all expire and are subsequently vacated by Teton County, these subsequent vacations will take an additional 103 lots off the books, bringing the total of vacated lots up to 296 by the end of 2012.

Paper plats have been the "low hanging fruit" of the county's vacation efforts thus far, and many complex problems lie beyond these few simple examples where there is no prior investment in infrastructure and the ownership is concentrated into the hands of just one party. Teton County still has 15 additional partially built subdivisions totaling 2,600 units on about 8,600 acres.[63] Some of these development agreements are expired; others will soon expire. Some have infrastructure that is almost entirely compete, while others have installed only minimal infrastructure. Because Teton County's old ordinances allowed for the pre-selling of lots, in some cases, all of the lots have been sold to individual purchasers but the developer no longer has the financial means to finish the expired project. In other situations, developers have sold entire portions of the un-built project to new investors, or the property is now bank owned. As discussed previously, the county has yet to develop a policy for addressing these expired developments.

In addition to these partially built projects, there are also 47 completed subdivisions with zero or only one house built in them.[64] Because the infrastructure is entirely complete in these developments, unless the property owner wants to voluntarily vacate or replat, the developer is vested and the county cannot forcibly vacate the plat. Interestingly, some of these "finished" developments have been vacant for so long, the roads are now disappearing, which may provide an impetus to vacate the plat because the roads are no longer up to county standards, thus hindering emergency access.

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to assure that such actions do not result in an unconstitutional taking or private property. The rights under the Idaho Regulatory Takings Act have not been extended to plat vacations, but seeing as how the vacation of a plat by local governments could have takings implications, it is possible that in the future, the Legislature may include the right to a takings analysis as a part of the plat vacation process.

[63] Teton County Planning Department subdivision annual report, August 2012.

[64] Teton County Planning Department subdivision annual report, August 2012.

Figure 5

Source: Anna Trentadue, 2011. Illustration of how some roads in vacant subdivisions are slowly being reclaimed by weeds and other vegetation. As these roads disappear, will this be an impetus for landowners to vacate premature or obsolete plats?

If a lot owner were to apply for a building permit in one of these subdivisions with vanishing roads, it is unclear whether the county could, or would issue the permit. The local Fire Protection District also has the authority to halt the issuance of a building permit if the roads cannot accommodate emergency vehicle access.[65]

The roads may be disappearing in some of these 47 completed subdivisions, but all of the utilities infrastructure still remains, often at a great capital expense by the local power provider, Fall River Rural Electric Cooperative. During the boom, Fall River extended over 1.5M in electrical distribution systems throughout Teton County in anticipation of the housing that would follow. These subdivisions now lie vacant, and Fall River has been unable to recover its initial investment. If costs cannot be recovered over a reasonable timeline, Fall River has told Teton County that user rates will be raised to offset the costs. In addition to this 1.5M already invested by Fall River, 12 of the 15 incomplete developments also have electrical "backbone" infrastructure installed partially at the expense of Fall River rate payers. Fall River maintains that if any of these 12 developments are vacated, these investments will be "stranded" and these costs will also be transferred to rate payers.[66] Because this utility provider has significant unrecovered investments, it is unclear whether Fall River would contest the vacation of these plats.

[65] Interview with Kathy Spitzer, Teton County Attorney, August 16, 2012.

[66] Fall River Rural Electric Cooperative letter to Teton County Board of County Commissioners regarding the 2013–2030 Comprehensive Plan, August 13, 2012. A copy of this letter is available on file at the Teton County Planning Department.

Mixed Progress with Teton County's Ongoing Plat Redesign Efforts

The progress to date on redesign and replatting derailed developments has been mixed with very few tangible success stories. Each replatting effort reflects very different facts and circumstances. Because each project stalled out at varying stages of completion, these individual subdivisions provide unique opportunities as well as limitations.

In general, the replatting ordinance has not been effective thus far because for the most part, it has been exploited for unintended purposes. The original impetus behind the replatting ordinance was to have a solution oriented process on the books which would allow Teton County to work with developers, landowners, lenders, and other stakeholders to untangle incredibly complicated developments which had become derailed and now involved multiple ownership interests and oftentimes millions of dollars in infrastructure. However, the first few replatting applications submitted to Teton County were for expired papers plats, and it seemed as if the replatting ordinance was being seized upon as an opportunity to simply extend the life of paper plats, rather than being used to solve the problems with partially built developments. Instead of replatting to minimize development costs and environmental impacts, developers used the ordinance to try and obtain large extensions of time in exchange for nominal changes to their projects. For example, the developer of one partially built development within an area of impact of the City of Driggs initially proposed a replat whereby the number of lots was reduced from 25 to 22, in exchange for a proposed extension of 12 years until 2023.[67] Despite the obvious market decline, developers still wanted to hang on to their entitlements for as long as possible in the event of a market turnaround.

Such large extensions of time raise serious questions about tying the hands of government with an incomplete development entitlement that stretches out multiple decades. This type of backdoor extension request was a common theme in most of the early replat proposals received by Teton County. None of these proposals have yet to be approved by the Board of County Commissioners, as they were not deemed to provide a sufficient public benefit in exchange for being permitted to replat.

Case Study #1: Scenic River Estates PUD—*Why Replat an Expired Paper Plat?*

A good illustration of unintended consequences resulting from passage of the replatting ordinance is Scenic River Estates PUD. When the developer of Scenic River Estates was originally served their notice of breach by Teton County, planning staff did not anticipate they would elect to go through the replatting process.

[67] Driggs City Council minutes, June 8, 2011. See http://driggs.govoffice.com/index.asp?Type=B_BASICandSEC={E00F1A69-28CA-4A69-9147-4023BE00521C}.

Figure 6

Source: Anna Trentadue, 2011. Scenic River Estates, the first plat to be vacated by the Board of County Commissioners over the landowner/developer's objections.

Because of Teton County's policy that all processes and procedures shall be made available to every development in breach, there were no grounds to deny the replatting process to the developer of this expired paper plat. It was also unclear as to how long a replatting process could be dragged out in avoidance of the plat being vacated. For 18 months after the development agreement for Scenic River Estates had expired, and before the plat was ultimately vacated by the Board of County Commissioners, the developer proposed several very tentative replat concepts. Most consisted of simply a sketch on paper proposing to reduce the number of lots from 51 to 25 and extending the timeline for completion all the way out to 2027.[68]

These designs were rejected by the planning staff and the Board of County Commissioners as not constituting a sufficient public benefit as to warrant approval. Because no fees are charged to compensate the staff's time reviewing replat applications, time commitment also became an issue here. How long could an expired development languish in the replatting process before the county could take action and vacate the plat? Planning staff acknowledged that lack of firm deadlines had proven particularly problematic in this case. However, once 18 months passed with little activity by the developer, Teton County ultimately vacated the plat for Scenic River Estates over the objections of the property owner. The way this expired development languished in the replatting process for so long raised the specter that more paper plats may similarly seek to be replatted in the future as a means of keeping a project alive with zero initial investment.

[68] Board of County Commissioner minutes January 23, 2012, including planning staff briefing attached to the minutes. http://www.tetoncountyidaho.gov/publicrecords.

Case Study #2: The Replat of Canyon Creek—*What Constitutes a Public Benefit?*

Canyon Creek Planned Unit Development was originally approved in 2009 as a 350-lot ranch style resort on roughly 2,700 acres including approximately 25 commercial lots, a horse arena, and lodge. Straddling Madison and Teton Counties, the location of this development is extremely remote.

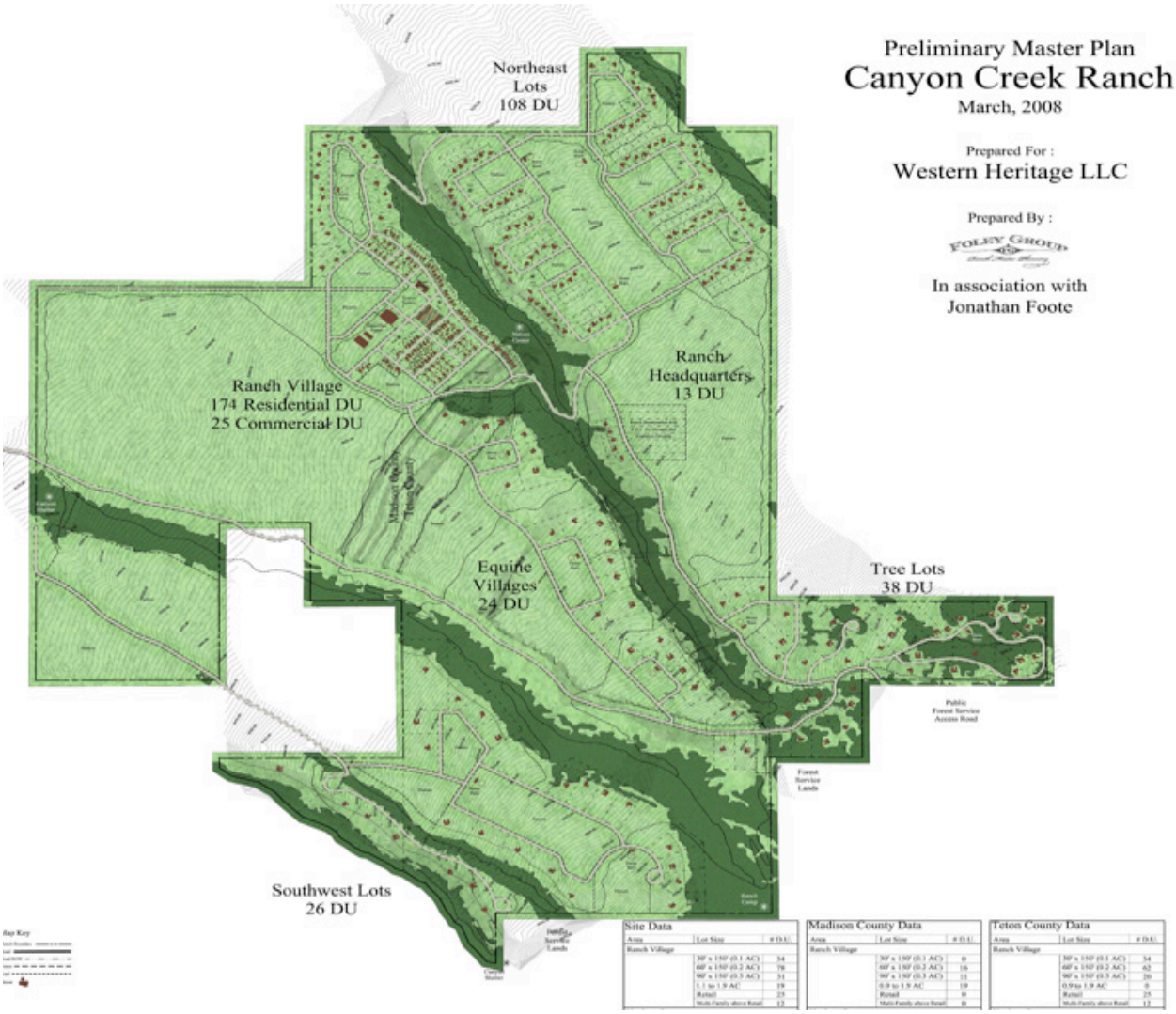
Figure 7

Source: Anna Trentadue, 2011. This is the Canyon Creek Ranch property. The grassland portions are currently committed to the conservation reserve program.

The property is over 23 miles from city services. Idaho Fish and Game considers this property to be critical wintering habitat for big game.[69] Wildlife impacts and the logistics of providing public services to such a remote area were a top concern at the original hearings in 2008 and 2009 when this project was first approved.

[69] Idaho Department of Fish and Game letter to the Teton County Planning Department, August 25, 2011. A copy of this letter is on file at the Teton County Planning Department.

Figure 8: The original 2009 master plan for Canyon Creek Ranch PUD



Source: Canyon Creek Ranch Development Team.

Source: Foley Group. This is the original master plan for Canyon Creek Ranch PUD. With over 27 miles of roads and a community water system throughout the 2,700-acre project, the infrastructure price tag exceeded $24 million.

So far, Canyon Creek has made it farther through the replatting process than any prior attempts by other developments. Unlike Scenic River Estates, Canyon Creek is a paper plat that has *not yet expired*. Thus, under obligations in the development agreement, the developer must begin construction of Phase 1 of this multiyear project by July 23, 2012, and be complete by the following summer. However, because the circumstances in the real estate market have changed so dramatically, the developer no longer believes the original concept and design is commercially or economically feasible and would be better marketed as a conservation property.[70]

[70] Applicant's narrative, Canyon Creek Ranch application for development agreement extension. (September 12, 2011.) A copy of this application is on file at the Teton County Planning Department.

Straddling Madison and Teton Counties, the extensive infrastructure that was originally planned for this development would leave a significant footprint on this fragile landscape. As illustrated in the master plan (see Figure 8), three large canyons traverse the property. Each canyon is very deep and has been identified by Idaho Fish and Game as providing critical winter range. The engineer's estimate for completing the infrastructure including 27 miles of roads to traverse these canyons and a community water system throughout this 2,700-acre project was $24,061,729.[71]

In early 2011, the developer approached Teton County with a proposal whereby in exchange for an extension of time until 2032, the developer would reduce the number of lots from 350 to 270 by removing one section of lots along the rim of the northeastern canyon. The Teton County Planning and Zoning Commission reviewed this proposal, but did not think it merited approval because removal of one section of lots was not viewed as a significant public benefit given the size, scale, and location of this project.[72]

After extensive negotiations between the Canyon Creek development team and the Teton County Planning staff, the developer has now proposed a further revised replat which will dramatically scale back the footprint and impact of this project and include only 21 lots (ranging from 43 to 166 acres) over the 2,700 acre property.

This newly revised proposal is pictured in the Figure 9 with grouse (red and green), songbird (yellow), and big game habitat (orange) superimposed over the new plat. This new design would create many benefits to both the developer and the public at large. For the developer, this new design would dramatically reduce the $24 million dollar infrastructure price tag down to roughly $500 to $800 thousand dollars (a 97 percent reduction in infrastructure costs) and enable the property to remain in the conservation reserve program thereby creating a source of revenue on the property while reducing the property tax liability.[73]

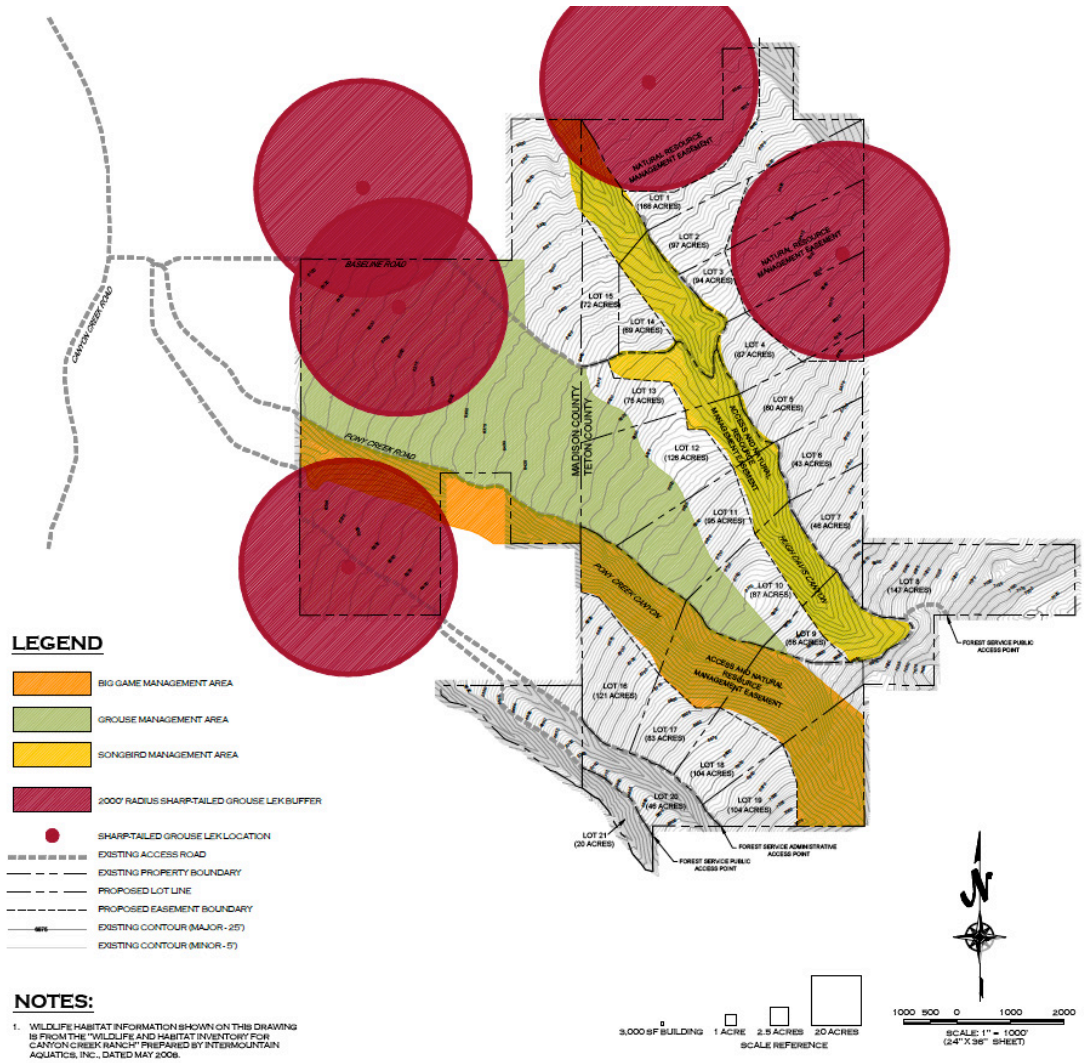
Under this revised plan, Canyon Creek would now be a traditional subdivision instead of a PUD. Thus, there would no longer be clustering or minimum open space requirements, as the new design would instead include very large rural lots over the entirety of the 2,700 acres. The reduced scale and impact of this new design will do a dramatically better job of preserving this critical habitat, and also maintain the rural landscape, which is a public benefit to the general community.

[71] Initial engineer's estimate for Canyon Creek Ranch PUD by Scheiss and Associates. (November 21, 2008). This estimate can be found on file at the Teton County Planning Office.

[72] Teton County Planning and Zoning Commission minutes, July 12, 2011. See http://www.tetoncountyidaho.gov/publicrecords.

[73] Initial rough estimates of cost provided by Canyon Creek Ranch project engineer. (June 19, 2012.)

Figure 9: Canyon Creek Ranch Replat Proposal Superimposed Over Wildlife Habitat



Source: Canyon Creek Ranch Development Team.

An initial sketch plan of this revised plat was recently reviewed by the Board of County Commissioners, and received praise from the Board as being perhaps the first replat application to be congruent with the original intent of the replatting ordinance.[74] The next step for Canyon Creek's development team includes submitting a formal replat application with engineered plat designs to Teton County for review and final approval.

Case Study #3: River Rim Ranch—*Too Big to Fail?*

First approved in 2004, River Rim Ranch PUD was originally designed as a very large (5,500-acre) high end golf course community with lodge and commercial village, located at the far remote north end of Teton County, over 15 miles from city services. Because River Rim is so

[74] Board of County Commissioner minutes June 25, 2012, including planning staff briefing attached to the minutes. http://www.tetoncountyidaho.gov/publicrecords.

remote, similar to Canyon Creek, part of the original design was to create a nearly self sustaining community that included a fire station, gas station, commercial storage, and restaurant.[75] Figure 10 provides an artist's rendering of the original River Rim Ranch master plan.

Figure 10: Artists' Rendering of River Rim Master Plan

Source: http://www.riverrimranch.com

Today, River Rim exists as a mix of farm fields, vacant luxury homes, and rubble piles. Pictured in Figure 11 is the present condition of Division II of River Rim Ranch. The razed area was supposed to be the "golf village" (golf course, lodge, pro-shop, commercial village, and golf chalets). This bulldozed area is over 500 acres.

[75] See http://www.riverrimranch.com.

Figure 11: Aerial Photo of Golf Village Area of River Rim Ranch

Source: Sandy Mason. Present condition of Division II of River Rim Ranch. The razed area was supposed to be the "golf village"—golf course, lodge, pro-shop, commercial village, and golf chalets. This bulldozed area is over 500 acres.

Division I was first platted in 2004 with 72 units/lots on 898 acres, including a visitor's lodge. It is considered to be the "finished" portion of River Rim Ranch that is visible today, and it is significantly smaller than the unfinished portions of Division II which have not yet been built.[76] Division II is over four times larger than Division I with an additional 562 units/lots on 4,595 acres including the golf resort village. In total, 189 lots have been sold in River Rim. However, despite revenues from all of these lot sales, the infrastructure was not completed as planned and in 2010, Glacier Bank foreclosed on River Rim. [77]

Since this large project first became bank owned, the Board of County Commissioners has expressed great concern over the incomplete infrastructure and has requested that Glacier Bank finalize a timeline for finishing River Rim. Also troubling to the county was the feasibility of ever building out Phases 2–6. Glacier has indicated that they do not want to invest in completing the infrastructure improvements for Division II as they are trying to sell the property. Because the original 2006 development agreement did not include finite dates for when this project would be finished, the County's negotiations with Glacier broke down over establishment of a timeline

[76] However, to say Division I is "finished" is a relative term because while there are 72 units in Division I, the county Planning Department reports that only 16 houses have been built (22 percent build out).

[77] Data take from Teton County subdivision report, February, 2012. This report is maintained by the Teton County Planning Department.

for finishing all of the infrastructure improvements they are contractually obligated to perform.[78] These obligations include bringing the 196 acres (approximately 27 miles) of platted roads up to county standards, managing dust and weeds, and finally, implementing the large scale farm conservation units that were supposed to function as the permanently protected open space which was a part of the original approvals by the county. In 2011, River Rim and Teton County entered closed mediation to develop a mutually agreed upon replat of this zombie development.

Some may consider River Rim "too big to fail" as 189 lots have already been sold and millions of dollars in utilities are installed. On the flip side, with only 16 of 640 total lots built out (the amount of which is 2.5 percent of approved build out), the size and scope of this incomplete development may never be feasible in such a remote location in Teton County.[79]

On November 17, 2011, a settlement proposal was signed between Glacier and the Board of County Commissioners. This proposal technically included a replat of the project using the new replatting ordinance, but the only substantive change was an extension of the phasing plan, which had the effect of extending the infrastructure deadlines until 2016 for Phase 1, and 2026 for Phases 2–6. If the improvements for Phase 1 are not completed by 2016, the new development agreement gives Teton County the right to vacate the entire master plan and downzone the entire property.

Implementing this contract provision may not be as simple as it sounds however. Because River Rim was originally approved as a PUD, the county entitled the developer to a 127 percent housing density bonus and 36 acres of "incidental" commercial zoning all of which would normally be prohibited in the county's most rural zoning designation of Ag-20. These density bonuses and commercial entitlements were granted in exchange for the developer's promise to deed a minimum of 2,700 acres of land into permanently maintained open space. To date, only about 900 acres have been permanently protected by being deeded into open space, while the remaining acreage is only master planned. Nearly 100 percent of this commercial zoning and 70 percent of the bonus housing is located in the golf resort village area, which Glacier Bank is actively marketing for sale. Glacier has already sold several of the other incomplete phases of River Rim which contained the majority of what was supposed to be the protected open space.[80] All of these independent sales beg the question: Can Glacier Bank sell off the un-built phases that were supposed to provide the permanently protected open space while simultaneously selling the properties already platted with commercial zoning and housing bonuses?

Should the required improvements not be completed by 2016, Teton County technically has the contractual authority to vacate the entire master plan and downzone the entire property, but the county cannot require permanent plat dedications of open space from the future owners of the

[78] Teton County Board of County Commissioner minutes: May 24, 2010 and September 16, 2010. See http://www.tetoncountyidaho.gov/publicrecords.

[79] Data take from Teton County subdivision report, February, 2012. This report is maintained by the Teton County Planning Department.

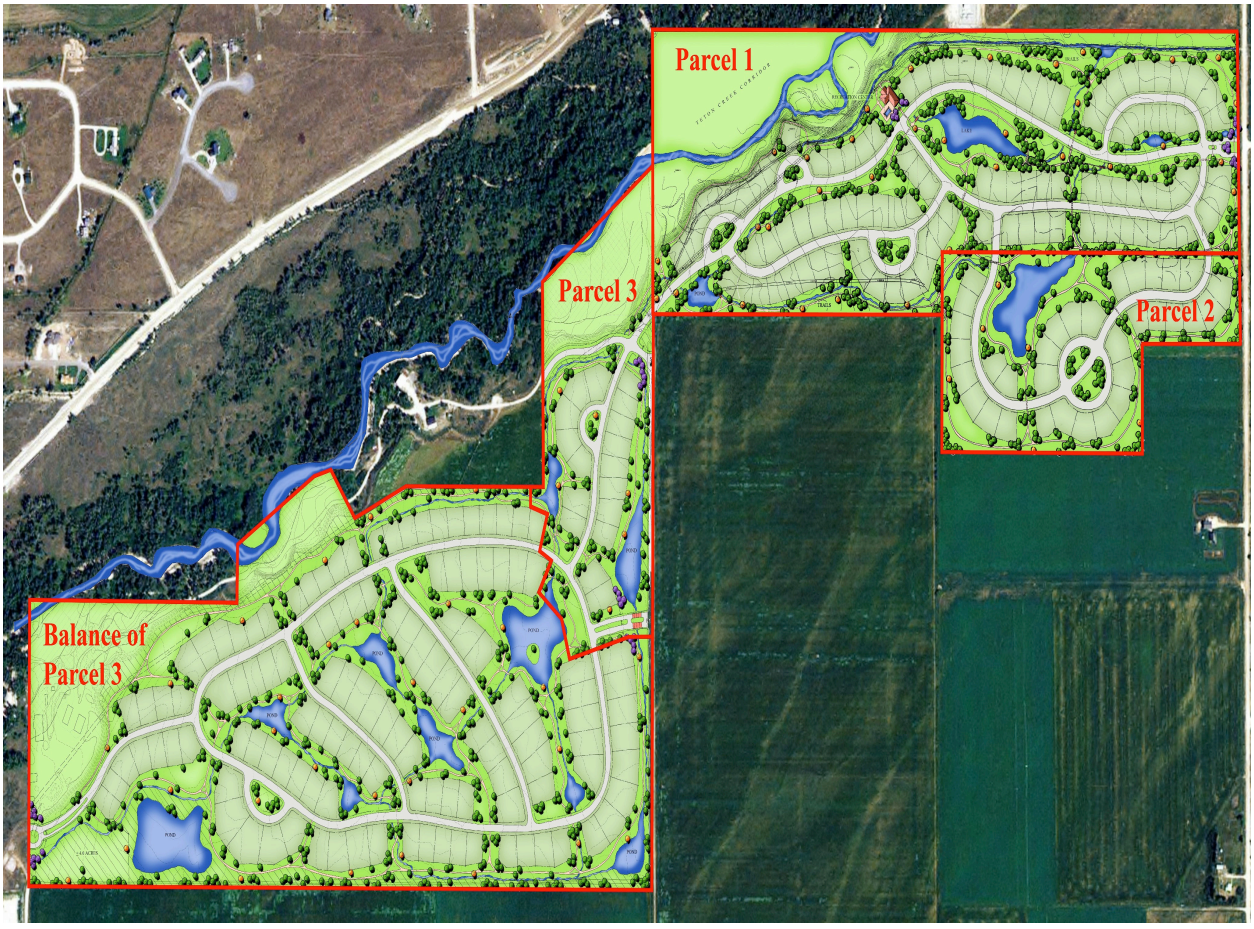
[80] In 2011, Glacier sold Phase V (677 acres and 24 housing units) to a local farmer. In June of 2012, a Colorado based agricultural, timber, and natural resources real estate investment company purchased the most rural areas of the project, which contained Phase 2 (788 acres and 45 housing units), Phase 3 (384 acres and 21 acres), and 299 acres of Phase 1. Glacier Bank is still offering phases 4 and 6 for sale.

un-built phases that were only master planned and never formally platted. Likewise, the county may not be able to revoke the housing bonuses and commercial zoning in the golf village because Glacier (or whoever the future owner may be) has potentially acquired a vested right to the golf village because of the large sums of money already spent on infrastructure. Just as vacating River Rim may prove to be challenging, it may be equally as difficult to achieve any form of master planning over the 5,500 acres originally comprising the River Rim project because the lands have now become divided between so many different property owners.

Case Study #4: Targhee Hill Estates—*How to Get the Banks to Cooperate?*

Located two miles from Driggs, Targhee Hill Estates was originally designed as a gated community with a clubhouse and extensive water features.

Figure 12: Original Targhee Hill Estates Sketch Plan



Source: Land Equity Partners

It was designed to be built in three phases totaling 274 housing units on 306 acres. Phase 1 was approved in 2007 with 101 units on 101 acres.[81] Part of the original design was to divert several

[81] See http://www.targheehillestates.com.

high value surface water rights to Teton Creek (pictured flowing through the master plan in Figure 12) to create the artificial water features in the development. Teton Creek flows through the city of Driggs (the county seat) and is historical spawning habitat for Yellowstone Cutthroat Trout. Despite its community and environmental values, in the summer months, the creek often runs dry due to irrigation diversions for water rights like the ones held by the developers of Targhee Hill Estates.

The developers sold 18 lots, installed a $2 million dollar sewer system, roughed in the roads, and installed some entry gating and landscaping before losing their financing in 2009.

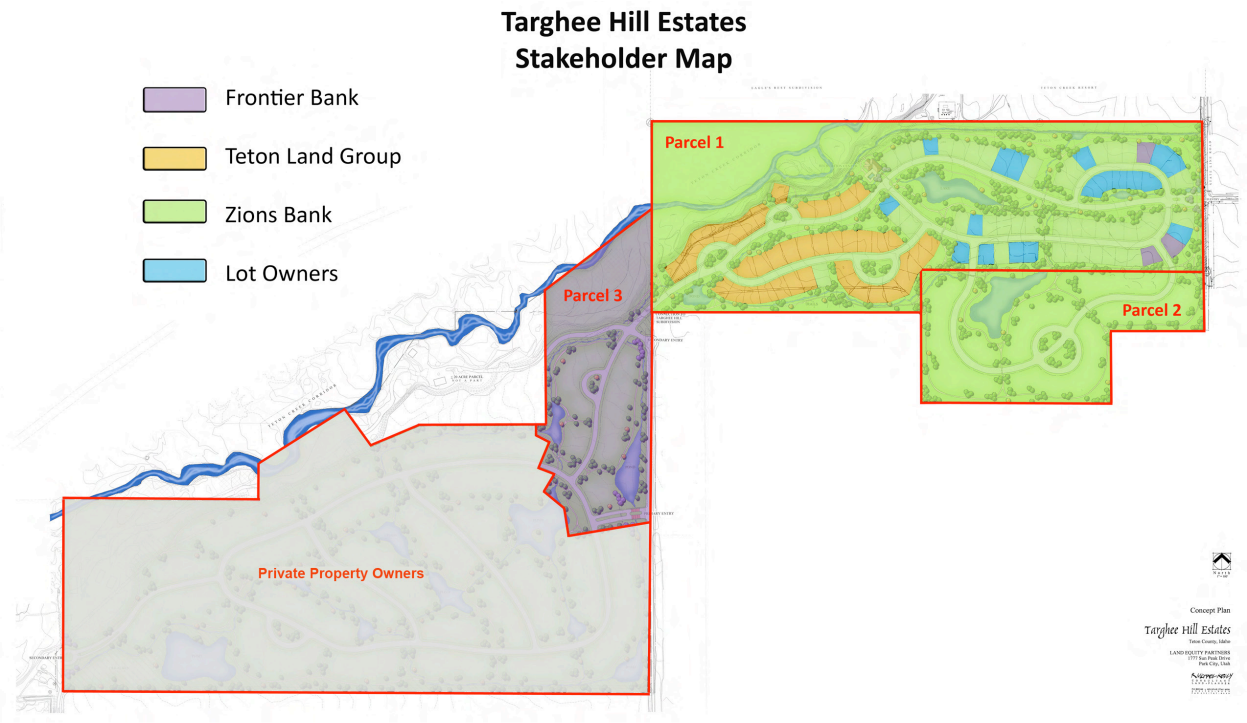
Figure 13

Source: Anna Trentadue, 2011. This image showcases the present condition of the entrance to Phase 1 of Targhee Hill Estates. The trees in the distance background are part of the Teton Creek riparian corridor.

In April of 2010, the developers of Targhee Hill Estates presented the challenges of financing and completing their project at the Reshaping Development Patterns workshop hosted in Teton Springs. Their intriguing presentation was the most discussed and praised by workshop attendees, which spurred discussions by VARD, the Sonoran Institute and the Lincoln Institute of Land Policy to have Targhee Hill Estates be the first pilot project to be replatted.

The developers were enthusiastic about the proposal to replat Targhee Hill Estates, and they participated in several work meetings the Teton County Board of County Commissioners and VARD. While there was earnest interest on all sides to replat the project, it proved to be more difficult than originally anticipated. One factor complicating the redesign of Targhee Hill Estates was the divided ownership of the property. Eighteen lots in Phase 1 had been sold to six individuals, and the ownership of the remaining parcels is divided up between the developers, two banks, and a neighboring property owner.

Figure 14: Targhee Hill Estates Stakeholder Map



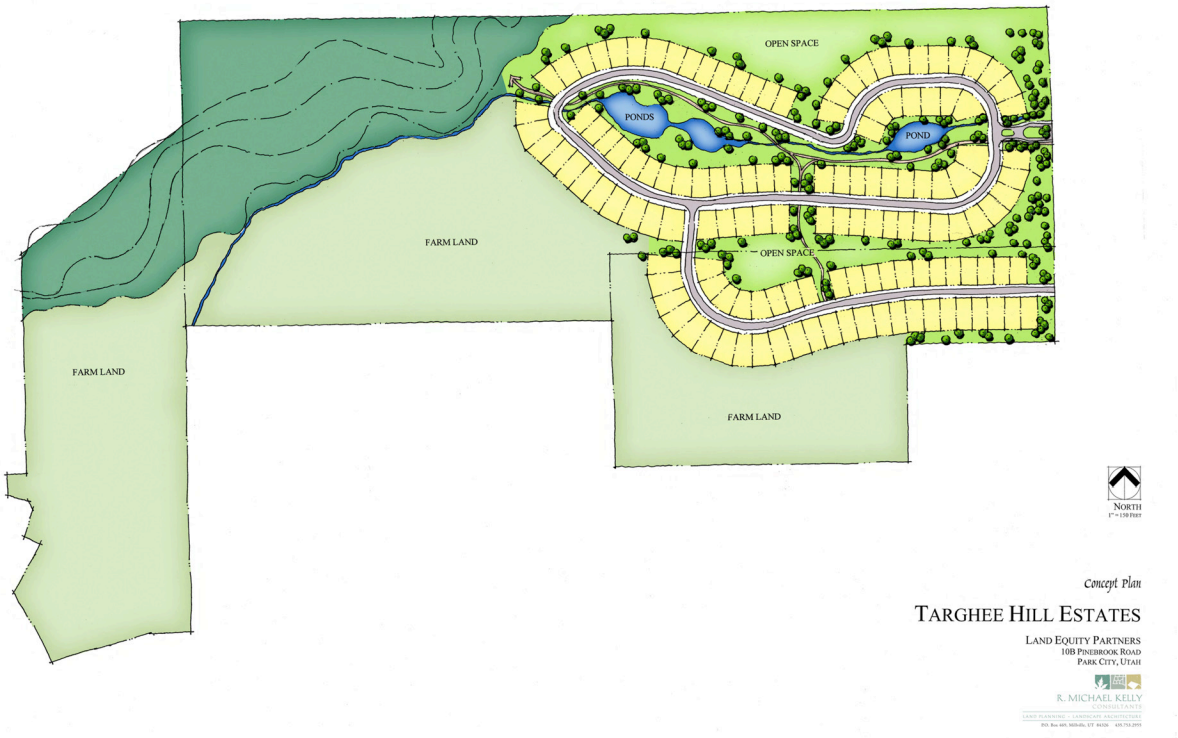
Source: Land Equity Partners

Without authorization from all property owners, a replat was not possible. The most difficult owners were the banks, which kept the replat effort in limbo for two years by essentially not authorizing or even participating in the replat effort. This cold shoulder from the banks may be due to the fact that Targhee Hill Estates was a relatively small liability in the grander scale of post bubble real estate losses. In addition, as stated previously, banks are simply not in the development business, and because of this issue, the banks had no interest in visualizing and engaging in a replat effort.

A very preliminary replat concept has been designed and would include many benefits to both the developer as well as the community at large. As pictured in Figure 15, the residential lots in Targhee Hill Estates would be reduced to 132 (or potentially even lower), 75 percent of the property would be permanently protected as agricultural open space, almost all the residential lots would be pulled away from Teton Creek establishing a permanently protected creek corridor, greenbelt pathways easements along the creek would be donated, and the surface water rights would be leased in-stream to restore flows to Teton Creek. The developers would benefit from

lowered infrastructure and carrying costs for their property (the new design would enable the farmland open space to receive an agricultural property tax exemption).

Figure 15: Targhee Hill Estates Preliminary Replat



Source: Land Equity Partners

To date, this replat design is still conceptual and until the banks holding ownership interests in the property are willing to authorize a replat, the future appears uncertain. Arguably, too much infrastructure has been installed and lots sold for this plat to be entirely vacated, thus a replat appears to be the only other way forward for this project. Anecdotally, discussions with the developers indicate that the banks may slowly be coming around to authorizing replat, but these discussions have not yet come to fruition.

The Future Impact of HB 519: Site Improvements Are Exempt From Taxation

On January 1, 2012, Idaho House Bill 519 went into effect.[82] Passed on March 23, 2012 in the wake of Idaho's slow recovery from the real estate crash, the intent of this new legislation was to exempt from property taxation the portion of assessed value created by site improvements constructed in the course of a land developer's ongoing business plan.[83] In short, subdivision

[82] This bill does not have a formal name, but was proposed by the Revenue and Taxation Committee of the Idaho Legislature to amend sections of the state tax code to exempt site improvements from taxation. The bill was retroactively put into effect after it was passed in order to apply to the 2012 tax year.

[83] For a full text of the bill as well as the statement of intent, see http://www.legislature.idaho.gov.

infrastructure, whether complete or incomplete, will be exempt from taxation until a house has been built on the property and occupied (see I.C. § 63-602W). Idaho's tax code already exempts single family residences, townhouses, and condominium units that have never been occupied, thus exempting speculative home construction from taxation until it is occupied. This new legislative addition will also exempt speculative subdivision's infrastructure from taxation.

Teton County, with its 8,702 vacant lots, 1,827 vacant homes, and 24 incomplete subdivisions, will certainly feel the impact of this change when it goes into effect next year. However, *how* this bill will impact the total assessed value of the county as well as the mill levy rate remains to be seen. Presumably, this change will lower the overall assessed value of land, generating a rise in the mill levy, and thus higher taxes on occupied homes. Even further down the road is the question of how this change may impact future development or the potential for existing developments to be vacated or replatted. If the carrying costs of real estate speculation in the form of property taxes are reduced, will this change spur additional speculation? In addition, if the carrying costs on a defunct subdivision are reduced, this outcome will certainly remove one of the incentives to vacate or replat.

Lessons Learned

It is much harder to undo bad decisions than to make good decisions to begin with. In the case of land use, once development entitlements are approved and a plat is recorded, it is difficult and in some cases impossible to take them back. Historically in Teton County, projects that seemed "dead in the water" were often approved even though they were highly unlikely to ever become a reality on the ground. Yet, past elected officials seemed to shrug and approve them anyway. If a speculative development proposal does not have immediate commercial viability, it is best to avoid approving it in the first place. Once entitlements are granted and a plat is recorded, it may be impossible to revoke prior approvals, even where there is no practical or feasible future for the project.

Once land is purchased for speculative development, it is particularly challenging to achieve a conservation outcome on the property unless a compelling economic case for land conservation can be made. If a speculative development falls into bank ownership, then it is even harder to achieve a conservation outcome because banks are not in the development business and will not take proactive steps to redesign projects to reduce infrastructure costs and environmental impacts.

In response to these challenges, Teton County has taken many deliberate actions to address the problems that emerge when faced with nonviable development entitlements. Some of these governmental actions are aimed at dealing with complications from the past, while others are more forward looking preventative measures:

- Adoption of a formalized Teton County development agreement template and passage of a policy for careful oversight of county contracts (both retroactive and forward looking).
- Adoption of development agreement extension request criteria (both retroactive and forward looking).

- Amending county development codes to prohibit pre-selling of lots and require sureties prior to plat recordation (forward looking).
- Development of a GIS department and a system for better record keeping (forward looking).
- Adoption of the Teton County Fiscal Impacts Planning System(forward looking).
- Adoption of the Teton County incentivized replatting ordinance (retroactive).
- Development of a strategy, policies and procedures for vacating plats (retroactive).
- Launching the Teton Valley 2020 comprehensive planning process (forward looking).
- Revision of Teton County's zoning and development codes (forward looking).

Collectively, these actions by the Board of County Commissioners represent a bold agenda. A few of these policies and legislative decisions have been perceived by some as controversial, such as the Teton Valley 2020 planning process and the revision of local zoning and development codes. It has been challenging for the county to maintain these controversial programs while also continually reminding the public about the previous decisions that created the present problems and explain the steps that have already been initiated (but must be continued and built upon) to create a better future. There is an innate tendency for communities to see no need to protect their treasured places until after they have been impacted, sometimes irreversibly. Implementation of grass roots change is often slow because political administrations can turn over every two years in election cycles, and it is easy for the general populace to forget the past decisions that created the current problems. In this sense, constant education and messaging is critical, whether it is sourced by local media, advocacy organizations, or the political administration itself.

It remains to be seen whether Teton Valley will forge a new future or slide back into the same boom and bust cycles of the past. If the Board of County Commissioners can maintain the current political will, then meaningful change can be implemented. However, there is often immense public pressure to instead opt for the quick fix solutions that offer immediate monetary rewards in the form of unplanned growth because the prolonged downturn of the bust cycles can be so agonizing. Despite the present pain of Teton Valley's precipitous real estate crash, a clear directive for community change has emerged through the Teton Valley 2020 comprehensive planning process—the people of Teton County do not want to repeat the past ten years of unchecked growth. If that momentum can endure through to the implementation of new zoning and development regulations, Teton County will have taken a hard-fought and significant first step toward building a new future.

Appendix A: Darby Flats Development Agreement

160897

DEVELOPMENT AGREEMENT
FOR
Darby Flats Subdivision

THIS AGREEMENT is made and entered into this 26th day of March, 2004 by and between JT Inc. and Teton County, Idaho.

It is the intent and purpose of the Developer to meet the conditions of approval for the final plat allowing the creation of Darby Flats Sub., as approved by the Teton County Commission on April 26, 2004; and

It is the intent and purpose of the Developer to obtain final plat approval for the subdivision; and it is the intent and purpose of the Developer and Teton County to enter into this Agreement, which will guarantee the full and satisfactory completion of the public improvements on the property described in this Agreement and it is the intent of the Agreement and the parties to satisfy the public improvement guarantee requirements for the final plat recordation and beginning of the build out of the public improvements of the subdivision.

In consideration of the mutual covenants and conditions contained herein, it is agreed as follows:

Section 1. Subdivision Description. This agreement pertains to and includes that property, which is designated and identified as Darby Flats Sub., located in Section 12, Township 4N, Range 45E in Teton County, Idaho.

Section 2. Improvements and Time of Completion. The Developer shall, at its own cost and expense, complete the road construction, the telephone, the power, and the fire protection pond. The Developer agrees to install a street sign at the entrance of the subdivision. The estimated costs to complete these improvements are shown on Exhibit A of this Agreement. The Developer shall not transfer construction and responsibility of public improvements to current or prospective lot owners. The construction shall begin on or before June 1, 2003 (or as soon as weather permits) for the public improvements and shall be completed for inspection by the County by June. 1, 2004.

Section 3. Schedule for Completion of the improvements. The Developer shall complete the road improvements, the telephone, and the power within two (2) years of the recording of the final plat. A one (1) year extension may be approved by the Planning and Zoning Commission for completion of the public improvements for unavoidable delays caused by employment strikes, lockouts, Acts of God, or other factors beyond the control of the Developer. Teton County shall have the authority to use the funds in the financial guarantee to complete the public improvements if the developer does not complete them by the completion date stated in this Agreement.

Section 4. Inspection. Representatives of the County shall have the right to enter upon the property at any reasonable time to inspect and to determine whether the Developer is in compliance with this Agreement. The Developer shall permit the County and its representatives to enter upon and inspect the property at reasonable times.

Section 5. Final Inspection and Approval of Improvements. The Developer shall notify the County when it believes that the improvements have been fully and properly completed and shall request final inspection, approval and acceptance of the improvements by the County. Upon approval the county shall give its written acceptance of the improvements.

Section 6. One-Year Guarantee of the Improvements. The Developer guarantees the prompt

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and satisfactory correction of all defects and deficiencies in the improvements that occur or become evident within one year after acceptance of the improvements by the County. If such defect or deficiency occurs or becomes evident during such period, and then the Developer shall, within ten days after written demand by the County to do so, correct it or cause it to be corrected. If the defect or deficiency cannot be reasonably corrected within ten days after written demand from the County, the Developer shall commence the correction of the deficiency within the ten-day period and proceed with reasonable diligence to correct the same or cause it to be corrected. The guarantee provided by this Section shall be extended for a full year from the date of repair or replacement of any improvements repaired or replaced pursuant to such demand.

Section 7. Financial Security Guarantee. As security to the county for the performance by the Developer of its obligations. In case of failure to complete construction of the improvements within the agreed upon time, the developer agrees to transfer the funds or the loan for said improvements to the county for completion of said improvements. Upon completion of the improvements the county agrees to release the guarantee requirement by providing a letter to the developer after final inspection. This guarantee may be reduced proportionate to completed improvements as asked for by the developer.

Section 8. Permits for new Construction. Building permits shall not be issued prior to the approval and recoding of the final plat and the beginning of construction on the public improvements. A certificate of occupancy shall not be issued prior to completion and approval of the public improvements by the county. There will be no sales of record until the final plat has been approved & recorded.

Agreed:

BOARD OF COUNTY COMMISSIONERS, TETON COUNTY, IDAHO

Chairman

PLANNING AND ZONING COMMISSION, TETON COUNTY, IDAHO

Chairman

(Owner/Developer name) President of J.T., Inc.

State of Idaho)
)SS
County of Teton)

On this 26 day of April, ~~2003~~ 2004, before me, a Notary Public for the State of Idaho, personally appeared Travis Thompson known to be the person(s) whose name(s) is executed above, and acknowledged that he executed the same.

Notary Public Jerriee J. Brower

Residing Tetonia, Idaho

Commission expires 2-27-10

JERRIEE J. BROWER
NOTARY PUBLIC
STATE OF IDAHO

160857

P.O. Box 139
Victor, ID 83455
208-787-2952

AW ENGINEERING

Civil Engineering
Land Surveying
Construction Management
Landscape Architecture

ENGINEER'S COST ESTIMATE

Darby Flats Subdivision, Teton County, Idaho Jan 24, 2003

J.T. Inc Travis Thompson Victor, Idaho

	DESCRIPTION	COST/UNIT	UNITS	COST
1	Electrical power service	6.50 / lin ft	740	*$ 5,200*
2	Telephone service	3.50 / lin ft	740	*$ 2,800*
3	Fire protection system - 2 lots	None	0	0
4	ROAD SYSTEM 24' wide gravel road	$ 11.00 / ft	1000	$ 11,000
			TOTAL # 4	*$ 19,000.00*

TOTAL PROJECT: $ 19,000.00

Bonding amount at 110% = $ 20,900.00

PROFESSIONAL ENGINEER - LAND SURVEYOR REGISTERED 12860 STATE OF IDAHO ARNOLD W. WOOLSTENHULME

Instrument # 160897
DRIGGS, TETON, IDAHO
2004-04-27 04:32:55 No. of Pages: 3
Recorded for : A W ENGINEERING
NOLAN G. BOYLE Fee: 9.00
Ex-Officio Recorder Deputy
Index to: AGREEMENT

160897

Appendix B: Teton County's development agreement template

DEVELOPMENT AGREEMENT FOR _____ SUBDIVISION (or PUD)

THIS AGREEMENT is made and entered into as of the___ day of _____, 20__, by and between _____(owner)_____ and/or assigns (hereafter "Developer") and Teton County Idaho, a political subdivision of the State of Idaho (hereafter "County").

WHERAS, the Subdivision was approved under the _____, 20___ Teton County Code.

WHEREAS, it is the intent and purpose of the Developer to meet the conditions of approval for the final plat allowing the creation of_____(name of subdivision or PUD)_____, as approved by the Board of County Commissioners of Teton County on _____, 20__.

WHEREAS, the Developer is the sole owner, in law or equity, of certain Property located in the County, which Property is hereinafter referred to as the "Development".

WHEREAS, it is the intent and purpose of the Developer and the County to enter into this Agreement that will guarantee the full and satisfactory completion of the required Improvements on the Property described in this Agreement and it is the intent of this Agreement and the parties to satisfy the Improvement guarantee requirements for the final plat recordation of the subdivision.

WHEREAS, the County has the authority to enter into a development Agreement for the construction of required Improvements associated with the Development.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

Section 1. Definitions

1.1 **DEVELOPMENT:** The subject of this Agreement, which is designated and identified as (name of PUD or subdivision) located on the Property described in Exhibit A in the jurisdiction of Teton County, Idaho. This definition shall include any and all future names or titles for (name of PUD or subdivision.)

1.2 **IMPROVEMENT:** Any alteration to the land or other physical construction located on or off the Property that is associated with this subdivision/PUD and building site developments.

1.3 **OWNER/DEVELOPER:** means and refers to __(name)____ whose address is (address)__, the party that owns and is developing said Property and shall include and subsequent owner(s) or developer(s) of the Property.

1.4 **PROPERTY:** means and refers to the certain parcel(s) of Property located in the County of Teton, as described in Exhibit A.

1.5 **UNAVOIDABLE DELAY:** When construction is impeded as a result of strikes, lockouts, acts of God or other factors beyond the control, and ability to remedy, of the Developer.

Section 2. Planned Improvements. The Developer has divided the installation of the required Improvements into ____ phases. The Developer shall, in conjunction with each phase, and at its sole cost and expense, complete the road construction, install entrance and street signs, install telephone and electrical service, install fire protection, install approved landscaping, stabilized and re-seed areas of the Property disturbed by installation of Improvements, and complete all other required infrastructure for each phase as detailed in the _____(name of subdivision or PUD)_____ Improvement plans dated _____, 20__ , recorded in the Teton County Clerk and Recorders office on _____, 20__. Such Improvements shall be constructed so that each phase is "stand alone" in terms of providing Improvements to the lots and units in that phase. Developer agrees that such Improvements shall be installed in compliance with Teton County's Title 9 and any design and engineering standards separately adopted by the County or other agencies responsible for providing services to the Development. The ____(name of engineer/engineering company)_____'s estimated cost to complete all Improvements as of _(date of estimate)_, 20__ is shown in Exhibit B of this Agreement. The Developer shall obtain an updated cost estimate within ninety (90) days prior to obtaining its Letter of Credit and starting construction of any Improvements in every phase, as set forth in Section 8 hereof. The phasing plan for the Development is shown in Exhibit C of this Agreement.

Section 3. Signs. The Developer understands and agrees to install subdivision entrance sign(s) and street signs prior to the County being able to issue a building permit for a dwelling within the Development. Such signs shall be non-reflective and built in accordance with Teton County requirements, and in a size and shape appropriate to meet ASHTO standards.

Section 4. Public Improvements. The Developer shall designate the following roads as private for public use: _____, _____, _____, and _____. The Developer shall maintain all public facilities, improvements, and open space for the Development according to Teton County standards and any standards separately adopted by the agencies responsible for providing services to the Development, until such time as the responsibility for maintenance of the public improvements and open space is turned over to the Homeowner's Association for this Phase of the Development. This transfer of maintenance responsibility shall occur when ____% of the lots or units have been sold. The Homeowner's Association shall collect dues, a portion of which will be used for maintenance of the public improvements and open space. The Developer shall notify the planning department in writing when the Homeowners Association is established and when the transfer of maintenance responsibility has occurred. A mailing address for future notifications shall also be provided.

Section 5. Off-Site Improvements. The Developer shall construct all off-site Improvements shown on the recorded Improvement Plans for __(name of subdivision or PUD)__ following the design, engineering, and standards of the agency responsible for the Improvement(s). Off-site Improvements shall be included in the engineer's cost estimate requirements as set for in Section

2 of this Agreement. Developer may seek pro-rata compensation for these off-site Improvements as provided for in Title 9 of the Teton County Code and Section 41 of this Agreement.

Section 6. Building Permits. No lots or units may be offered for sale or sold (warranty deeds transferred) prior to recordation of the final plat which shall be approved upon completion of improvements according to the Improvement Plan. The fire protection, including all weather road(s), shall be operational per the Fire District's inspection and written approval, and street signs installed, before any building permit shall be issued by the County. Furthermore, no certificate of occupancy for residential units shall be given until all Improvements have been completed and accepted in writing by the County.

Section 7. Schedule for Commencement and Completion of the Improvements. The Developer shall commence construction of the Improvements for Phase One within ____ years after the recording of the approved final plat, and will complete construction of the Improvements within _____ years after commencement of construction of such Improvements. Subsequent phases shall complete the Improvements no later than ___ years from the effective date of the Development Agreement for each phase. The Developer may be allowed extensions of time beyond the commencement or completion date for unavoidable delays caused by strikes, lockouts, acts of God, or other factors beyond the control, and ability to remedy, of the Developer upon application and granting of such request by the Board of County Commissioners. However, except for extensions for commencement of Improvements allowed for such unavoidable delays, if Developer does not commence construction of the Improvements within _____ years of recording of the final plat, the Developer will lose its approvals and entitlements for _(name of subdivision or PUD)_____ and will have to reapply for approval for any planned unit development or subdivision under the then current County subdivision ordinance. If the developer does not complete construction of the Improvements by _____ _____, 20_____, the Developer will lose its approvals and entitlements and will have to reapply for approval under the then current County subdivision ordinance. The County may choose to use the posted surety to complete the Improvements if the developer has not done so and there is a public benefit to having the Improvements complete.

Section 8. Future Phases. The Developer and County acknowledge that Phase Two and all subsequent phases of ___(name of subdivision or PUD)___ will require approval by the Teton County Planning Administrator demonstrating that the plan for that phase is in substantial accordance with the approved and recorded Master Plan for the Development as defined in Teton County Code 9-3-5-C and D. Final plat submittals for future phases shall require review by the Planning Administrator and approval by the Board of County Commissioners, as long as the final plat of the future phase conforms to such Master Plan. If the Teton County Planning Administrator determines that the final plat of the future phase does not conform to the Master Plan, the Developer shall comply with Teton County Code 9-3-2 (D-8) and 9-3-2 (D-9) (as amended 11/14/2008).

Section 9. Request for Additional Phases. Any request to the County for additional phase(s) shall be made at the same time the application is made for the final plat.

Section 10. Extensions of Time. The Developer may be allowed extensions of time for commencement of construction, or for beyond the completion date, for unavoidable delays such as those caused by strikes, lockouts, acts of God, or factors beyond the control of the Developer. Application for extension shall be made on the Teton County "Development Agreement Extension Application" and shall address the criteria presented on that form and in Exhibit C, Extension Criteria. The Developer shall pay the fee associated with the request. Developer acknowledges and agrees that the Board of County Commissioners has the sole discretion to grant or deny a request for extension. The application for a development agreement extension must be submitted to the Planning Department before the expiration of the original development agreement.

Section 11. Construction Dates. The Developer reserves the right to commence construction of the Improvements any time after recording of the final plat, if weather conditions permit, and the obtaining of the financial security guarantee set forth in Section 19 hereof. The subdivision Improvements will be completed within _____ months after construction begins, and no later than _____, 20_____. The Developer will be solely and fully responsible for the supervision of subcontractors and timely completion of installation of the Improvements detailed in Exhibit B and the recorded Improvement plans. Phases of the Development will be constructed and completed no later than as shown below:

Phase	Start Date	Completion Date
One		
Two		

Section 12. Control of trash, weeds, dust, erosion, and sedimentation. The Developer shall be fully responsible for all dust abatement, erosion, sedimentation, weed, and trash control on the Property. Developer shall use best management practices and industry standards for control. Trash shall be contained at all times. Dumpsters and sanitary facilities are required on site during every phase of construction. Final bond installment shall not be released until all onsite trash is removed, construction rubble is leveled, lost soils are replaced, and disturbed areas are reseeded with native vegetation or planned landscaping. The responsibilities in this Section shall run with the land and they shall therefore apply before, during, and until completion of Improvements. This means that trash, weeds, dust, erosion, and sedimentation control on the Property will be fully the responsibility of the current owner of the Property

Section 13. Open Space Management Plan. The Developer shall provide a complete open space management plan that includes long term management and control of all open space areas on the Property. The plan must address weed control and include an annual survey of the Property to map weeds and methods to control those weeds.

Section 14. Permits. The Developer is responsible for obtaining all right-of-way, access, excavation, and other permits and approvals required by local, State, and Federal regulations.

Section 15. Inspection. Prior to construction of the Improvements, Developer shall have a pre-construction meeting with Teton County Planning and Engineering representatives, the Fire Marshal for the Teton County Fire Protection District, and the Developer's engineer and contractor. The Developer's engineer shall make regular inspections and maintain control of the Development while it is under construction. Representatives of the County shall have the right to enter upon the Property at any reasonable time to inspect and to determine whether the Developer is in compliance with this Agreement. The Developer shall permit the County and its representatives to enter upon and inspect the Property at reasonable times. The Developer will not materially deviate from the recorded Improvement Plans without the prior written approval of the County Engineer, which approval will not be unreasonably withheld.

Section 16. Inspection Fees. *(this may or may not apply)* The Developer agrees to pay the inspection fees as required by _____.

Section 17. Final Inspection and Approval of Improvements. The Developer shall notify the County when it believes that the Improvements have been fully and properly completed and shall request final inspection, approval and acceptance of the Improvements by the County. The County will provide prompt interim and final inspection of the Improvements when notified by the Developer of completion. The Developer must provide a signed and sealed letter from an engineer stating the roads have been built in accordance with the submitted road plans and meet or exceed county standards. In addition to the roads, the signed and sealed letter from the engineer shall certify that all Improvements are 100% completed according to Exhibit B and the recorded Improvement Plans. Upon inspection, the county shall give timely written acceptance of the Improvements or a written checklist of material deficiencies, such noted deficiencies shall be specific as to location and shall specify, in detail, the necessary corrective action to be taken by the Developer. Upon approval of the final inspection, the county shall give express written acceptance of the Improvements. After this written acceptance is received, the Developer shall record the record plat and will be able to sell lots in the development.

Section 18. As Constructed Plans. Prior to County inspection and approval of the Improvements in the Development, the Developer will file signed and sealed "As Constructed" Improvement Plans with the County Engineer, along with a letter of certification from a licensed engineer as to the accuracy of the corrected plans. Such "As Constructed" Improvement Plans shall show actual constructed location of all required Improvements.

Section 19. Warranty of the Improvements. The Developer warrants the prompt and satisfactory correction of all defects and deficiencies, for both materials and workmanship, in the Improvements that occur or become evident within two years for all open space and landscaping Improvements and one year for all other Improvements after acceptance of the Improvements by the County. If such defect or deficiency occurs or becomes evident during such period, then the Developer shall, within thirty (30) days after written demand by the County to do so, correct it or cause it to be corrected. If the defect or deficiency cannot be reasonably corrected within thirty (30) days after written demand from the County, the Developer shall commence the correction of the deficiency within the thirty (30) day period and proceed with reasonable diligence to correct the same or cause it to be corrected. The warranty provided by this Section shall be extended for

a full year from the date of repair or replacement of any Improvements repaired or replaced pursuant to such demand.

Section 20. Financial Security Guarantee. In lieu of construction of the Improvements by the Developer during the period after County approval of the final plat and the final plat being recorded for each phase, as security to the County for the performance by the Developer of its obligations to complete the Improvements in accordance with this Agreement, the Developer shall, prior to the commencement of construction of any Improvements, obtain financial security in one of the following three methods, in the sum of one hundred and twenty-five (125%) of the engineer's estimated costs for all Improvements, which engineer's cost estimate shall be revised and updated within ninety (90) days of securing the financial guarantee described in Section 1. Obtain from a County approved financial institution or approved private financier an irrevocable 12-month letter of credit with guaranteed 6 to 12 month extensions as needed until the public Improvements are completed and accepted by the County or 6 months after the expiration date of this Development Agreement; 2. Deposit into a Teton County escrow account funds in the form of a certified check or cash available for disbursement upon signatures by the Developer and Teton County. The County shall maintain any interest accrued. 3. Obtain a negotiable construction or development bond from a County-approved bonding company for the estimated length of time to fully complete the Improvements including acceptance by the County. The amount of the escrowed funds shall be released for the completed and approved portion of the scheduled Improvements on the subject Property by line item as described on the engineer's cost estimate in Exhibit B. If the County releases a portion of the escrowed funds, the County shall retain twenty five percent (25%) of the original escrowed amount. The Developer shall be limited to three partial releases of escrow per phase. Any amount of the escrowed funds remaining in letter of credit, escrow account, or bond shall not be released until one hundred percent (100%) complete installation and approval of all County required Improvements, including signage and the successful completion of all warranty periods. Ten (10) percent of the original approved engineer's cost estimate for the Improvements shall be provided in one of the three methods presented above in this Section for the entire warranty period described in Section 18 to guarantee the correction of any defects or deficiencies.

Section 21. Remedies. In the event the Developer fails to perform any of the terms, conditions or obligations in this Agreement or has not resolved a defect or deficiency under this Agreement, the County, at its option, may exercise any rights and remedies it may have under law. Furthermore, the County reserves the right, in its absolute discretion, to revoke the Developer's entitlements for _____(*name of subdivision or PUD)*____ and after such revocation, if Developer chooses to move forward, Developer will have to reapply for approval under the then current County ordinances. Teton County may impose penalties on the Developer in the form of monetary fines, not to exceed the outstanding balance of work not performed or carried out at the scheduled completion date or not to exceed the work to correct the defect or deficiency. The County may withhold the issuance of any building permit or certificate of occupancy for any structure located in the Development, refuse to accept ownership and maintenance of any County Improvements and record a notice of such action in the Teton County Clerk and Recorder's Office, or issue a "stop work" or "cease and desist" order for any building or Improvement under construction in the Development. All of the above remedies are cumulative and to the extent not

wholly inconsistent with each other, may be enforced simultaneously or separately, at the sole discretion of the County.

Section 22. Voided Agreement. The County, at its option, may void this Agreement and any vested right should the Developer's failure to perform in compliance with this Agreement results in the County seizing the escrow to complete the Infrastructure or correct the defect or deficiency.

Section 23 Default. If the Developer defaults or fails to fully perform any of its obligations in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the Improvements required by this Agreement, Teton County shall inform the Developer in writing of the specific default or failing. If the default or failing continues for thirty (30) days after such written notice and the Developer makes no attempt to remedy the default, Teton County shall have, in addition to all of its other rights under the law, the right to complete the construction of the Improvement(s) or to correct the defect or deficiency, using either its own forces or contractors hired for that purpose. The County shall have the right to draw from either/or the financial security guarantee escrow account or credit line provided, those sums not to exceed 125% of the engineer's estimate for individual Improvements installed. Included in the costs of the work, the County is entitled reasonable legal fees and reasonable administrative expenses.

Section 24. Transfer of Lots or Units. No lots or units may be offered for sale or sold (warranty deeds transferred) prior to final Improvement completion and a Certificate of Completion being issued by the County. The fire protection, including all weather road(s), shall be operational per the Fire District's inspection and written approval, and street signs installed, before any building permit shall be issued by the County. Furthermore, no certificate of occupancy for residential units shall be given until all Improvements have been completed and accepted in writing by the County. Appropriate easements, covenants and deed restrictions regulating the open space portions of the Developer's lots, consistent with the open space regulations contained in the Teton County Subdivision Ordinance (Title 9) will be promulgated by the Developer and binding upon all lot owners. Developer does hereby agree that all unsold lots shall be maintained by the Developer at the Developer's sole expense, and this responsibility shall run into perpetuity.

Section 25. Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

Section 26. Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives, including County's corporate authorities and their successors in office. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.

Section 27. Notices. All notices in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee when delivered in person on a business day at the address set forth below or on the third day after being deposited in the United States mail, for delivery by

properly addressed, postage prepaid, certified or registered mail, return receipt requested, to the address set forth below.

Notices to the County shall be addressed to, or delivered at, the following address:

Teton County Board of County Commissioners
ATTN: Planning Administrator
150 Courthouse Drive, Rm. 107
Driggs, Idaho 83422

Notices to the Developer shall be addressed to, or delivered at, the following address:

__(owner's representative)__
_____
_____
_____

By notice complying with the requirements of this Section, each party shall have the right to change the address for all future notices, but no notice of a change of address shall be effective until received as provided above.

Section 28. Enforcement. The parties may, in law or in equity, by suit, action, mandamus, or any other proceeding, without limitation enforce or compel the performance of this Agreement.

Section 29. Indemnification.

A. No Liability for County Approval. The Developer acknowledges and agrees (1) that the County is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the County's issuance of any approvals or acceptances of the Improvements or use of any portion of the Improvements, and (2) that the County's issuance of any approvals or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its heirs, successors, assigns, tenants, or licensees or any third party, against damage or injury of any kind at any time.

B. Indemnification. Except as provided below, the Developer agrees to, and does hereby, indemnify the County, and all of its elected and appointed officials, officers, employees, agents and representatives from any and all claims, costs and liability of every kind and nature that may be asserted at any time against any such parties for injury or damage received or sustained by any person or entity in connection with (1) the County's review and approval of any plans for the Improvements, (2) the issuance of any approval or acceptance of Improvements, (3) the development, construction, maintenance or use of any portion of the Improvements and (4) the performance by the Developer of its obligations under this Agreement and all related Agreements. The Developer further agrees to aid and defend the County in the event that the County is named as a defendant in an action concerning the Improvements provided

by this Agreement only as to Improvements that are not in conformance with the approved and recorded Master Plan of ___(name of subdivision or PUD)___ in compliance with each phase, except where such suit is brought by the Developer. The Developer is not an agent or employee of the County.

Section 30. Amendments or Alterations. All changes, amendments, omissions, or additions to this Agreement shall be in writing and shall be signed by both parties.

Section 31. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Section 32. Filing. The Developer shall have this Agreement recorded in the office of the Teton County Clerk and Recorder at the same time as the final plat is recorded. The Developer shall be responsible for all recording fees associated with this Development.

Section 33. No Conflicts. The County and the Developer hereby acknowledge and agree that all required notices, meetings and hearings have been properly given and held by the County with respect to the approval of this Agreement. The County and the Developer also acknowledge and agree that this Agreement is supported by Title 9 of Teton County Code. The County and the Developer agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right.

Section 34. Authority to Execute. The County hereby warrants and represents to the Developer that the persons executing this Agreement on its behalf have been properly authorized to do so by the Board of County Commissioners. The Developer hereby warrants and represents to the County (1) that it is the record owner of fee simple title to the subdivision, (2) that it has the right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the subdivision as set forth herein, (3) that all legal action needed to authorize the execution, delivery, and performance of this Agreement have been taken, and (4) that neither the execution of this Agreement nor the performance of the obligations assumed by the Developer hereunder will (i) result in a breach or default under any Agreement to which the Developer is a party or to which it or the subdivision is bound or (ii) violate any statute, law restriction, court order, or Agreement to which the Developer or the subdivision is subject.

Section 35. Codes. The Developer agrees to abide by all ordinances, regulations, and codes of Teton County and those of the special purpose districts providing service to the Development.

Section 36. Governing Law. This Agreement shall be construed and governed according to the laws of the State of Idaho. The venue for any action arising out of this Agreement shall be exclusively in the District Court of the Seventh Judicial District of the State of Idaho, Teton County, or in the United States District Court for the District of Idaho.

Section 37. Attorney's Fees. Should any litigation be commenced between the parties concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief

as may be granted, to court costs and reasonable attorney's fees as determined by a court of competent jurisdiction.

Section 38. Final Agreement. This Agreement sets forth all promises, inducements, agreements, condition and understandings between Owner/Developer and County relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between Owner/Developer and County, other than as are stated herein. All Exhibits referenced herein are incorporated in this Agreement as if set forth in full including all text information in the Exhibits. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assigns, and pursuant, with respect to County, to a duly adopted ordinance or resolution of County.

Section 39. No Waiver of County Rights. No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision nor will it be deemed to constitute a continuity waiver unless expressly provided for; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any obligation under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement. Developer acknowledges that Teton County reserves the right to revoke all approvals for (name of subdivision/PUD) upon failure to comply with the conditions of approval of Final Plat, upon any of the violations of Teton County Title 9, or for misrepresentations or material omissions made to the Teton County Planning Commission or Board of County Commissioners.

Section 40. Mitigation of Teton County for Road Improvements. Upon the issuance of a Certificate of Completion of __(name of subdivision or PUD)_____ by Teton County and the issuance of the first building permit for such subdivision, the Developer will make a donation to Teton County in the amount of $_____ to be designated for road Improvements to _(road name)_____.

Section 41. Community Enhancements. The Developer hereby pledges $_____ from the proceeds of each lot closing in ___(name of subdivision or PUD)___. The Developer desires $_____ to go to _____, $_____ to go to _____, and $_____ to go to _____. These contributions are being given on a voluntary basis and will be donated as follows: Funds will be collected at the closing of the initial sale of each lot sold by the Developer; The Developer will record an Agreement placing a lien on the lots such that the collection of these funds will be facilitated by the title company handling the closing of such lots.

Section 42. Sharing Development Costs. Teton County Subdivision Regulations, Title 9, provides the Developer a mechanism to recoup a portion of certain costs associated with Improvements made by the Developer. All shared development rights afforded the Developer under Title 9 and this Agreement, in particular Section 7, are hereby retained; any other Agreement, document, or statement by the Developer shall not be deemed to waive any rights afforded the Developer under Teton County Title 9.

Section 43. Effective Date. This Agreement shall become valid and binding only upon its approval by the Teton County Board of County Commissioners and its recording in the Teton County Clerk.

Appendix C: Teton County development agreement extension request criteria

SECTION II: APPLICATION NARRATIVE

The Development Agreement should be extended for the following reason(s): (provide detailed narrative and documentation that substantiates your request. The considerations used the Board of County Commissioners are in Section III on the reverse side. Address only those criteria that apply and describe the unique or extraordinary circumstances that make the criteria applicable. An attached sheet or sheets may be used.)

SECTION III: CONSIDERATIONS FOR DEVELOPMENT AGREEMENT EXTENSION APPROVAL

The burden is on the applicant to provide a detailed narrative explaining their extraordinary and unique reason(s) for consideration. The extent of completion of the required improvements will be taken into consideration.

1. Incomplete due to seeding time frames. Non-irrigated seeding and re-seeding in Teton Valley is only viable from May 15 to June 15 and October 1 through snowfall. Facts should be presented that the project was completed during the time when seeding is not viable and that only seeding work remains to be finished. A time extension should be considered for only the period necessary to complete the seeding; or

2. Shortage of key construction material. Substantiation should be presented that shows the shortage is extraordinary; or

3. Labor strike, lockout, extraordinary weather event, or act of God; or

4. Problem with the contractor, such as leaving the area or going broke. The developer should substantiate his/her good faith efforts to replace the contractor; or

5. Conflicts with major unknowns, such as sinkholes, utilities, environmental contamination, or other underground hazards; or

6. Inability to renew or secure a new letter of credit (or bond, if applicable). The developer should provide proof of failed attempts to secure financial surety for the project; or

7. Infrastructure is re-designed for one reason or another. The developer has submitted the re-designed improvements to the Planning and Engineering Departments for approval; or

8. Nothing in the development agreement is changing except:
    a. The time to complete the improvements (maximum extension is one year and only one extension allowed except for acts of God);
    b. The phasing plan. The developer has submitted an amended development agreement and phasing plan to the Planning and Engineering departments. The addition of phases will require the development agreement to be revised to state:
        No lots have been sold in the added phases;

No lots shall be sold in the added phases until the improvements are 100% completed and approved by the County; or

9. It is in the public interest; or

10. Delays are the result of securing regulatory approvals or lengthy/unusual approval agency timeframes. The developer should provide proof of the delays;

11. Other extenuating circumstances, such as other governmental agencies have changed their approval requirements. The developer should substantiate these circumstances.

12. County property taxes are current on developer owned lots.

Conditions of Approval for Development Agreement Extensions

All Development Agreement extensions shall have the following conditions of approval written into the amended development agreement:

A. A recent engineer's cost estimate (less than 90 days old) approved by the County and calculated at 125% of the cost estimated for all remaining improvements.

B. Financial surety in the form of letter of credit, bond, or cash deposit for the amount of the approved cost estimate ("A" above) and for a term matching or exceeding the extension period of 12 months or less, or for 12 months with guaranteed extensions for the remaining extension period for terms longer than 12 months.

C. A two year warranty on open space and landscaping improvements and a one year warranty on all other required improvements.

Appendix D: Teton County's replatting ordinance

REVIEW OF PROPOSED CHANGES TO RECORDED PLATS, EASEMENTS, RIGHTS-OF-WAY, MASTER PLANS, OR DEVELOPMENT AGREEMENTS: Any proposed changes to a right-of-way, recorded easement, an approved plat of a subdivision or Planned Unit Development and the accompanying Master Plan, or the recorded Development Agreement shall first be reviewed by the Planning Administrator to determine if the changes are insignificant, substantial- increase, or substantial- decrease in nature. The Planning Administrator has the discretion to schedule meeting time in front of the Commission and/or the Board for an evaluation of the changes. Changes to the previously recorded documents shall be approved or denied pursuant to this subsection.

1. **Purpose and Intent.** The purpose and intent of this Subsection is to provide an efficient procedure for reviewing changes or proposed vacations to previously recorded rights-of way, easements, to recorded plats of subdivisions and Planned Unit Developments or to recorded Development Agreements. It is the further purpose and intent to ensure the revised plats, and Planned Unit Developments or recorded Master Plans comply with all applicable regulations but it is desirable to avoid unnecessary duplication of studies and analyses that may have been required as part of the initial plat application and approval. The purpose and intent also is to reduce the intrusion of development into sensitive natural areas of the county and reduce governmental costs associated with scattered development by expediting changes to recorded plats that reduce the number of vacant platted lots in the county.

2. **Definitions** For purposes of this Subsection the following definitions shall apply.

   a. **Insignificant Changes / Vactions**The proposed changes to the recorded land records have minimal direct impact on the immediate neighborhood, general vicinity of the subdivision or overall community. These include:
      i. vacations of portions of a plat, except where platted open space acreage would be reduced in acreage or the value of the protected resource may be diminished.
      ii. minor amendments to the recorded Master Plan,
      iii. lot line adjustments between lots within a subdivision,
      i. lot consolidations of two or more platted lots into fewer lots,
      ii. the re-arrangement or relocation of five (5) or fewer lots, parcels or buildings that does not encroach further into natural resource areas or Overlay Areas as defined in Title 8 or Title 9 or move closer to neighboring property;
      iii. a minor boundary adjustment between a lot in a platted subdivision and an adjacent non-platted property,
      iv. minor changes to the layout of roads, utilities or other facilities;
      v. other changes of similar magnitude and minimal direct impact.

   b. **Substantial Changes – Increase Scale / Impact** Substantial Changes – Increase Scale, Impact are changes that increase the scale or scope of the platted subdivision, or increase the direct or indirect impacts on the immediate neighborhood, general vicinity of the subdivision or overall community. These substantial changes may include the following:
      i. an increase in the number of lots;
      ii. the re-arrangement or relocation of lots that encroach further into natural resource

areas or Overlay Areas as defined in Title 8 or Title 9 or move closer to neighboring property;

iii. the relocation of parking facilities, buildings, or other elements of the development that encroach further into natural resource areas or Overlay Areas as defined in Title 8 or Title 9 or move closer to neighboring property; or

iv. other changes of similar magnitude or projected impact.

c. **Substantial Changes/Vacations- Decrease Scale or Impact** Substantial Changes or vacations of a plat, the master plan, or portions of it that substantially decrease the direct or indirect impacts on the immediate neighborhood, general vicinity of the subdivision or overall community. These substantial changes may include the following:

i. a reduction in the number of lots or parcels;

ii. the re-arrangement or relocation of more than five (5) lots or parcels that does not encroach further into natural resource areas or Overlay Areas as defined in Title 8 or Title 9 or move closer to neighboring property;

iii. renegotiation of development agreement;

iv. other changes of similar magnitude or reduction of impacts.

3. **Criteria for Approval -** Applications to vacate or make changes to recorded rights-of way, easements, recorded plats, or master plans shall be reviewed using the following Criteria for Approval.

a. **Insignificant Changes**

i. Any proposed changes to an easement, public right-of way, or Planned Unit Development, shall comply with all applicable criteria and standards of the county regulations, conditions of approval established in the previous approval, and the development agreement approved as part of the previous approval.

ii. Insignificant changes to a recorded plat or master plan shall not reduce the area of designated open space or increase the number of lots or the overall amount of area of development.

iii. Insignificant changes to a recorded plat, master plan, easement, or right –of-way shall not increase or create new and potentially substantial direct or indirect impacts on the neighborhood, vicinity of the subdivision or overall community.

b. **Substantial Changes – Increase Scale, Impact**

i. The master plan and plat for a subdivision or Planned Unit Development, including the proposed changes, shall comply with all applicable criteria and standards of the current county regulations.

ii. Any proposed changes to a recorded plat or master plan that increase direct or indirect impacts may require additional mitigation pursuant to the criteria and standards of county regulations.

c. **Substantial Changes – Deacrease Scale Impact**

i. The applicant shall submit to the Planning Administrator revised maps showing the proposed vacation or revisions to the layout of lots or buildings and any reduction in the number of lots or buildings. The project's Development Agreement may require adjustments in order to reflect the substantial changes being proposed. This revised layout shall be accompanied by the maps and analyses that were submitted as part of the

previous application and approval. These maps and analyses include the following to the extent they were required for the previous approval:

1. Existing Conditions Inventory and Existing Conditions Map;
2. Existing Contour Map;
3. Maps of Overlay Areas as established in Title 8 and Title 9;
4. Land Management Plan and/or Open Space Management Plan
5. Fiscal and Services Analysis;
6. Natural Resource Analysis; and,
7. Approved Development Agreement

ii. No additional studies or analyses are required.

iii. No additional application fees are required.

iv. The master plan and plat for subdivision or Planned Unit Development, including the proposed changes, shall reduce governmental costs for operations and capital expenses. The applicant shall provide financial surety of 125% of a current engineer's cost estimate for infrastructure OR the development agreement shall require no lot sales in the improved amended plat until such time as infrastructure is complete or financial surety has been provided. As applicable, shall reduce the intrusion of development into natural resource areas that are protected by criteria in county regulations or reduce development in the Overlay Areas as these areas are defined in Title 8 or Title 9.

4. Proposed vacations or changes of a recorded easement, right-of-way, or to an approved plat for a subdivision or Planned Unit Development, or a Development Agreement shall be reviewed pursuant to the following procedures.

   a. **Insignificant Changes.** Upon determining the application complete, and that the proposal is an insignificant change or vacation, the Planning Administrator shall recommend to the Board of County Commissioners approval, approval with conditions, or denial the application pursuant to the criteria and standards in the county regulations. The Board may review insignificant changes at a regularly scheduled public meeting.

   b. **Substantial Changes – Increase Scale, Impact.** Upon the Planning Administrator determining the application complete, and that the proposed changes are substantial, the application shall be reviewed as a revised Preliminary Plat and revised Final Plat pursuant to the procedures established for such applications. The Planning Administrator shall schedule the application for review by the Planning and Zoning Commission and Board of County Commissioners pursuant to the procedures established in this regulation for Preliminary and Final Plats.

   c. **Substantial Changes – Decrease Scale, Impact.** Upon the Planning Administrator determining the application complete, and that the proposed changes will decrease the scale or impacts of the development, the application shall be reviewed by the following procedure.

   i. **Concept Review by Planning Administrator.** The application for proposed changes shall be reviewed by the Planning Administrator as a Concept Plan. The Administrator shall recommend approval, approval with conditions or denial to the Board.

ii. Final Plat by County Commission. Upon receiving a recommendation from the Planning Administrator, the Board shall review the application at a legally noticed public hearing. A Final Plat application shall be submitted pursuant to Title 50 of the Idaho Code and Title 9, and shall be accompanied with a revised Development Agreement and/or Conditions, Covenants and Restrictions (CCR) as such revisions may be necessary to implement the Final Plat. The Board shall approve, approve with conditions, or deny the proposed Master Plan, Final Plat, and/or Development Agreement pursuant to the criteria set forth in C-iii-d of this section.

d. **Public Hearings and Public Notice.** The scheduling, public notice and conduct of public hearings as required in shit Subsection shall comply with the standard procedures established in county regulations and the Idaho Code §§ 50-1301 through 326.

Appendix E: Example of Teton County's formal notice letter sent to the owner of an expired paper plat

To: Warm Creek Estates LLC
PO Box 2085
Eagle, ID 83616

Date: May 9, 2011

Re: Expired Subdivision

Dear Warm Creek Estates LLC,

You are in breach of your development agreement because 1) your timeline for infrastructure completion has expired and 2) our records show you have not started the infrastructure improvements for the subdivision and that 3) the County Engineer has not inspected and approved your subdivision's improvements.

Section 9-3-2-D-2-L of Title 9 (the Subdivision Regulations) states that, *"The Board of County Commissioners may revoke a subdivision or Planned Unit Development upon failure to comply with the conditions of approval of a final plat or subdivision extension, upon the violation of any of the provisions of this Title, or for misrepresentations or material omissions made to the Planning Commission or to the Board of County Commissioners."* Therefore, the Board of County Commissioners has applied to vacate Warm Creek Manor subdivision by authority of this section of code and Idaho State Code 50-1306A. The vacation will be heard at the July 14, 2011 Board of County Commissioners Public Hearing. We encourage you to attend the hearing and an appeals process shall be provided pursuant to Idaho State Code 50-1322.

This letter serves as formal notice that no construction activity can take place in your subdivision. A violation is a misdemeanor and a separate offense is deemed committed for every day you are in violation.

If you have any questions about this notice, please call the Teton County Planning Department at 208-354-2593.

We look forward to hearing from you,

Teton County Board of County Commissioners

Appendix F: Example of Teton County's formal notice letter sent to the owners of a partially built and expired development

To: Ironwood Land LLC
Richie Group Office 1245 Brick Yard Rd, Ste 70
Salt Lake City, UT 84106

Date: May 9, 2011

Re: Expired Subdivision

Dear Ironwood Land LLC,

You are in breach of your development agreement because your timeline for infrastructure completion has expired and our records show that the County Engineer has not inspected and approved your subdivision's improvements. Teton County is aware that many approved subdivisions are unable to sell lots and, therefore, are unable to complete their required infrastructure. In an effort to respond to this situation and protect the health, safety and welfare of Teton County, the Board of County Commissioners has added a plat amendment procedure to Title 9 of the County Code.

The new amendment can be found in Title 9-3-2 (D-3) online at http://www.tetoncountyidaho.gov/pdf/additionalInfo/PZ_Title9_Amd20100916.pdf. In summary, it allows a developer to replat a project so that it can be viable. If your replat qualifies, the process will not require any additional fees or studies and will undergo an expedited process and likely result in new entitlements and a new development agreement with the County. Qualification, in short, requires a public benefit. This public benefit may include, but is not limited to, significantly decreasing density, increasing open space, the creation of more meaningful open space and/or rearranging open space so that critical habitat is protected.
If you are interested, please submit a plat amendment application. You must be current on your taxes for you replat application to be deemed accepted by the County. If this replat option is not of interest to you then please make an appointment to meet with planning and zoning staff and the prosecutor to discuss your other options.

Be advised that this letter serves as formal notice that no construction activity can take place in your subdivision until you enter into a new development agreement with the County which shall include an updated engineer's cost estimate and provide an updated financial surety. Prior to construction of any public improvements, a pre-construction meeting is required with the Teton County Zoning Official, the Teton County Fire Marshal and the project engineer and the contractor. A violation of these code provisions is a misdemeanor and a separate offense is deemed committed for every day you are in violation. Furthermore, no building permits can be issued until the requisite fire standards are in place and certificates of occupancy may not be issued until all public improvements are complete. For clarification about what improvements need to be complete, please see the attached resolution passed by the commissioners in February.

Finally, this letter serves as formal notice that, although you have a plat on file, the lots depicted may not be buildable or inhabitable until further arrangements are made with the County.

If you have any questions about this notice, please call the Teton County Planning Department at 208-354-2593.

We look forward to hearing from you,

Teton County Board of County Commissioners